

Sexual Morality



The purpose of this series is to demonstrate, through the treatment of problems drawn from contemporary life, the practical relevance of philosophy. The aim is to show how philosophical problems can arise out of, and can exert a profound influence upon, our personal and social problems; and how philosophical analysis can enlighten our moral attitudes, aspirations and decisions. At the same time, since the authors all in fact belong to the liberal, empiricist tradition of British thought, their attempts to show philosophy at work are also attempts to re-express, in a form that fits the time, the liberal vision of man and society.

PHILOSOPHY AT WORK

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Sexual Morality



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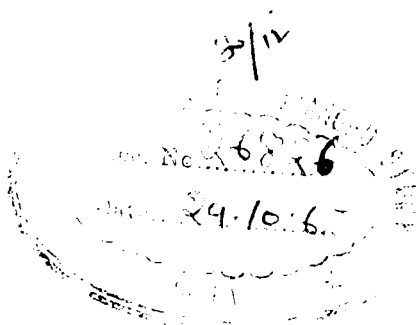
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Contents

<i>Preface</i>	7
• <i>Introduction</i>	9
• <i>Logic and Morality</i>	12
The 'Standard' Arguments	45
Free-love	73
• <i>Divorce</i>	111
Homosexuality	132
Contraception and Artificial Insemination	152
Epilogue	180
<i>Works referred to in the Text</i>	185
<i>Index</i>	189

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Preface

I am greatly indebted to the following people who read the book in typescript and made many valuable suggestions: to my wife Joan Atkinson, to my friends and colleagues Professor A. G. N. Flew, Dr. P. Halmos, Mr. A. Ryan, Professor A. E. Teale, and to the editor of the series Professor J. P. Corbett. They have saved me from a number of errors and infelicities, but, needless to say, are not to be held responsible for any that remain.

My grateful thanks are due also to Mrs. J. Bagshaw who typed the bulk of the manuscript with her customary efficiency.

Note on references

In order to avoid footnotes references to books and articles are given in the text, very often in abbreviated form. All the works cited should, however, be readily identifiable on the list at the end of the book. Where a work has gone through more than one edition the page references in the text are to the edition shown on the list. When this is a paperback edition I have, if applicable, given the place and year of first hardcover publication in brackets.

R. F. ATKINSON

Keele

I

Introduction

SEX is not the sole topic for morality, nor maybe in some absolute sense the most important one, but it concerns us all very nearly, and is above all others the area in which we have the opportunity to express our moral convictions in practice. The individual's direct influence on what happens in regard to such great matters as nuclear warfare and racial conflict is necessarily small, but we all of us have to make decisions about sexual conduct in our personal lives, and very many of us, as teachers, doctors, employers, or whatever it may be, in our public lives too.

The present book is mainly concerned with the critical examination of types of argument that are commonly used in connexion with the issues of sexual morality. It has two major purposes. One is to show—by example rather than precept—how so abstract a subject as moral philosophy often appears to be when treated academically can nevertheless have a bearing on the problems of practical life. The other is to make some contribution to the rational discussion of the substantial issues of sexual morality themselves.

The book is arranged as follows: After this Introduction come two chapters dealing, respectively, with certain general logical or philosophical matters, and with what I have chosen to call the 'standard' arguments. I try to explain the logical points without undue technicality, and so far as possible in an uncontroversial way. Some preliminary acquaintance with them should make it easier to follow what comes later, though their full force and importance will not be apparent until they have been applied in the

analysis of actual arguments. The standard arguments are put in because, in one guise or another, they crop up constantly in current debate. Moral argument is not a field in which the human race is specially inventive. It is worth looking at the bare bones of these types of arguments, taking them in general or, as it were, in diagrammatic form, because one is then in a better position to appreciate their power, to discern the sorts of conclusion they can and cannot be expected to yield.

Whereas Chapters 2 and 3 are thus devoted to the consideration of moral arguments in fairly general terms, the remainder deal with arguments about particular topics in sexual morality, namely, free-love, divorce, homosexuality, contraception and artificial insemination. (The choice of topics reflects partly my personal moral opinions on what is important, partly my judgment of what is currently interesting, and partly the belief that it is more useful to discuss a few topics at reasonable length than more very briefly.)

The later more practical chapters presuppose the earlier more theoretical ones, whose doctrine they indeed apply. But theory is most readily understood in its applications, and the two parts of the book are not wholly independent, each being intended to reinforce the other. Although I have arranged the chapters in what seems to me the most natural and convenient order, it does not matter very greatly in what order they are read.

In the pages which follow it is not my prime purpose to persuade people to take one side or the other on the issues discussed. The relevance of moral philosophy to practical problems, though important, is indirect. It puts us in the way of detecting absurdities, ambiguities, *non sequiturs*, honest confusion and cynical propaganda. It helps us to see problems for what they are, but it does not solve them for us. All the same, it is impossible to consider important and controversial issues with proper seriousness without sometimes taking sides, and I have, therefore, made no attempt to conceal, though I have tried not to obtrude, my personal convictions. It may make it easier both to follow what I have to say and to allow for my personal bias and prejudice if I give a brief account of my general moral position at this point. In the last analysis I am a species of utilitarian. That

on the other hand

is to say, I hold that whether or not a mode of conduct is acceptable, desirable or mandatory, right, good or obligatory depends on the contribution it makes to the welfare of the people affected by it. I allow that there is always a presumption in favour of the received moral code, and that it is wise to look for sense even in its more mysterious provisions, but, in the end, departures from it may be justified if the balance of advantage is with them. My views on the particular topics in sexual morality discussed are, as I believe, determined by this general approach. With regard to serious sexual relationships between unmarried young people (pre-marital intercourse), I can only assent to the hypothetical proposition that it is acceptable *if* it does no harm. It seems to me, however, that there rather frequently is some, and often much, harm in it, and that some of the people who would countenance it have not thought their position out at all adequately. Divorce I should like to see put on to a more straightforward and realistic basis than it is at present in England and Scotland, or than it appears to be in most of the states of the American Union. As for homosexuality, I see no reason why acts between consenting male adults in private should continue to be illegal. Contraception and artificial insemination by the husband (A.I.H.) raise no difficulties of principle for me, nor, I suppose, should artificial insemination by a donor (A.I.D.), and, although I feel a certain unease about it, I do not want to see it made illegal.

Logic and Morality

I MORAL ARGUMENTS Put in the most general terms a moral argument consists in a variety of statements, mostly either factual or moral, which are offered in support of a moral judgment. The moral judgment may be in force prescriptive ('You ought to . . .'), prohibitory ('You ought not to . . .'), or permissive ('You may, if you want to . . .'). It may also take the form of a statement to the effect that an action or course of conduct is right or wrong, or that a person, his character and actions, or the results of his actions are good or bad.

It is possible to cover a good deal of paper exploring the relationships between the terms 'ought', 'right' and 'wrong', 'good' and 'bad', and indeed other associated terms such as 'obligation', 'duty', 'virtue' and 'vice'. It is not, however, for the present purpose necessary to do very much of this. It will be sufficient if we remember that moral judgments can generally be expressed in a variety of ways.

It will be helpful to consider a few, schematic, examples of moral arguments. Take, for example, the topic of capital punishment. The conclusion might be that capital punishment for murder ought to be abolished and life imprisonment substituted. The reasons given (the premises) might be:

- 1 That capital punishment is justifiable only if it effects a significant reduction in the murder rate (a moral statement).
- 2 That the substitution of life imprisonment for capital punishment has no effect on the murder rate (factual statement).

Notice that there are at least two different sorts of question that can be asked about this argument. We can ask (1) whether the statements offered as reasons or premises are true or probable or otherwise acceptable. And (2) we can ask whether the reasons support the conclusion, i.e. whether or not the argument is valid, cogent or sound. Questions concerning the acceptability of premises must be distinguished from questions about the soundness of arguments. Unsound arguments can have acceptable premises, sound arguments unacceptable ones. Notice, too, that I am using 'moral' and 'factual' in such a way that statements can be moral or factual without being true. 'The moon is made of green cheese' is a factual statement even though it is false. Whilst 'One ought never to let an injury pass unavenged' is a moral statement, though not one that I accept.

Arguments used in connexion with euthanasia illustrate further how our two questions, concerning respectively truth of premises and validity of argument, can arise. Euthanasia, which I here take to be the painless killing of the incurably and painfully ill at their request, may be defended on the ground that it prevents suffering, and attacked on the ground that its practice, if widespread and publicly known, would undermine respect for human life and add a new dimension of terror to serious illness by weakening the patient's trust in his doctor. The pro-argument has a patently true factual premise—euthanasia really does prevent further suffering—and an implicit moral premise—that it is right or obligatory to relieve suffering—which is unexceptionable in itself. There can be little doubt about the acceptability of the premises. The question is whether they are sufficient to support the conclusion. The anti-argument in effect directs attention to some of the considerations that are neglected by arguing directly from the rightness or obligatoriness of relieving suffering to the legitimacy of euthanasia. The anti-argument itself, however, has different strengths and weaknesses. Its premises, if acceptable, lend strong support to its conclusion; the doubt is whether they are true, probable or even plausible; whether there really is, in fact, no way of having euthanasia whilst avoiding the indeniably bad results alleged to follow from it.

Another point that emerges from the euthanasia example

is that argument on moral issues need not be—in fact it usually is not—a simple matter of finding reasons which support the desired conclusions. Typically there will be reasons both for and against. It will be necessary to balance, to weigh against one another conflicting considerations—in the above example the relief of suffering on the one hand, the preservation of patient/doctor confidence and respect for life generally on the other. It is here that our powers of moral judgment obtain their most characteristic exercise. It is easy enough to think of general moral principles which hardly anyone wants to dispute. The trouble is that they tend to conflict, to point in different directions when applied to particular issues. Choosing between them, ranking goods in order of priority, determining the lesser evil, is the difficult and worrying task.

Capital punishment and euthanasia are pretty clearly moral issues, and the arguments used in connexion with them moral arguments. Some of the arguments about, say, expanding higher education and smoking cigarettes are different. A reason commonly given for expanding higher education is that it is necessary to maintain and increase the nation's economic strength, to raise the standard of living. And, notoriously, the argument for giving up cigarettes is that it increases one's chance of avoiding lung cancer. These arguments might be called economic and prudential respectively, or they might be said both to be arguments in expediency as opposed to morality. The important points, at the present stage, are that there can be arguments on practical issues which are not moral, and that the most important features of moral arguments are shared by practical arguments generally. These have practical, i.e. prescriptive, prohibitory or permissive conclusions, and commonly include both practical (e.g. lung cancer is to be avoided) and factual statements (e.g. cigarette-smoking increases one's chances of contracting lung cancer) in the premises. 'Practical' I am using as a general term to cover economic, prudential, moral, etc., arguments. No definite limit can be set to the number of types of practical argument that there are. It partly depends on how far one wants to go into detail.

Sexual behaviour is appraised both from the moral and from other, mostly prudential, points of view. We shall

have, therefore, to give some attention to the differences between moral and other forms of practical appraisal below.

So far, then, we have seen how practical arguments generally take the form of factual and practical premises or reasons offered in support of practical conclusions. We have further seen how two sorts of questions can be asked about such arguments, namely (1) whether they are valid or cogent, and (2) whether the premises are true or otherwise acceptable. In other words, there are two sorts of ways in which practical arguments can go wrong: their premises or reasons may be *insufficient*, or they may be *unacceptable*. A given argument may, of course, be defective on both counts.

I shall consider in turn logically sufficient reasons, morally (practically) sufficient reasons, and the truth (acceptability) of moral (practical) and factual statements.

2 LOGICALLY SUFFICIENT REASONS The idea of logically sufficient reasons can be illustrated by considering a logic-book example of a syllogism :

e.g. All mammals are vertebrates.

All cats are mammals.

Therefore: All cats are vertebrates.

Here the first two statements, the premises, are logically sufficient reasons for the conclusion. Given the premises, the conclusion *must* be true. In other words, to accept the premises and yet deny the conclusion is to contradict one-self. Anybody can contradict himself, fail to draw the appropriate conclusion, especially when the argument is complicated or he is hasty, inattentive or prejudiced. But one who persisted in denying the conclusion of so simple an argument as that above would raise doubts about his capacity to understand the statements involved.

Arguments of which the premises are or purport to be, in the way illustrated, logically sufficient are called *deductive*.

Logical fallacies There are a large number of ways in which deductive arguments can go wrong, a large number of fallacies. Many of these have been labelled. There is, for

instance, the fallacy of the 'undistributed middle'—as when one argues: All mammals are vertebrates, all whales are vertebrates, *therefore* all whales are mammals (the argument is invalid despite the truth of its premises and conclusion); and the fallacy of 'affirming the consequent'—as when one argues: If Smith does not apply for the job he will not be appointed, he will not be appointed, *therefore* he will not apply. It would be impossible to list many logical fallacies here. Impossible and unnecessary. For most people can detect logical fallacies, at any rate in the more straightforward cases, even though they may be unable to put a name to them.

Our present interest in logical fallacies derives from the fact that moral (practical) arguments are sometimes deductive in form and go wrong because they involve general logical fallacies. Take the two examples:

- (a) All promises ought to be kept.
You promised to be at the bus stop at 5 p.m.
Therefore: You ought to be at the bus stop at 5 p.m.
- (b) Adultery is a wrongful sexual act.
A.I.D. (Artificial insemination by a donor) is a wrongful sexual act.
Therefore: A.I.D. is adultery.

Argument a is valid, b is not. It requires no *moral* perspicacity to grasp this. The mistake in b is purely logical. It is sometimes a little hard to detect invalidity if one feels very strongly that both premises and conclusion are true, as somebody perhaps might with argument b. In such cases the invalidity can be made plain by constructing an argument of the same form in an uncontentious subject-matter. For example:

- b (i) Cats are mammals.
Dogs are mammals.
Therefore: Cats are dogs.

The moral arguments we actually encounter often suffer from purely logical defects, as indeed do arguments in all fields. Although it is necessary to have some idea of what they are, logical fallacies are not of the first importance from the point of view of this book. They are not specific

to our subject-matter, and are often no more than retrievable slips in reasoning. We are not, after all, debating. Accordingly, I shall try always to put the best possible logical face on the arguments on sexual topics that will be considered below, to take them in their strongest possible forms, where necessary and possibly plugging the purely local holes in them first.

'Ought' and 'is' Besides the innumerable, relatively unimportant, formal fallacies just referred to, there is another sort of defect in deductive reasoning which does merit close attention. In some cases the premise is of the wrong sort to support a conclusion of a given type. If, for instance, we want a universal conclusion we must employ a universal premise; if we want an existential conclusion we must have an existential premise; a factual conclusion requires a factual premise and a practical (or moral) conclusion a practical (or moral) premise. It is the last point that specially concerns us here.

Brief illustrations of some of these requirements may be helpful. The case of the universal conclusion is the most straightforward. Everyone can see that one cannot pass deductively from *some* to *all*. As for the existential conclusion (i.e. a conclusion asserting the actual existence of something), it is clear enough that from the non-existential *'If anything is an A, then it is a B'* it does not follow that there actually exist any A's. If anything is a unicorn it will have one horn, but there still are no unicorns. The so-called Ontological Argument for the existence of God, the argument from the idea, essence or definition of God to His existence, offends against this rule. (The argument is roughly: God is by definition perfect, if He did not exist He would be less than perfect, *therefore* He exists—a version of it is to be found in Descartes' *Meditations*.) The rule that factual conclusions require factual premises is the logical basis for the principle that the only way to discover facts is by empirical investigations, by looking and seeing as opposed to sitting and thinking.

The most important rule from the present point of view is that which stipulates that deductive arguments with practical (moral) conclusions must have practical (moral)

statements in the premises. All the examples of practical arguments so far given comply with the rule, including the invalid argument about A.I.D. and adultery. Compliance with the rule does not guarantee validity, but non-compliance precludes it.

It is very easy to find examples of arguments which violate the rule. For example: a The practice of contraception tends to reduce the birthrate and to encourage sexual activity outside marriage, *therefore* contraception ought to be forbidden and the manufacture and sale of contraceptives prohibited. b The emancipation of woman (involving, among other things, equal pay for equal work, equality of access to the professions, and so forth) leads to marital instability, *therefore* the trend towards emancipation ought to be reversed. c There are approximately equal numbers of men and women, *therefore* monogamy is the only acceptable form of marriage. Considered as deductive arguments these are all invalid for lack of practical premises to the effect that a falling birthrate, extra-marital intercourse and unstable marriage are objectionable and (though there are a number of different possibilities in the last case) that everybody ought to marry. Quite irrespective of whether their factual premises are true or not, the arguments are unsound unless practical premises are added. The rule which these arguments, taken as they stand, violate is, moreover, of much more than merely theoretical importance. In requiring the explicit statement of practical premises which have perhaps been taken for granted by some of the parties to a dispute it not infrequently brings to light that the premises in question are unacceptable or at least disputable.

The slogan 'You can't get an "ought" from an "is"', which has acquired a certain currency in recent moral philosophy, may be interpreted as expressing our rule that practical conclusions require practical premises, and consequently cannot be deduced from purely factual ones. There are some difficulties in the way of justifying the rule in a perfectly precise and general form. It is, however, my personal opinion that these difficulties can be overcome. And, in any case, there can be no doubt that if we apply the rule in practice it will direct attention to a great many arguments which are indisputably defective.

Another type of defective argument which is of some importance is when practical conclusions are purportedly derived from premises which are true by definition or, as it is commonly said, *analytic*. (If 'triangle' is defined as 'rectilinear three-sided figure', then 'A triangle has three sides' is true by definition, or analytic or, to give yet another current term, *tautological*. Such statements are necessarily true, and cannot be denied without self-contradiction. But, and this is just the other side of the coin, they are in a way empty or uninformative to anyone who understands the terms in them.) This type of defective argument may be illustrated by such dialogue-diagrams as the following: (a) 'It is always wrong to tell a lie.' 'But you did not think it wrong to tell your wife (falsely) that her new hat suited her.' 'I don't call that a lie.' And (b) 'Murder is always wrong.' 'But you approved of the generals' attempt to kill Hitler in 1944.' 'I don't call that murder.' In each case the first speakers are, in effect, protecting themselves against objections by making their original assertions true by definition, by taking 'lie' to mean (something like) 'objectionable falsehood' and 'murder' 'wrongful killing'. But the price of putting assertions beyond challenge by making them analytic is to deprive them of practical force, to make them incapable of supporting practical conclusions. An assertion like 'Killing is wrong' is not analytic, is disputable and has practical force. An assertion like 'Murder (= wrongful killing) is wrong' is indisputable, but has no practical force. This is why we are neither surprised nor impressed to hear that the preacher, in the old joke, is against sin.

The practical importance of this point derives from the fact that many statements offered as premises of arguments are ambiguous in that it is not clear whether or not they are to be taken to be true by definition. A very common form of equivocation—illustrated in the two dialogues above—is to begin by employing a statement as a substantial practical precept, but when challenged to make it true by definition. But, as will be further illustrated in section 5 below, the losses incurred by this manoeuvre exactly cancel out the hoped-for gains.

The two rules that practical conclusions cannot be de-

duced from, (1) purely factual and (2) merely analytic premises reinforce each other. Rule 1 requires us to put our moral/practical cards on the table, i.e. to state our practical commitments and thus lay them open to criticism. Rule 2 then forestalls any inclinations we may have to pass these commitments off as necessary truths.

3 MORALLY SUFFICIENT REASONS The burden of the last section was that statements of fact and analytic statements are not logically sufficient reasons for practical conclusions. There is, however, a rather different way of looking at arguments from factual statements to practical conclusions. One can think of them not, as hitherto, as failed *deductive* arguments, but instead as possibly successful examples of *non-deductive* arguments. That is to say, we can regard 'You said you would go therefore you *ought* to go' *either* as an incomplete deductive argument which lacks the practical premise 'You ought to do what you say you will do' or as a non-deductive argument proceeding in accordance with the rule that "'You said you would do . . .'" is to be counted as a good, i.e. practically or morally sufficient, reason for "You ought to do . . ."' Thus we can think of moral principles *either* as possible premises for deductive arguments or as rules for non-deductive arguments. It is not important here to try to decide which is the better way of regarding them. This is an issue in moral philosophy whose bearing on matters of practical concern is far to seek. Whichever way we regard moral principles or practical principles generally, there is no getting away from the fact that they are indispensable in arguments intended to support practical conclusions. It follows that such arguments can go wrong, be found exceptionable, not simply for purely logical defects but also because the practical principles involved in them are not acceptable.

More will be said about the acceptability of practical principles in the next section. Meantime, it will be worth while to review some of the main varieties of them. A distinction is very commonly drawn between morality on the one hand and prudence or expediency on the other. The objection to getting drunk when you are going to drive is

moral, the objection to continuous spirit drinking in the safety of the home is prudential, as is the objection to heavy cigarette smoking. Of course, imprudent behaviour may in a secondary sense become open to moral objections if one is incapacitated by the results of it from discharging one's obligations; and immoral behaviour may turn out to be imprudent in so far as it damages the reputation of the agent. Morality and prudence are, however, distinct in principle, and their secondary entanglements, though common, are not inevitable. From both the moral and the prudential or expedient need to be distinguished certain quasi-aesthetic appraisals we make of people and their conduct, appraisals involving such conceptions as the *dignified* and the *degrading*, the *admirable* and the *disgusting*. Occasional drunkenness, even if extreme, need not be imprudent (harmful to health), nor immoral if due precautions are taken to avoid hurt to others, but many would nevertheless hold it to be wrong in the sense of disgusting or degrading. It is of the very first importance where the appraisal of sexual conduct is concerned to keep clear the distinction between the immoral and the imprudent on the one hand and the merely disgusting on the other. For this is, above all others, a field in which our disgusts are likely to be idiosyncratic and irrational.

The relationships between the moral and the prudential or expedient will bear further consideration. We must not forget that 'moral' is a complimentary term, 'expedient' usually derogatory, whilst 'prudence' has a somewhat archaic flavour about it. The tendency is, I think, to regard imprudence as folly rather than wickedness, although prudence has been traditionally accounted a moral virtue and its opposite sometimes, e.g. in the eighteenth century, denounced as a terrible vice. (Broadly speaking, morality requires us to consider the needs and welfare of others, whilst prudence concerns only ourselves.) One frequently encounters a tendency to sharpen the contrast between morality and prudence. Prudence is counting consequences, morality scorning them. Prudence involves the mean-spirited calculation of chances, morality total, selfless commitment. One can, it seems to me, in this way make morality seem unduly irrational, principally by failing to grasp the difference be-

tween the question how we should regard our acknowledged moral obligations and questions about the grounds upon which actions become morally obligatory. Granted that such and such is a moral obligation, to *discharge* it in complete disregard of consequences is perfectly proper. But the man who tries in scorn of consequence to *discover* what is and is not obligatory is just a fool.

'Common sense' has no such simple conception of the moral as the above discussion might suggest. Some acts which cause great and obvious damage to other people, notably motoring offences, are not considered to be immoral, whereas relatively harmless sorts of lying and thieving are. Similarly some acts, e.g. oral-genital contacts, of which at any rate the occasional practice is entirely harmless, although disgusting to some, are held to be immoral.

'Ought' and 'can' Moral, prudential, indeed all practical principles relate to possible actions. They function as guides to conduct by way of prescription, prohibition and permission. Clearly we can guide a person's conduct only over that range of possibility within which he has the power to do or to forbear. This is one respect in which the quasi-aesthetic category of the degrading and the disgusting differs from the immoral and the imprudent. An 'action'—perhaps 'reaction' would in such cases be the better word—that literally cannot be helped may be disgusting, but it cannot be immoral or imprudent. It is because morality and prudence are thus restricted to what we can do or forbear at will that statements of physical and psychological possibility become relevant. Only in this regard have such enquiries as that of Dr. Kinsey and his collaborators into sexual *behaviour* a bearing upon sexual *morality*. To judge that, because 'everybody does it', some action or course of conduct is permissible or even admirable is to commit the fallacy already discussed of attempting to deduce a practical precept from a factual statement. Statements about what people *in fact* do become relevant to questions about what they *ought* to do in so far as they afford clues to what people can and cannot do. This is one very important respect in which psychological and social science have a bearing upon morality. Another is that they help us to grasp the rationale

of people's codes of conduct by making clear the sorts of problems that have to be coped with.

4 MORAL AND FACTUAL TRUTHS We have discussed at some length the validity of moral/practical arguments, i.e. the ways in which premises/reasons assumed true or acceptable might nevertheless fail to lend support to the conclusions in question. Now we must look at the question of truth itself. Factual premises/reasons, e.g. that capital punishment tends to reduce the murder rate, present no special problem. It may in practice be difficult to find out whether they are indeed true or false, but it is not seriously doubtful how one should set about trying to do so.

It is surely obvious, though apparently often forgotten, that a statement offered as a reason lends support to the conclusion *only if* it is true or otherwise acceptable. Where factual statements are concerned their truth can normally be ascertained only by investigation and enquiry. Possibly, if it were known to be true that homosexual behaviour among the ruling classes led to the decline of the Roman Empire, it would have some bearing on whether homosexual behaviour ought to be tolerated here and now. But since there is no reason for believing the statement to be true it has no force at all.

Factual truth, then, cannot normally be discovered without enquiry, but it presents no serious theoretical difficulty. The case is opposite with 'moral truth' or, more exactly, with the possibilities of establishing moral principles in particular or practical principles generally. Remember, as was pointed out above, that practical principles may be regarded *either* as premises of *or* as rules for moral/practical arguments. They may further take the form *either* of prescribing, prohibiting or permitting an action *or* of indicating an end as desirable, forbidden or legitimate. It is not of the first importance how practical principles are conceived. Nor, of course, are they always in dispute, but when they are it is by no means clear how or whether the dispute can be settled.

One can, of course, 'prove' a subordinate moral principle by deducing it from more ultimate ones, or by presenting it

as an application of them. Detailed rules concerning matrimonial or property arrangements are commonly justified by appealing to more general rules enjoining the promotion of justice or social welfare. General rules may be justified by appeal to still more general ones, but there manifestly must be an end to this process. *First* principles of morality cannot be proved in this way. There necessarily must come a point when there are no moral principles of sufficient scope and generality left to appeal to. But cannot the first principles of morality be placed on a non-moral foundation, given *outside* support? In the history of moral philosophy there have been very many attempts to do this, but none has been, and none can be, successful, given the two rules enunciated at the end of section 2.

Much the same applies if we conceive our moral principles not as rules prescribing actions but as setting before us ends or goals to be aimed at. Proximate or nearer ends may be justified as means to remoter ends. We eat less in order perhaps to slim, and we slim in order to make ourselves more attractive to the other sex, or it may be to keep healthy. And maybe we do all these things in order to be happy. This, being an ultimate end, cannot, however, be justified in the same way as a proximate end. There necessarily can be no further end for it to be a means to.

Thus people may differ on ultimate moral matters without there being any way of settling the difference, for neither need be making any logical errors or mistakes of fact. We can say, if we like, that one of the parties must be in moral error, but this does not help very much, since which of the views is *morally* erroneous is precisely the subject of dispute. Because of the irreducibility of ultimate disagreements it is a matter of considerable importance how much agreement and disagreement there is, as a matter of fact, in practical affairs. The logical impossibility of resolving ultimate disagreement does not preclude there being a wide measure of agreement in fact. There can be no disputing about tastes, but in fact there are things many people like and others many dislike, and within a given society the uniformity of taste may be more impressive than its diversity. How much agreement is there, then, on ultimate moral matters? Somewhat more, I think, than one might

gather from a cursory reading of the accounts given by the anthropologists of the beliefs and practices of 'primitive' societies. The variety of moral belief *within* our own culture is our chief concern, but even as between it and the strange cultures of Africa and Polynesia there is less variation in *basic* beliefs than appears at first sight. It is frequently possible to see different moral practices as responses to different social circumstances, to feel that, whereas our matrimonial or property system is reasonably appropriate in our society, the very different Eskimo or Samoan systems are equally appropriate to their special circumstances. It is possible to discern among an almost infinite variety of belief and practice a common concern for human welfare which, naturally, finds expression in different ways in different times and places. (Compare Hume's 'A Dialogue'—an early, and effective, exposition of this insight.)

With regard to our own society the arguments which take place on sexual matters are conducted within a fairly uniform climate of opinion. There is wide agreement on what things are good and what bad. Venereal disease, illegitimacy, marital disharmony are bad; stable, loving relationships, homes which constitute a secure and affectionate environment for children to grow up in, are good. The questions largely under debate are what the effects of alternative social practices are likely to be. It is sometimes said that the differences among us are matters of emphasis, that they concern the relative priorities of considerations of universally admitted relevance. There is a good deal of truth in this, but it can be misleading. For disagreements about priorities are still disagreements, and they may be crucial ones in that they lead to vast differences in policy. For example, with regard to capital punishment, we may all agree that it is important *both* to avoid the irrecompensible punishment of the possibly innocent *and* to prevent one-time murderers killing again. The relative priorities we here accord, our distribution of emphasis, will determine whether we want to abolish or retain capital punishment for murder.

The really important point in this connexion is, however, that we do not know in advance of an examination of the arguments in a particular field, i.e. before we try to distinguish the factual or evaluative elements involved in argu-

ments about, say, sexual morality, how far we—most of us—agree in our ultimate moral judgments. We may find we have a basis for co-operation with one another, or we may not. Since we need to co-operate, if we can, we have always a good reason for trying to find out.

5 DEFINITIONS Philosophers have always given a great deal of attention to the meanings of words. 'It depends on what you mean by so-and-so' is a phrase constantly on their lips. Many people, and possibly a few philosophers, seem to think that it is an established philosophical principle that before rational discussion or argument can begin the key words or concepts should have been defined. In fact, it is not very important to try to produce agreed, *explicit* definitions. Arguments about defining 'good' are over 2,000 years old. Moral discussion could never start if we had to agree on the definition of 'good' first. What really does matter is to have some grasp of the various possible ways of defining or otherwise explaining the meaning of a term, and of the logical consequences of adopting one definition rather than another. It is in virtue of the meanings or definitions of their terms that statements are *analytic* or *synthetic* (i.e. non-analytic), and it is upon this that their logical power very largely depends.

We have already (towards the end of section 2 and in the second of the two rules there laid down) mentioned analytic statements, i.e. statements that are true or false solely on account of the relations between the definitions of their terms. For example: 'A triangle is a three-sided figure' or—a false analytic statement or contradiction—'A square need have only three sides.' All other types of statements are synthetic. Analytic and synthetic statements occur in the moral field. For example: 'Adultery is wrong' is analytic on some definitions of 'adultery', and 'You ought not to repudiate your debts' is synthetic. Analytic statements, whether moral or not, are necessarily true or false but in a way empty or pointless, whereas synthetic statements, again whether moral or not, though they have point, are never, just *because* they have point, necessarily true. The only way

we can be sure of not being refuted is never to say anything of substance.

A common fault in argument is for a statement which is ambiguous, as many are, with respect to the analytic/synthetic distinction to be used sometimes as if it were analytic, other times as if it were synthetic.

Consider 'Murder is wrong'. This may be an analytic statement, 'murder' being taken to mean the same as 'wrongful killing', or a synthetic one, if 'murder' means simply, say, 'killing another human being intentionally and not in self-defence', i.e. if the term includes no unfavourable evaluation of the practice it describes. In the former case it cannot sensibly be denied that murder is wrong, but it remains an open question which cases of killing are to be counted as murder. In the second case it does, of course, make sense to dispute that murder is wrong. In *both* cases, however we interpret the statement, there remains to be decided the substantial question which sorts of killing are wrong. A substantial moral/practical question cannot be closed by definition, by interpreting a statement apparently bearing upon it as analytic. Nor indeed can a substantial factual question be closed in this way.

There is a similar ambiguity, i.e. scope for alternative definitions, in the term 'adultery'. Is it by *definition* wrong or not? If it is, then, of course, we need never wonder whether or not adultery is wrong; if it is not, then we may; but in either case the substantial question concerning the rightness or wrongness of certain sorts of sexual conduct remains to be faced.

'Murder' and 'adultery' are terms with a fairly determinate descriptive (factual) meaning, with which there may or may not be associated an unfavourably evaluative meaning. There are other terms whose descriptive meaning is associated with a favourably evaluative meaning, e.g. 'generous' and 'helpful'. Terms vary, depending on how firmly tied together their descriptive and evaluative meanings are, i.e. it may involve greater or less paradox to employ them in an evaluatively neutral or opposite sense. To say that it did not matter whether murder or adultery was committed, or still more that it was right to commit them, seems strange, if not actually contradictory. So much so that it

would often be reasonable to assume that 'murder' and 'adultery' were being used ironically in such constructions.

Roughly speaking, the names of the vices tend to be unfavourably evaluative in sense (i.e. 'dyslogistic' terms), whereas the names of the virtues are favourably evaluative ('eulogistic'). There are also some neutral terms, i.e. terms which are not normally, though in special cases they may be, used in either a favourably or unfavourably evaluative sense. 'Sexual desire', for instance, might be regarded as a neutral term standing between the dyslogistic 'lust' and the eulogistic 'love'.

Persuasive definitions It is in the perhaps unconscious hope of exploiting their eulogistic or dyslogistic force that people often attempt to apply an evaluatively loaded term to some practice the rights and wrongs of which are in dispute. It might naively be thought that it could hardly matter less, except to the dictionary makers, whether or not it is correct to call A.I.D. adultery, and that the only important question is whether or not A.I.D. is morally or legally acceptable. To be sure this is the important question, but it is begged if one allows the term 'adultery' to be applied to A.I.D. Because of the usually dyslogistic flavour of 'adultery', to concede this application is virtually to admit that A.I.D. is wrong. Again, the advocates or defenders of pre- or extra-marital sexual relations will prefer, because of the eulogistic flavour of 'free' and 'love', to describe what they recommend or permit as free-love, and not, dyslogistically, as fornication, adultery or promiscuity. A further example of persuasive definition is to be found in the evidence submitted to the Royal Commission on Marriage and Divorce by the then Archbishop of Canterbury. He held that it was morally preferable that couples in grave matrimonial difficulties should seek judicial separation rather than divorce, and tried to recommend this view by, in effect, and quite contrary to ordinary usage, choosing to call the second marriages of divorced persons *illicit unions*. 'It is of real moral importance that things should be called by their right names. Separation does at least secure that illicit unions cannot borrow the title of marriage or the status of legitimacy. Any person who chooses a separation in preference to a

divorce is helping to keep reality in this realm' (*Church and Marriage*, p. 24). Manifestly, no one who dissents from the moral teaching of the Church of England will be allowed by Lord Fisher to be in touch with reality.

The first step towards that clarity which is the beginning of wisdom is to keep fact and value separate. The practices of which the moral acceptability is under discussion need first to be described as neutrally as possible. Only then can one fruitfully ask whether they are right or wrong.

In addition to the few we have already mentioned, there are a great many other terms whose meanings present both descriptive and evaluative aspects, terms which accordingly tend to be used ambiguously as between fact and value. 'Nature', 'natural' and 'normal', 'function' and 'purpose', 'mature' and 'healthy' are among the more notoriously bewitching examples. They turn up repeatedly in the arguments that will be considered below.

6 MORAL THEORY AND POSITIVE MORALITY / By 'positive morality' is intended the moral beliefs which are in fact held by given people at a given time, their actual beliefs irrespective of whether they are right or wrong, no matter whether or not we share them. In the same sort of sense we speak of positive law, meaning the law as it, perhaps deplorably, is as opposed to what we should like it to be. It is, of course, never the case that everybody in a modern nation state has precisely the same moral views. Regional, class, denominational and age differences are quite common. There is, however, probably a consensus of opinion on some matters both of detail and of principle. The famine-relief and cancer-victim aid societies when they appeal for funds can be confident that their claims will not be rejected in principle. It may be felt that they oversimplify the issues involved, but nobody avows that people should be allowed to starve or that they should have to suffer in poverty and squalor.

A common pattern of moral argument or deliberation is working out the bearing of agreed generalities on some matter of current dispute. For instance, in a discussion of euthanasia the received opinions on murder, suicide, evading

one's obligations and relieving pain might be the starting points. Obviously, moral argument is rarely a simple matter of applying a precise rule to cases clearly falling under it. Such cases hardly could be controversial. Moral thinking is more like that required of the judge applying the common law in a test case. The principles applied are not always formulated, or readily capable of formulation. They are rather collected from the precedents, the decided cases which have points of resemblance to the one in question. 'Applying' the moral 'law', positive morality, is at least as complex and subtle a process as this.

But is 'applying' the right word, in view of its implication that the law is, so to say, there beforehand, just waiting to be applied? Students of the operations of the courts have frequently pointed out that the judges are not always simply *applying* the law, but that they are sometimes in effect *making* it, and have talked of judges legislating and of judge-made law. So it is very often with applying the moral law too. This is not invariably, and never in disputed cases, purely a matter of deduction, of intellectual expertise—it is an exercise in practical choice. We modify and make up the moral law as we go along, much more than the judges invent and extend the common law. For there is a legislative authority, whose statutes override the common law, in the legal field: but there is no accredited legislator or legislature in morality. The moral law is all case law, agent-made law. There are no moral statutes.

This last pronouncement does not, as it stands, take account of the fact that some Churches claim authority in morals and in effect, for the faithful, legislate in the moral field. Even so it is not usually thought that they create laws, i.e. just make them up and enact them, as it is now almost universally recognised that secular legislatures do. It is rather thought that they declare what the moral law has always been. The secular moralist is, in my opinion, ill-advised to stretch the received categories to cover new cases, e.g. to spend much time trying to decide whether A.I.D. does or does not come under the heading of adultery. This almost invariably deflects attention on to secondary issues. But the ecclesiastical moralist is virtually bound to do so. Parliamentary legislation is a slow, expensive and chancy

business, and we can only be grateful when the courts attempt to do what Parliament never gets round to, even though it sometimes involves their using words in a sense flat contrary to their ordinary meanings. So with ecclesiastical moral legislation. It is perhaps inconceivable that a Church should modify its opposition to divorce, but it might achieve much the same result by extending the grounds of nullity. Or, if it can hardly allow that the established homosexual's behaviour in private with a consenting, adult partner is in itself morally permissible, the practical consequences are about the same if it concedes that the so-called invert is 'invincibly ignorant' in this matter so that, although what he does is 'intrinsically sinful', he is not to be blamed for it (cf. Bailey in Rees and Usill, 1955, pp. 52-6). The secular moralist can hardly help feeling that there is an element of disingenuousness in manoeuvres of this sort. All the same, it should be recognised that they are made almost inevitable by the nature of ecclesiastical organisations, and that this species of disingenuousness is sometimes exercised in a good cause!

Moral theories are related to positive morality in a variety of ways. There may be psychological or sociological theories which aim to explain why particular people or groups have the moral beliefs that they have. Such theories, speculative and insufficiently supported by evidence as they too often are, are potentially of great interest and importance, not least to the reforming moralist in so far as they indicate the directions in which reform/change is possible. They are not, however, our present concern. *Philosophical* theories of morality are, moreover, themselves of various sorts. Sometimes they are simply attempts to systematise, to describe in general terms, common moral beliefs. These latter certainly appear to be pretty much of a hotch-potch, and philosophers have frequently attempted to express them more tidily, usually by representing rules concerning particular practices as derivable from a few general principles, or perhaps even a single supreme one. Kant claimed to have isolated the supreme principle of ordinary morality. And one variety of utilitarianism is the view that the received rules about debt repayment, abstention from murder, theft, etc., are derivable from the single basic obligation to do

whatever tends to bring about the greatest happiness of the greatest number.

It is, in fact, doubtful in the extreme whether all received moral beliefs can be related to a single principle, be it the utilitarian one or some other. The view that there are several mutually independent moral principles, usually and not too happily known as *intuitionism*, though intellectually less satisfying, probably gives a more faithful picture of ordinary morality. (Ross's *The Right and the Good* is a classical expression of intuitionism: philosophically more fashionable, but otherwise similar views are to be found in the writings of Toulmin and Baier.) But, of course, philosophers have not always been content simply to describe ordinary morality. They have frequently hoped to improve on it. It would not, after all, be very surprising if common beliefs on moral as on other topics were muddled and incoherent. In general, then, we may usefully distinguish between *descriptive* and *prescriptive* moral theories. Viewed as possible bases for judging and deciding on conduct, they differ with respect to their authority. Descriptive theories, assuming them to be accurate, have the same authority as the moral beliefs they describe. Prescriptive theories, on the other hand, have to be judged, accepted or rejected, on their intrinsic merits. They cannot, for the reasons indicated at the end of section 2, be in any very strong sense proved.

The point of going into this discussion of moral theories is to give some indication of the attitude that should be adopted to appeals to moral theory in the course of moral arguments. One needs to decide whether the theory in question is descriptive or prescriptive, and, if the former, whether it is true, or, if the latter, whether it is worth accepting. Another purpose I had in mind was to emphasise the fact, obvious enough in itself but liable to be forgotten when working out moral argument forms, that there is nothing sacrosanct about positive morality, the consensus of moral opinion—if indeed there is one relevant to the matter that happens to be at issue. When two people disagree on a point of, say, sexual morality, though it can be, it need not always be the case that one is arguing well and the other badly, or both of them badly, from common premises. They may disagree on what the received moral

beliefs are, or they may, one or both of them, reject them. As I maintained earlier, I think there often is agreement on the 'first premises' of disputes about sexual morality, but the contrary possibility must always be borne in mind.

Rules and ends The distinction noticed above between the utilitarian and intuitionist views of positive morality connects with the earlier distinction drawn in section 4 between conceiving morality in terms of ends to be sought and in terms of rules to be followed. We may, that is, think of the received moral rules as having been adopted for the sake of securing, by their general observance, some end—usually, but not necessarily, social welfare, which may itself, of course, be very variously conceived. Or we may think of moral rules as having been adopted for their own sake because they commend themselves to the moral consciousness, irrespective of any end their general observance might promote. Both approaches find some support in positive morality. Moral debate almost invariably involves reference to the results of adopting certain practices, but on the other hand too overt and exclusive attention to results tends to be condemned as 'mere expediency'. A certain scorn of consequence, resolute adherence to principle, largely irrespective of what the principles are, is admired: justice, it is thought, should be done though the heavens fall—a preposterous sentiment on the end (or teleological) view of morality. On the other hand, though, it would commonly be thought fantastic to suppose that morality had no social function at all, that its rationale is not at least partly that of regulating conduct with a view to making social life possible, tolerable, or even desirable. One's attitude to religion, the topic of the next section, has a bearing here. For the secularist, the unbeliever, morality hardly makes sense save in relation to its social function.

7 RELIGION AND MORALITY Religion, or at any rate the more familiar religions of the English-speaking world, Judaism and the varieties of Christianity, with their notion of the divine legislator, tend to be congenial to the rule view of morality. Sometimes even human welfare is thought to

have nothing at all to do with morality, which is concerned solely with pleasing God. And, conversely, it seems to me that the extreme-rule view of morality is a little hard to maintain without religion. There is no secular point in obeying rules of which the general observance can achieve no earthly good. This is not, however, the whole story. Congenial or not, an end view of morality is nevertheless logically compatible with Western religion. The Judæo-Christian God is usually held to desire the earthly welfare of His creatures and may be presumed therefore to approve of courses of conduct which tend to promote it. It is, moreover, possible to regard the moral emphases of the New Testament, which are not wholly unprecedented in the Old, as representing a shift from rule- to end-morality. The utilitarian injunction to promote the happiness of the greatest number is, from this point of view, but a secular, and perhaps shallower, version of Christian charity.

This possibly rather academic-seeming distinction between the end and rule conceptions of morality has some practical importance, not least in the sexual field. The end view tends to be more congenial to the 'liberal' attitude on such questions as pre- and extra-marital sexual relations, artificial insemination and divorce. The rule view tends to be more 'conservative'. But for some religious believers the end/rule issue is largely theoretical, and the two conceptions materially equivalent. They may hold that certain rules are to be obeyed because they have been, in effect, enacted by God, and not because the results of obeying them are or would be socially good. But, because their God is benevolent, they believe that He will enact only rules whose observance will in fact lead to socially good results.

It is beyond dispute that current Western positive morality has been greatly influenced by Christianity. But no *simple* conclusion about the indispensability of Christianity to morality follows from this historical fact. After all, Christian moral teaching will itself have been influenced by the antecedent moralities of the peoples who embraced Christianity. There is no ground for saying that without (the Christian) religion morality is impossible. Every society has a morality in the sense of a set of views about how its members should and should not behave. And it is simply

foolish to suppose that morality without religion is somehow left in the air, without support. As if religion itself had no need of support. As a type of human activity religion is much more seriously in question than morality. Whatever the whole story may be, there clearly is a social function for morality to discharge. It is not so obvious what function religion serves. Not at all obvious that a society could not very well live without it. It is no service to morality to stress its connexion with religion. This, in our post-Christian society, is to use the weak to prop up the strong.

Nevertheless, it is probably true that a further decline in religious belief and practice would affect not the *existence* but the *content* of the received moral code. In the field which is our particular concern it is virtually only Roman Catholics who are opposed to 'artificial' contraception within marriage, and only some of the Christian denominations, Roman Catholics and Anglicans especially, who are resolute in their opposition to any extension of the grounds for divorce. There are some elements in positive morality which owe their persistence to ecclesiastical support. This should, it seems to me, be a source not of delight but of concern to religious moralists. Precepts which can be supported only by authority, whether ecclesiastical or any other, are hardly likely to be wise or practicable in themselves. Seen in this light, talk of living on our spiritual capital in an age of unbelief is unimpressively question-begging to the secular eye. For it is only those items of the received moral code which are of least importance to unbelievers that would gradually disappear in default of a religious revival.

Of course, apart from influencing the retention or disappearance of particular precepts, a further decline in religious belief would have more general effects. It might well lead to a movement away from a rule-centred to an end-centred conception of morality. This would probably make it easier for changes in positive morality to occur. To think in terms of promoting ends makes it relatively easy to see that in different circumstances different practices will have to be adopted in order to realise the same result. This is less obvious if one thinks in terms of rules. Rule-morality is conservative, end-morality innovatory. For instance, to one who sees the avoidance of illegitimate pregnancies as the

point or part of the point of the rule of pre-marital continence, it is obvious that the development of a 100 per cent effective contraceptive system must make a difference.

Religion is thus a doubly conservative force in morality. Once because Churches, like other institutions, are innately conservative. And again because religion tends to be congenial to the conservative rule conception of morality. This is not to deny that many moral innovators and reformers have been religiously motivated. Western religion, in the main, encourages moral seriousness. Nor, of course, is it to assert, though I fear I may have left this impression, that moral innovation is necessarily a good thing. Originality, novelty, is always interesting, platitudes are a bore, but, in morality as in poetry and other fields, there is an abundance of original nonsense for every grain of original sense.

18 DOING AND BEING—ACT AND AGENT ETHICS Up to this point we have been thinking of morality primarily in relation to conduct, i.e. as concerning what we should or should not or may legitimately *do*. It is a natural enough extension of this approach to take in attitudes and dispositions as well in so far as they are (likely to be) expressed in conduct. Thieving is held to be wrong, and accordingly the disposition to steal, and attitudes likely to encourage stealing, such as envy, greed and covetousness, are held to be bad. But it is still what people do or are likely to do that matters most. This is one way of conceiving morality. Notoriously, however, not all moralists have accorded supreme importance to the outward act. Some have a greater or even exclusive regard to the inward disposition, to what people are not what they *do*, and are interested in outward acts, if at all, only in so far as they reveal inward dispositions. The Christ of the Gospels is sometimes conceived as promoting an extreme agent as opposed to act ethics, though this does not seem to me the inevitable or even the most natural way to read the Gospels. True, the non-adulterer who lusts after women 'in his heart' is condemned, but the point appears to be that outward behaviour is not enough by itself, not that it does not matter what it is. The same is surely true of St. Augustine's celebrated 'love God and do what you like'.

This pronouncement can only express St. Augustine's confidence that those who loved God in the required sense would like to do what is right.

To concentrate on the inward disposition and to neglect altogether the outward act seems to me to be a fantastic reversal of the obvious. But, as we have noted, some religious moralists have been interpreted as adopting an extreme agent ethics, and clearly, without going to the extreme, different emphases may be given to the act and agent aspects of morality. The stress placed by some people influenced by psycho-analytical writings on mental health, balance, integrity, maturity amounts to a sort of agent ethics, as does perhaps also the Existentialist enthusiasm for the authentic, autonomous act of choice. 'It does not matter what you do, so long as *you* choose to do it' sometimes seems to be the Existentialist message. At the opposite extreme are some Communists with their talk of people 'objectively' assisting the class enemy, if their actions, no matter how impeccably well intentioned they may be, do in fact help the enemy in question.

The act/agent divide is another point at which religion bears upon morality. Although the major institutional Churches are more commonly under fire for being too much the other way, extreme-agent ethics, with its utter indifference to the effects of one's actions on other people in this world, may, nevertheless, make a sort of sense in a religious context. It may be believed that God requires one first and foremost to seek spiritual integrity, to cultivate one's soul, and to take no thought for what one's actions bring about in this world. From the purely secular point of view, on the other hand, extreme-agent ethics presents itself as a sort of moral narcissism, a selfish, frivolous aestheticism.

It need hardly be said that a person's placing along the act/agent dimension will have an important bearing on his attitude to the problems of sexual behaviour. It makes a very great deal of difference whether one regards *chastity*, to use an old-fashioned, rather debased word, primarily as a practical disposition or as a mere state of mind.

9 LAW, MORALITY AND PERSONAL PREFERENCE The distinction just discussed between act and agent ethics is sometimes associated with another between matters of law and matters of morality—the line of thought being that the law is, or ought to be, concerned with outward acts, whilst morality has to do with the inward disposition and takes note of the outward act only so far as it is a manifestation of it. (The act/agent disagreement about morality may be complicated by merely verbal differences. ‘Morality’ is occasionally reserved for the agent aspect, whilst the act aspect is dealt with under the heading of law.) This simple view of the relationship between law and morality is, however, seriously misleading. All civilised legal codes do, to the general approval, take into account motives and intentions. English law does, it is true, recognise some offences of ‘strict liability’. When charged with such an offence it is no defence, as it generally would be, to plead that you did not intend the act in question. But the recognition of such offences is felt to be exceptional, and to be objectionable in general principle, even though it may be justified in particular cases (e.g. in respect of motoring offences) for the protection of the public. In general, however, the law does, and most people think should, concern itself with rather more than the outward act, though the extent to which intentional factors are taken into account is restricted by practical considerations—some of the finer discriminations cannot reasonably be made subjects of evidence in a court of law.

On the other side, morality, current positive morality, is concerned with outward acts. The prohibition of adultery, which is not in itself a crime in England, is an example, as are various sorts of breaches of faith which though not illegal are nevertheless morally condemned. Why is not adultery a crime? The rationale of many features of our positive moral and legal codes is obscure, but in this case it seems reasonable to suggest that it is because the difficulties and disadvantages of enforcing a law prohibiting adultery would far outweigh any advantages. (Apparently adultery is illegal in some American states, though the laws are not generally enforced—Stevan, 1961, p. 129 and p. 218.) In general whether or not some (positively) immoral act is a

crime depends on a complex mixture of factors, which includes regard for personal freedom, the 'seriousness' of the act in question, and various practical considerations relating to the possibilities or advantages and disadvantages of enforcement. The state of popular feeling, what the public will stand, is highly relevant, since it is not in a free society feasible to enforce a law of which most people disapprove.

The important thing from the present point of view is that the relations between crime and sin are complex. (I here use 'sin' to mean 'immorality', though the word normally has religious connotations too.) It may not automatically be inferred that because an act is (held to be) immoral it ought to be made illegal. Nor that because it is illegal it must be immoral. There is in the latter case the additional complication that it might be held that it is immoral to break the law as such, or at any rate that it is immoral to break any law enacted after a due democratic process in which one has participated. On such views the commission of any crime will inevitably be immoral, but it will still have to be admitted that certain acts, which are crimes, would not be immoral if they had not been made criminal. Generally speaking, different arguments are in place if the question is 'Is it immoral?' from those that are appropriate if it is 'Should it be illegal?'. This difference can be important in connexion with, say, homosexuality and divorce. There is no contradiction in thinking that the former, though immoral, should not *as such*, i.e. when not involving the exploitation of the second parties involved, be illegal; nor is there any contradiction in holding that, although divorce is morally objectionable, the grounds on which it is legally available should nevertheless be extended. A somewhat similar discrepancy between legal and moral judgment may occur with respect to A.I.D.

It is often painful to have to oppose legislative interference with something one feels to be thoroughly immoral. But few of us, after reflection, can seriously think that the immorality, as we think, of an act is, *in and by itself*, a sufficient reason for making or keeping it illegal. On the credit side, too, the distinction between law and morality affords a basis for co-operation between people who are irreconcilably divided in their moral views. It is sometimes

possible for such people to agree about the law—particularly if they hold, as they might, that the presumption is always against legislative restriction of individual freedom of action.

In addition to the distinction between law and morality a further distinction can be drawn between morality and personal preference. (I here use 'personal preference' to cover *both* matters of mere liking and disliking *and* matters involving one's most cherished personal ideals.) A case for such a distinction arises to the extent that morality is conceived as essentially a social affair, comprising rules or policies or aims whose service tends to promote or at least not to frustrate the interests and welfare of everybody. The importance of morality might be thought to derive from its social character, as does also the legitimacy of imposing moral sanctions on other people, of condemning or applauding their moral or immoral behaviour. In so far as pre- and extra-marital sexual relationships are thought to be a moral matter, the implication is that people are to be up for judgment for their behaviour in this field. If, however, these activities fall within the field of personal preference they concern only the parties who engage in them and nobody else has the right of censure.

Presumably everybody but the most fanatically meticulous moralist will agree that some trivialities, habits of eating, dressing, etc., come within the field of personal preference. But so also do such serious matters as the choice of a job, a style of life, or a marriage partner. Morality is almost invariably so conceived that it leaves a wider or narrower area open to personal choice, a space within which one's choices, whatever they may be, will not come into collision with the requirements of morality.

It is true, of course, that current positive morality—and even, in some instances, current positive law—does take cognisance of a few acts which it would seem reasonable to include within the area of personal preference. This is perhaps most conspicuously the case where sexual matters are concerned. Masturbation has been widely condemned as immoral, as have certain 'deviant' practices even when carried on within marriage (anal intercourse in such a context would appear to be actually *illegal* in England), and homo-

sexual acts between consenting adults. Our judgments in matters of sexual behaviour will obviously be profoundly affected by how wide or narrow we take the field of personal preference to be.

For the present, however, I want only to emphasise the possibility that, much as one may think that an act should not be illegal even though one thinks it immoral, so one may think that an act is not immoral, i.e. not a proper object of censure, even though it runs contrary to one's personal standards, even though one personally finds it disgusting, degrading or ugly. Moral standards apply to all alike: personal standards, ideals, are not touchstones for the behaviour of other people. (There is a valuable discussion of the relationship between morality and ideals in R. M. Hare's *Freedom and Reason*.)

TO REASONING AND RATIONALISATION I have in the course of this chapter made various logical points about moral arguments, and a number of pronouncements about morality and the relationships between it and religion, law and personal preference. Everything that I have written is, in greater or less degree, disputable. This matters less than might be thought so far as the purpose of the book is concerned. If a precondition of the study of arguments were the establishment of unchallengeable distinctions, such study could never begin. All that is in fact indispensable is some awareness of and sensitivity to the sorts of distinctions that can be important, and some familiarity with the sorts of manœuvres that may be attempted in moral arguments.

I suppose, however, that it may be thought that altogether too much attention is being paid to *arguments*. Is there anything easier than to exaggerate the extent to which people are rational, are actually influenced in their behaviour by their own and other people's arguments? Surely much of what passes for argument, especially in the sexual field, is simply what people say, to themselves or others, in order to 'justify' what they are impelled to do anyway by powerful, perhaps unconscious, instinctual drives. Reasons given are nothing but rationalisations of courses of conduct of which the determining causes are quite different. The philosophical

scrutiny of *arguments* should surely give way to the scientific investigation of sexual *behaviour*. And has not the investigator at the very outset to learn not to take at their face value the things people say?

Certainly scientific studies of sexual behaviour are wanted, and I have already (section 3 above, on 'ought' and 'can') tried to indicate the sort of bearing they can have on questions concerning right and wrong. But it is, nevertheless, quite mistaken to neglect the arguments people produce. True, they may not be of the first importance to the student of sexual behaviour, the biologist, the psychologist or sociologist. But we are not, all of us all the time, students of sexual behaviour. We are practitioners, agents, judges as well. We have to make up our minds how to behave, and what attitude to adopt to the behaviour of others. From this point of view arguments are important. What else *can* we do when trying to make up our minds than attend to the pros and cons? It is, furthermore, easy to show that not all arguments can be bogus, not all of them rationalisations, if that implies they are shams.

People do rationalise in regard to sex. They do produce bad and irrelevant arguments for courses of conduct they have chosen on other grounds or none at all. But not all the apparent reasoning in this or any other field can be rationalisation—for the concept rationalisation is parasitic upon that of reasoning. The one is defined in contradistinction from the other. There cannot be instances of the one without the possibility of instances of the other.

A typical case of rationalising is when somebody gives what is on the face of it a perfectly good reason for what he does, although we have grounds for believing that it was really something else that led him to perform the action. For example: Mr. A. takes off his coat saying, 'It's stifling in here,' but the thermometer stands at 2°C, and we know that he is acting out a post-hypnotic suggestion. It is just because 'It's stifling in here' is, if true, an *obviously* good reason for taking off one's coat that it is available for rationalisation. Mr. A. could only invent a bogus reason because he and the rest of us are well aware what a genuine reason in the field in question has to be like. The prevalence of rationalisation in a field thus does not entail that reason-

ing is impossible within it. Rather the reverse. Nor, therefore, does it mean that to assess the worth of arguments is either impossible or pointless. If it is arguments we are interested in it does not matter whether a particular person is reasoning or rationalising, whether he is or is not himself actually being moved by the arguments he uses. They can be good or bad irrespective of this.

In one type of case there is a special danger that possibly good arguments will be written off as mere rationalisations. This is when somebody refuses to retract his conclusion even though the argument originally offered in support of it has been decisively rebutted. Instead of giving up the conclusion he simply casts round for better arguments. When this happens one is frequently quite unable to believe that the subsequent arguments, however sound they may be in themselves, have much to do with the *speaker's* acceptance or retention of his conclusion. Examples come readily to mind. Heterosexual promiscuity is condemned because it may lead to illegitimate babies and venereal disease. It is replied that it is possible to avoid these untoward consequences by contraceptives and prophylactics—whether and how far this is true does not matter for the moment. Whereupon promiscuity is condemned on the new ground that it is incompatible with the establishment of satisfactory personal relationships. The one point that I want here to emphasise is simply this: that it is *one* question whether our moralist is rationalising, and quite *another* whether the second reason offered is a good one or not. Only the latter question matters if it is the rights and wrongs of promiscuity we are concerned with. It is not important that some moralists are seeking reasons for conclusions they have adopted for no reason at all. Their own imperviousness to reason will not turn any good reasons they happen to find into bad ones.

Reasoning, even with regard to sexual morality, is thus not necessarily mere rationalisation, and I hope I do not exaggerate the extent to which we are in this field open to conviction by cogent argument. It can be a serious error to do this if one is concerned to influence behaviour in the short term. Coercion, bribes and threats, indoctrination and propaganda, may well achieve better results. It does not,

however, follow that it would not be a good thing if we were more rational than we are, nor that we cannot become so, nor therefore that it is not worth trying to make it easier for us to become so by working out what rationality entails in a given field. There is no call to be too pessimistic about the prospects of success. Irrationality is common, but there are some pressures which exert themselves the other way. Public argument, for example. The desire to confute one's opponents may lead one into sophistry and deceit. But, on the other hand, the surest way to win an argument is to argue cogently, just as the surest way to get people to take your arguments seriously is to show that you propose to be yourself guided by them. To argue is to lay oneself open to counter-argument, to run the risk of being forced to accept unpalatable conclusions. The only safe course for the irrationalist is to keep his mouth shut and not try to make converts. Sexual morality seems, moreover, at present to be a field in which there are many people quite likely to be receptive to argument. There appears to be widespread, genuine uncertainty about how one should behave, how one should teach one's children to behave, and how the behaviour of others should be judged.

3

The 'Standard' Arguments

I THE WESTERN NORM Many of the types of argument that will be considered in this chapter have a long history as well as being still in use. They have all been invoked in support of what I shall call the *Western norm*, i.e. that conception of marriage and sexual relations generally which is at least the point of departure for discussions of sexual morality in the more or less 'advanced' Christian or post-Christian societies of Europe and the New World. The content of the Western norm or ideal is familiar enough. It is that sexual relationships shall be exclusively heterosexual, and that no sexual activity shall take place outside monogamous unions which are, intentionally at least, life-long. When death interrupts a marriage the surviving spouse is permitted to re-marry. The married pair may not be near blood relations: parent-child and sibling marriages being completely ruled out, though there have from time to time and place to place been some variations of attitude to uncle-niece and first-cousin marriages, and to marriages between relations by 'affinity' ('in-laws' are relations by affinity). There has also been some variation in the attitude adopted to divorce, though this has always been confined to a narrow range of cases in which some 'offence', e.g. adultery, desertion, has been committed by one or other of the partners. For a realistic picture divorce and annulment of marriage have to be considered together.

One does not have to reflect very long on such accounts as the above to realise that the Western norm has not only been widely disregarded so far as sexual *behaviour* is concerned

but that it has also not infrequently, explicitly or implicitly, in one respect or another, been challenged *in principle*. A 'double standard' of sexual behaviour for men and women has very commonly been tolerated, pre-marital continence being required of respectable women only, and female prostitution accepted. The word 'tolerated' describes the situation that has perhaps most usually obtained, in which the double standard, prostitution, etc., are recognised as derogations from the ideal—accepted, but not defended or regarded as justified. But the system described has had its defenders too, i.e. people who do not seriously think of pre-marital continence for men even as an ideal.

Thus the Western norm as I have outlined it, though it is the *ostensible ideal* to which lip-service has usually been paid, has not always been the *operative ideal* even for morally serious and responsible people. To the twentieth-century eye the gap between 'official' precept and accepted practice in sexual matters in the nineteenth century seems to have been so remarkably wide that it is impossible not to account for it in terms of hypocrisy and male privilege. This is an extreme case. But there normally is some discrepancy between the ostensible and the operative ideal—not only, of course, with regard to sexual matters. This sort of divergence is in fact virtually inevitable, and not necessarily to be dismissed as mere hypocrisy.

I stress this distinction between ostensible and operative ideals partly in the hope of warding off complaints of excessive unrealism in my delineation of the Western norm. Partly too by way of a warning that it may be a matter of some difficulty to ascertain what we *think* on sexual, and indeed on moral, issues generally, since this often differs from what we tend to *say*. Leaving out of account hypocrisy, which if it means deliberate other-deception as opposed to self-deception is I think fairly rare, the sort of discrepancy we have noted can arise simply from the difficulty of finding succinct verbal formulae for expressing our often very subtle and complex moral convictions. The law is rightly regarded as a crude mechanism from which morally relevant refinements, differences between cases, have to be omitted in the service of practical necessities. Yet the law in all civilised countries has attained a degree of complexity not easily to be

encompassed by the layman. Morality is not less complicated. The moral principles we recite, those quoted in the moral-philosophy books, in the pulpit, on the bench and in the Press, are often only the roughest approximations to the opinions of morally serious people. Moral judgment is not, moreover, a simple matter of intellectual expertise. It has some affinities with a practical skill. Those who do it well are not necessarily good at describing what they do, or at spelling out the principles with which they in effect operate. The moralist does not have to be expert in moral philosophy.

This almost universal discrepancy between talk and thought (which is not, incidentally, peculiar to morality—witness the contrast between the maxims of the driving manuals and the practice of good drivers) generates certain forms of speech which can, I think, cause serious confusion. Such things are said as 'It is wrong, but necessary, inevitable, etc.' Proponents of a double sexual standard often talk in this way, as do non-pacifists who feel obliged to doff their hats to the Sermon on the Mount. At the risk of pedantry, but for the sake of clarity, we must insist that 'wrong' be reserved for what it is seriously believed ought not to occur; that what is necessary or inevitable cannot be morally wrong in so far as moral judgment (as noted in the previous chapter) is confined to objects of possible choice; that anybody who seriously and sincerely thinks that a copybook maxim ought to be disregarded in practice is, quite simply, *thereby* evincing his non-acceptance of the maxim in question.

As already explained, the arguments we have to consider have, all or most of them, been used to support the Western norm. Not one of the more compelling ones does in fact, as we shall see, carry one the whole way. This result, in *itself*, does not, however, constitute a condemnation of the received opinions about sexual behaviour. For, to repeat, the Western norm as outlined above is little more than a schematic representation, a sort of diagram of those opinions. And in the present chapter the arguments too are being considered in very general terms. We are considering argument *types* rather than examples of actual arguments. This is a theoretical activity, but none the worse for that. The point of it is simply that, before considering actual arguments, it is

helpful to have some idea of the *sort of* conclusion a particular *sort of* argument might yield.

It has to be kept in mind that the Western norm is supported partly by custom, partly by legislation—adultery is immoral, but bigamy criminal—the boundary between law and custom varying somewhat from time to time and place to place. We must not forget what emerged in the previous chapter about the relationships between law, morality and personal preference.

2 THE GROUNDS OF ASSESSMENT The Western sexual norm may be regarded as ultimate, as incapable of justification and requiring none. This is less an argument than a, possibly reasoned, refusal to argue. It might seem a very unsatisfying position to adopt, but it has some advantages and there are various ways in which it might be defended.

One way is to contend that moral questions can be rationally answered only when there are criteria or standards for determining what would count as a correct answer. The received moral principles are such criteria. To raise questions about these criteria is not to engage in moral argument but rather to challenge the very possibility of it.

Or, somewhat similarly, it may be held that to pronounce a course of conduct right or wrong is to say that it is or is not in accordance with the relevant moral principles. If this is what 'right' and 'wrong' mean, then it makes no sense to say that, or enquire whether, the moral principles themselves are right or wrong.

These lines of argument are reinforced by the general truth that first principles cannot be proved. The essence of the position under discussion is that our sexual and matrimonial regulations are first principles. It may seem an unduly arbitrary position to take up, but it has its charm. The *arguments* that can be invoked all, as we shall see, have their weaknesses. The man who refuses to argue cannot be shown to be arguing badly.

What, then, can be said on the other side? At least this: that, even granting that the received moral opinions cannot intelligibly be challenged, and that 'right' and 'wrong' cannot be intelligibly applied save in relation to those principles

(neither of which I should grant), it remains the case that the received moral opinions (most people's, anyway) include bases for criticising the more detailed regulations in particular fields. Sexual relations are one such field of detailed regulation, property and inheritance is another. There is some detailed variation among the regulations of different Western societies. It is at least widely held that such regulations can be assessed from the points of view of *prudence* or expediency (i.e. whether they lead to results beneficial to the individuals concerned), of *beneficence* (i.e. whether they promote the well-being of society generally), and of *justice* or fairness. Practically all moralists, secular and religious alike, use arguments under these three heads in support of or in opposition to the existing opinions. Prudential and utilitarian considerations and considerations of justice or equity are all widely held to be *relevant* to the acceptability of the positive code, in the sexual as in other fields. In most fields most moralists are prepared to take the risks of arguing.

In the remainder of this chapter I shall examine in turn arguments in prudence, beneficence, and justice. I shall also outline a notion of *responsibility* which will, I think, readily be allowed to be a consideration the innovating moralist in particular has to bear in mind. Later I shall go on to examine arguments of a more controversial sort, natural law and religious arguments among others, and finally consider some of the different views that can be taken of the relationship between law and morals in the sexual field.

3 PRUDENCE AND EXPEDIENCY Arguments of this sort must be very familiar. Extra-marital intercourse is condemned because it may lead to unwanted pregnancies and the miseries of unmarried motherhood, promiscuity because it may lead to venereal disease. Masturbation has been condemned on account of an immense variety of physical or psychological ills to which it has been alleged to lead. More subtle arguments of the same sort have been constructed in the hope of showing that a stable heterosexual relationship within a monogamous union is the only really satisfying one.

Some arguments can about equally well come under the

heads either of prudence or of beneficence. For example, the very common argument that homosexual behaviour, at any rate if widespread and socially accepted, tends to destroy society. If the destruction of society is thought of primarily as a disaster to the individual then the argument would be in prudence, if to people generally then the argument belongs to beneficence. It is not very important that we should be able to bring every argument clearly under one head rather than the other. If we can get clear *both* about arguments which are unequivocally prudential *and* about those which are definitely in beneficence we shall be adequately equipped to deal with any that come in between.

Some general comments can be made about arguments in prudence. First, their evaluative components are often virtually incontestable. It can hardly be doubted that illegitimate pregnancies and venereal disease are objectionable. But secondly, and it might be thought obviously though the point is often missed, it is not enough to point to an acknowledged evil and *claim* that it is brought about by the practice condemned (or to an acknowledged good claimed to be produced by the practice defended). It has in addition to be shown that, *as a matter of fact*, the practice does—invariably, usually, or commonly—lead to the evil or good result in question. We see here both the strength and the weakness of prudential argument. Its strength is that the main point of controversy is factual, and hence, in principle, capable of settlement by the ordinary procedures of empirical enquiry—by scientific investigation if you like. Its weakness is that the relevant empirical facts are in many cases not known, and not easily to be obtained. Who knows, for example, whether the psychological trauma undoubtedly sometimes caused by abortion really is inevitable or highly probable; or, if it is, whether it would continue to be so if abortion became more 'respectable' than in most circles it is at present? Not only is it much too often *assumed* that the relevant facts are known, but there is also a tendency to resist, or to evade, unwelcome conclusions in prudence by exaggerating the difficulty of ascertaining the relevant facts. This tendency can very clearly be seen to be at work in discussions about the linkage between smoking and lung cancer.

We should note with respect to those arguments in prudence which rely on the effects of certain practices on physical or mental health, first, that morality typically requires a regulation of appetite which goes beyond, and/or is different in kind from, that which can reasonably be thought to be necessitated by prudence. In the sexual field such prudential arguments may yield answers to the questions 'How much?' and 'How often?', whereas morality is here more characteristically concerned with what may be done with whom. It should also be noted that over a wide range of cases the individual is himself allowed to be the best judge, or at least the final court of appeal, with regard to questions of his own well-being—which overlaps his health. In matters of food and drink, anyway, it is usually thought to be a person's own affair whether or not he is prepared to accept some measure of indigestion, or a moderately increased chance of liver or stomach damage, or, in the case of smokers, of lung cancer. It is not obvious from the prudential point of view why the same attitude should not be taken to sex. Why, that is, we should not allow that people might reasonably choose to accept some of the pains of excess if they are so minded. It is partly for reasons of this sort that the imprudent are felt to be foolish rather than wicked. And indeed if, after due reflection and in the light of experience, they think it was worth it, who has the right to call them foolish? We may very well think that it would have been imprudent for us to engage in a like course of conduct, but manifestly it was not for them.

But, on the other hand, though it is clearly independent in principle, prudence cannot be altogether dissociated from morality in the shape of beneficence and fairness. For instance, in some states of society it may be true to hold that pre-marital intercourse is imprudent for young women but not for young men. The stigma of illegitimate maternity may be very great, female contraceptives very hard for the unmarried to obtain, abortion illegal and dangerous, whilst custom may make it very easy for the man to evade taking responsibility for his action. Manifestly, in these circumstances, although prudence would not require a man to refrain from intercourse outside marriage, considerations of beneficence and fairness would. The view that one some-

times hears expressed that pre-marital intercourse, though doubtless imprudent, especially for the girl, is not wrong, seems to me to fail to take account of this linkage. It would, in fact, seem normally to be the case that, where it is *imprudent* for one party to engage in a co-operative enterprise, it will for that reason be *wrong*, as contrary to beneficence and/or justice, for the other to do so.

The most significant feature of arguments in prudence is, however, this: that their appeal is to self-interest. They point, most usually, to evils held to be produced by the course of conduct up for judgment, evils which can accordingly be avoided if the conduct is not undertaken. But, obviously, what is called the result of a course of conduct will normally come about only if certain conditions other than the course of conduct in question obtain. (Just as pressing down the switch will result in the light coming on only if the wires, fuses, etc., in the system are intact, and current is flowing in the mains.) Consequently, it will often be possible, and so far as prudence goes always legitimate, to engage in the conduct and avoid the evil result by eliminating or otherwise operating upon one of the other conditions. Contraception is a good example of a development of this sort. If the only objection to pre-marital intercourse were the likelihood of an illegitimate pregnancy, then a 100 per cent efficient contraceptive would remove this objection. It is sometimes said that it is absurd to allow the morality of sexual relations to be in any way determined by the successes of the contraceptive manufacturers. Whatever sense there may be in this as regards morality (and I think there is not much) it manifestly does not apply to prudence. Similarly, a non-carcinogenic cigarette would greatly reduce the prudential objections to smoking. It is entirely reasonable to try to get round prudential arguments by trying to devise the perfect contraceptive, the safe cigarette. Again, if the only objection to sexual promiscuity is the prospect of venereal disease, the rational course may well be to abandon the uphill task of encouraging continence and instead concentrate on prophylaxis, as the Army does. Or one might seek to develop some system of protection by mass inoculation.

I must emphasise that my sole purpose has been to set

out in rather general terms some of the strengths and weaknesses of arguments in prudence. I have been discussing the sorts of conclusion they may, rationally, be taken to establish. It is a completely different question how far notice is likely to be taken of them. The history of the smoking and lung cancer argument is not very encouraging. Prudence, it is to be feared, makes small appeal to the generous spirit. Soft hearts are quite often ruled by soft heads.

4 BENEFICENCE—UTILITARIAN ARGUMENTS Whatever other arguments they use, and sometimes prefer, moralists of virtually all persuasions do use utilitarian arguments too. The monogamous matrimonial system is defended mainly on the grounds that it secures the proper upbringing of children and various other personal and social goods. The appeal is to beneficence, to a regard for the welfare of others beside the agent, not to prudence, regard for his own welfare, merely: though often, especially perhaps in the eighteenth century, it has been held that prudence and beneficence coincide.

It will be helpful to have some examples of utilitarian arguments before us.

Sidgwick, for instance (1901, p. 359), informs us that reflection discovers two grounds for the current sexual morality: (1) 'Chiefly, the maintenance of a certain social order, believed to be most conducive to the prosperous continuance of the human race', and (2) 'The protection of certain habits of feeling in individuals believed to be generally most important to their perfection and happiness'. As to the first, in so far as the 'prosperous continuance of the human race' is interpreted rather crudely as a matter of maintaining the population at some optimum level, whilst a monogamous family structure is doubtless one way of achieving this, it is not at all obviously the only way. Hence the need, if the object is to justify the monogamous family structure in particular, to bring in more nebulous considerations of the second type. Indeed utilitarian arguments generally refer to both sorts of consideration, and it depends on which receives the greater stress how far the compound argument yields a verdict in favour of monogamy. Sidgwick

is concerned to insist that a regard for the protection of certain habits of feeling, allegedly promoted by monogamy, is a necessary ingredient in a rational preference for it. It is in this connexion interesting to notice that Rashdall, who is a somewhat more determined monogamist than Sidgwick, and who is manifestly rather tempted to assert that monogamy is *self-evidently* right, has to put almost all the weight on the maintenance of a certain state of feeling (1907, Vol. 2, p. 197): 'Whilst strongly insisting that the moral consciousness in its highest development does condemn all sexual indulgence outside monogamous marriage, I should contend that this prohibition admits of being stated in the form of a judgment as to the ultimate value of an end. It is a certain state of feeling which is pronounced to be of intrinsic value—a state of feeling which the clearest moral insight and the highest spiritual experience of the race have decided to be incompatible with sexual indulgence outside a relatively permanent monogamous union.'

Like prudential arguments, utilitarian ones require us not merely to state a desirable end but also to give a reason for supposing that, *as a matter of fact*, the course of conduct we support tends to bring about the end. Sidgwick is careful to insist on this, Rashdall less so. A minimum condition for it to be possible to mount a course of empirical enquiry into whether monogamy promotes a certain end is that the end in question should be identifiable independently of monogamy. The utilitarian claim is that monogamy achieves some good thing other than itself. This condition is fulfilled, or fulfillable in principle, where the end is the prosperous continuance of the human race. It is not, however, too clear that it is when the end is a state of feeling. We must allow that it is logically possible for polygamists to develop the appropriate habits of feeling if any significance is to attach to our claim that they never in fact do. Because utilitarian arguments would seem to be inherently incapable of justifying monogamy, for everybody everywhere and everywhen, there is a temptation, to which I think Rashdall succumbs, to substitute for them arguments utilitarian in form but not in substance.

The utilitarian argument for monogamy, as traditionally stated, ignores the possibility of contraception, which clearly

tends to undermine one of the more promising grounds for confining heterosexual relations within marriage. Hume noticed that chastity, in the sense of abstention from sexual relations outside marriage, was nevertheless demanded of women who were for one reason or another incapable of bearing children, and offered a psychological explanation of how we are inclined to extend a general rule to cases in which it need not apply (1739, Book III, Part II, XII). To explain in this way is not, however, to justify. (It is easy enough to explain why motoring offences causing death or grave injury are often regarded rather lightly whilst trifling thefts are sometimes considered very seriously indeed, but that does not mean that it is justified.) Moreover, the utilitarian arguments assume rather than support the Western family structure. They do not take account of the possibility of, say, a matriarchal family or a system in which working mothers have impermanent sexual relations with a variety of men, whilst the children are brought up in communal nurseries.

Such considerations reinforce the conclusion already reached that utilitarian arguments fail to give completely adequate support to the Western norm. As commonly stated they are culture-bound and, like prudential and all other means/end or teleological arguments, they are liable to be rendered obsolete by new developments such as cheap, mass-produced contraceptives. A related point is that a utilitarian philosopher-king could hardly have much idea of what sexual arrangements to prescribe for his Utopia. Nor, if one enquires in abstraction from the actual arrangements of existing societies what sexual arrangements would best promote human happiness or welfare, is it at all clear what the answer would be or even how it could be found. The range of possible types of social organisation is very wide, human nature very plastic, our conceptions of happiness and welfare too much conditioned by the social systems under which we have grown up for them to afford touchstones by which such systems can be judged. A utilitarian position hardly constitutes a basis for the reappraisal of our sexual arrangements *as a whole*, nor will it take the weight of proposals for the really radical re-shaping of them.

We may note in passing that, however disappointing this may seem to aspiring philosopher-kings, it need not worry

us, since none of us will ever hold that high office. We are not, and will not be, in a position to wipe the sexual slate clean and start afresh. Practical morality has a more modest role to fill. It has simply to try to decide which of the changes that can be made should be made.

There is further support available for the conclusion that, from the utilitarian point of view, root and branch proposals for social change cannot rationally be assessed. Professor Popper has forcefully argued in more than one place (1945, and especially 1957, Part III, 21) that very sweeping, 'Utopian', proposals for social change are irrational because they are, inevitably, leaps in the dark. Reformatory proposals can only be rationally founded upon, and hence are limited by our capacity to make, social predictions, to say, with reason, what will happen if such and such is done. But all we can make with confidence are rather short-term predictions in narrow fields. Crudely, we have to assume that all else will remain the same when we try to estimate the effects of some particular change. Suppose we ask what the effects on recruitment will be of raising police salaries by 25 per cent. It is notorious that even in such simple cases as this the 'other things' do not always stay the same. The police award may spark off a round of wage increases which leaves the police relatively as badly off as before. Generally speaking, the more radical the change proposed, the less likely are other things to remain the same, the harder it is to predict what will happen, and the harder therefore rationally to assess the merits of the proposal.

A further point with the same tendency is the 'functionalist' thesis that institutions are so intimately and intricately interlinked into complex social wholes that making any change in one institution will have, largely unforeseeable, ramifications throughout the whole of society. Family structure is, for instance, closely bound up with the property system, the laws and customs relating to inheritance, to the principles for the division of labour between men and women, etc. and etc. For an example of a possible ramification take the suggestion that the economic emancipation of women tends to reduce the stability of marriage. Such functionalist considerations tend to suggest

that even 'piecemeal' innovations may have largely undiscernible effects.

The lines of argument I have been sketching in rather lend themselves to exploitation in the service of an extreme social conservatism, a total opposition to all advocacy of social change. I have myself no wish to push them so far. Our particular present problem is the scope and limitations of utilitarian arguments, and the fair conclusion from the considerations we have been discussing seems to me to be that they can reasonably be employed with regard to proposals for rather limited alterations to institutions, whose effects, just because they are limited alterations, can be rationally foreseen. The position is well stated by Sidgwick in the work already referred to :

To sum up : I hold that the utilitarian, in the existing state of our knowledge, cannot possibly construct a morality *de novo*, either for man as he is (abstracting his morality), or for man as he ought to be and will be. He must start, speaking broadly, with the existing social order, and the existing morality as part of that order : and in deciding the question whether any divergence from this code is to be recommended, must consider chiefly the immediate consequences of such divergence, upon a society in which such a code is conceived generally to subsist. No doubt a thoughtful, well-instructed utilitarian may see dimly a certain way ahead, and his attitude towards existing morality may be to some extent modified by what he sees. He may discern in the future certain evils impending, which can only be effectually warded off by the adoption of new and more stringent views of duty in certain departments : While, on the other hand, he may see a prospect of social changes which will render a relaxation of other parts of the moral code expedient or inevitable. But if he keeps within the limits that separate scientific prevision from fanciful Utopian conjecture, the form of society to which his practical conclusions relate will be one varying but little from the actual, with its actually established code of moral rules and customary judgments concerning virtue and vice (1901, pp. 471-2).

It will be as well at this stage in our account of utilitarian arguments to indicate some of the 'piecemeal' alterations in the Western sexual norm which, it would seem, could be rationally assessed on this basis. Among them are our attitudes to pre-marital sexual relations, the accepted grounds for divorce, and A.I.D.; and questions about where the boundary should be drawn between law and morals (e.g. in the matter of homosexual behaviour), and indeed between morality and personal preference. I am not, at any rate at the moment, positively advocating any alteration in any of these fields. I am merely suggesting that such alterations would seem to be among those rationally discussable from the utilitarian point of view. The consequences of changes in these matters are not too difficult to foresee. The 'liberalisation' of our attitude to pre-marital liaisons clearly raises questions about acceptable ways of coping with contraceptive failures, abortion, illegitimacy, adoption, etc., and about venereal disease. A.I.D. raises questions about legitimacy, grounds for divorce, inheritance. Attention to such consequential problems is required by *responsibility*, as I understand it. Responsibility is not, like prudence, beneficence, justice, a separate head under which practical proposals can be assessed. It is rather a matter of making *thorough* assessments under whatever head one happens to be concerned with. It involves trying to think through one's proposals, to consider their less obvious effects, to take account of questions of the form '*In itself* what is proposed is no doubt all very well, but what is to be done if . . . ?'

One final comment on utilitarian arguments. Some would try to bring the whole of morality under this head, others would not. This is an issue that will not directly be discussed in these pages. It is, however, possible to hold that, whatever may be the case with morality, legislation, restrictions on people's liberty of action, ought to be assessed with regard to utilitarian considerations alone. To hold, for example, that homosexual practices between consenting, sane adults are morally right or wrong irrespective of their consequences for human welfare or happiness, *but that* they should be legislated against only if they are ascertainably harmful, and only if legislation ascertainably reduces the harm they do. That is to say, it is perfectly possible (logically

consistent) for the non-utilitarian moralist to be a utilitarian where legislation is concerned. Churchmen too, who are generally somewhat reluctant utilitarians, may be and sometimes are content to assess legislation on utilitarian grounds. It is not, indeed, at all clear that there is any other basis upon which it can in practice be assessed in morally pluralistic, democratic societies.

5 JUSTICE AND FAIRNESS Our ideas of justice and fairness are at best complex, at worst confused. They are very frequently invoked in arguments both for and against departures from the 'official' sexual norm. Here I want only to try to assess the inherent strengths and weaknesses of arguments of these types.

In the first place, arguments in justice cannot by themselves be relied upon to yield a *single* practical conclusion, for in most cases it will be possible to conceive alternative social arrangements that are equally just. This is sometimes overlooked. Kant, for instance (1930, p. 167; 1887, p. 111), rather quaintly objects to a man having two wives on the grounds that it is unfair that he should have two women when each of them gets only half a man. I do not wish to give the impression that I see nothing wrong with bigamy, but clearly, if equality or fairness is all that we are concerned with, then whilst we *could*, as Kant assumes we shall, settle for monogamy, we could also with equal fairness permit the women the same plurality of mates as the men. This is, in fact, the arrangement which Russell (1961, p. 47 and p. 80), who like Kant attaches considerable importance to equality between men and women, prefers. Kinsey, it is interesting to note in this connexion, reports cases of adulterous men encouraging their wives to follow their example—whatever these men may be guilty of, it is not injustice. Thus, arguments in justice, we may conclude, yield determinate conclusions only against an assumed background of social possibility. Kant failed to see the insufficiency of his argument because he took it for granted that plural marriage was entirely out of the question. Arguments in justice can be resisted by anyone prepared to challenge such background assumptions.

Another way of making the same point is this: that unfairly double standards, as between men and women, for instance, can be eliminated and justice restored in more than one way. We can either 'level up' or 'level down'. Considerations of justice do not, by themselves, determine which direction is up and which down.

The demand for justice, fairness, equality—though related these terms are not always synonymous—sometimes finds expression in the view that morality requires us to act on general rules or principles, on rules we are prepared both to obey ourselves and to have others obey. This aspect of morality, much stressed by Kant (e.g. in his *Groundwork*), is, of course, implicit in the so-called Golden Rule of the Gospels, which enjoins us to treat others as we would have them treat us. This sort of consideration is very frequently appealed to in moral arguments. People are criticised for 'inconsistency', for expecting moral rules to be set aside when their own interests are at stake. Once again, however, it has to be noted that this requirement of universalisability, of not making arbitrary exceptions to general rules, does not, unless it is taken in an extreme and implausible form, yield unequivocal directives for conduct.

The extreme view would be that we should act only on principles we are prepared to have *everybody*, irrespective of who or what or where he is, act upon. (This is what Aristotle called 'strict' or 'arithmetical' equality—*Ethics*, Book 5; *Politics*, Book 3. There is a useful discussion of justice in Benn and Peters, Chapters 5 and 6.) This would exclude a double standard for men and women, but also for the old and the young, the rich and the poor, the learned and the ignorant, etc. and etc. Very few of us are seriously prepared to accept strict equality, and adopt instead the more moderate principle that people should be expected to obey the same rules only when there is no relevant difference between them or their situations. (This is Aristotle's 'proportional' equality.) An illustration may be useful. It would be unfair to Jones to make him do military service when Smith is exempt if there were no other difference between them than their names. But if Smith has a weak heart, then, since this is a relevant difference, to

discriminate between them in respect of liability for military service is perfectly (proportionally) fair.

The main points to be brought out are two: *First*, that there is room for controversy about which grounds for discrimination are morally relevant. So that, unless agreement can be assumed in a particular case, it will have to be achieved before arguments in justice will yield determinate conclusions. *Secondly*, that, even though we may in substance be biased in our own favour, it will normally be possible to devise a general rule on which we can claim to be acting. All that needs to be done is to find a general description that happens to fit our own case only. (Anybody, anybody at all, provided only that he is *next in the succession*—a general description—can succeed to the throne of England.) One can then claim that one is prepared to apply the general rule to all people whom the description fits. There will be no temptation inconsistently to make exceptions to such rules in one's own favour. In other words, the requirements of justice, interpreted as universalisability, admits of being satisfied in form rather than in fact. This should give pause to anyone who is inclined to rest the whole weight of morality on justice.

The double standard, which practically everybody now deplores, well illustrates the limitations of justice. Formally, it need not be unjust. The sex difference is just that sort of difference which is sometimes regarded as morally relevant. Discrimination between men and women in respect of their rights and duties is not seriously challenged in several fields, for instance, in connexion with military service.

There is yet another prominent strand in our tangled notion of justice. *Individual* departures from accepted practice will often involve the risk of injustice, in the shape of deceit or disappointment of reasonable expectations. Innovations in any field are apt in this respect to be unfair. Clearly this is a point that may be exploited in the conservative interest. But it does serve to emphasise what is clearly part of the point of our moral ideas, namely that they help to ensure that people know where they stand, and what they can and cannot reasonably expect from others in certain important matters. The desirability or worth-while-ness of an established practice, in whatever this may be held

to consist, must it seem to me be allowed to be *relevant* to the extent of an individual's obligation to conform to it. But it must be conceded that a less desirable practice that is generally followed may actually be preferable to a practice, more desirable in *itself*, that there is little reason to expect actually will be generally followed.

We have now considered in turn arguments in prudence, beneficence, and justice, all of which are allowed to have force by all moralists. The types of argument that remain to be considered are less generally accepted.

6 HUMAN NATURE AND NATURAL LAW I include under this head arguments which rely on some conception of human nature and what is consonant with it, arguments which appeal to the function or purpose of human organs or faculties, to the nature or purposes of institutions such as marriage and the family, and arguments founded on the traditional system of natural law. (The last is sometimes given a prudential and/or utilitarian interpretation, e.g. by Hobbes in *Leviathan*.) I will consider in turn some examples of these sorts of arguments.

(a) Too often they turn out to be little more than extracting the implications from more or less arbitrary definitions. (Compare Chapter 2, section 5—where it is argued that substantial moral questions cannot be closed by definitions.) Consider the following arguments from the nature of love employed by R. F. Trevett (Todd, 1956, pp. 156–9): Trevett is objecting principally to divorce, and *a fortiori* to impermanent unions generally. He observes that the traditional Christian arguments for the indissolubility of marriage relying on the needs of the children, valid and important though they are, seem academic and incomplete in the light of more recent emphasis on the nature of love. 'Love', we read, 'involves a self-giving from which there is no return.' A self-giving for better or for worse, until the couple are separated by death. 'This is not the statement of an ideal or the enunciation of a code of conduct imposed by a religious or social system. It is simply the statement of how love works.

That the love of so many married couples does not in fact work like that, merely means that they have never been truly in love at all.' And 'the contemporary problem is therefore not so much that of people falling out of love, as of the dubious character of much that passes for love itself'.

We should note the rhetorical effectiveness of 'It is simply the statement of how love works'—an obvious literal falsehood in any ordinary sense of the term 'love'. The argument is presumably designed to appeal to the widely held belief that mutual love is the ideal and perhaps only acceptable basis for marriage. But, of course, the people who hold this belief regard love as something you can fall out of, as well as into, and quite often they do not disapprove of divorce. Having, therefore, caught their interest by an appeal to the idea of love, Trevett's next step is to redefine the term in such a way that you cannot fall out of love, or if married separate. If the change of definition is not noticed there appears to be an argument from a widely accepted premise about love to a widely disputed conclusion about divorce.

In the same paper there is a formally similar argument against contraception. 'Love demands the whole movement of the self to the loved one.' But, 'However apparently unselfish are the motives of contraception, the objective fact remains that contraceptive intercourse is not intercourse at all [because the spermatozoa are prevented from reaching the ovum]. It cannot be a sign of self-giving.' Needless to say, the 'objective fact' is a simple falsehood on any reasonable definition of 'sexual intercourse'. The proposed new definition is hardly likely to appeal to anyone not already convinced of the wrongfulness of contraception—and with him Trevett has no need to argue.

I have objected to these two arguments against divorce and contraception on the ground that the key definitions on which they rest are arbitrary and question-begging. They certainly are. But the more fundamental point is that even arguments from perfectly correct and acceptable definitions yield conclusions of verbal rather than moral importance. Marriage, for instance, might reasonably be defined as an intentionally life-long union. It follows from this that intentionally short-term liaisons are not (to be called) marriages. But it does not *follow* (though it may be true) that

there is anything wrong with them, or for that matter right with them. Of course, if it is held that marriage is the only form of permissible heterosexual union (held as a matter of moral principle, not as a matter of definition), then, if marriage is by definition intentionally life-long, it will follow that intentionally impermanent unions are morally impermissible. Even so, it would still be less muddling to look at intentionally short-lived liaisons for what they are, and to judge them on their merits if they have any, than simply to bring them under an established moral principle by exploiting the meaning or definition of 'marriage', let alone by arbitrarily re-defining it.

(b) Arguments relying on the function or purpose of organs, faculties, institutions must be distinguished according to whether the crucial functional assertions do or do not admit of factual interpretations. Relying on the logical principles laid down in Chapter 2, section 2, we may assert that, in so far as functional assertions can be interpreted factually, although they can be established independently of moral considerations, they do not *in and by themselves* give decisive support to moral conclusions; and (the other horn of the dilemma) that, in so far as they do decisively support moral conclusions, they are not purely factual, cannot be established independently of moral considerations, and consequently are open to question on moral grounds. In other words, functional arguments tend to be *either* invalid *or* question-begging.

Take the assertion that the human sexual organs are for the procreation of children. This presents itself at first sight as a factual assertion. The organs can be and frequently are used in this way, and if there had to be some one purpose assigned to them then this would have to be it. But, remember, we are working in the realm of fact. The organs can be employed in other non-procreative activities, and moreover are—not only by human beings, but by all mammalian species. There really is no factual basis for the contention that our sexual equipment is *exclusively* procreative in function. If, in the face of this, we insist that procreation is its *real* or *essential* or *natural* function we are moving out of the world of fact. We are not saying that it *cannot be* or *is*

not used in a non-procreative fashion, but that it *should not be* or that such uses are *misuses*. In short, we are moralising.

'Function', 'purpose', 'nature' are notoriously prone to exhibit fact/value ambiguities. If we find them first used without qualification, and then a little later qualified by 'real' or 'essential', we can be virtually certain that moral pronouncements have been smuggled into ostensibly factual communications.

Similar fact/value ambiguities attend assertions about the function of such institutions as marriage. Disputes about whether its function is exclusively or primarily the production and education of children are, in substance, not factual but moral. What is usually at stake in them is not the role played by marriage in human society now and through the ages, *that* would be a factual question, but such things as whether or not contraception is legitimate or whether divorce should be readily available to childless couples. Sometimes there is a theological element in disputes about the function of institutions. More about that under 'c' below. Here it will suffice to note that theological disputes are not factual ones. The two sorts of people who are most likely to try to base their moral arguments on functional premises are, on the one hand, the traditional religious moralists and, on the other, the moralising social scientists. They both make mistakes, but different ones. The moralising social scientists try (fallaciously) to derive moral conclusions from (plausibly) factual assertions, whereas the religious moralists tend to try to pass off moral (or theological) assertions as factual ones.

Religiously based functional arguments will be considered shortly. Meantime, as an example of defective functional argument by a secular moralist, consider the play made with Westermarck's dictum—that marriage is rooted in the family not the family in marriage—by Ronald Fletcher in his *The Family and Marriage*. Westermarck's claim would appear to be primarily an historical one. He supposes that what led couples to stay together was originally the need and their desire to care for their offspring. On this ground Fletcher opposes the moral claim that romantic love is the

sole acceptable basis for marriage (p. 22). It is 'obvious' to him that 'marriage is for founding a family'. I do not dispute Fletcher's moral opinions, which indeed seem to me to be eminently sensible. My sole point is that those opinions receive no direct or decisive support from the factual assertions he collects from Westermarck about the history of marriage. From statements about what was originally the case no pronouncements about what ought or ought not to (continue to) be the case can be validly deduced. To think otherwise is to commit the 'genetic fallacy' in one of its many forms.

(c) Some functional assertions have, as we have noted, religious backing. See, for instance, the account in the English Book of Common Prayer of 'the causes for which Matrimony was ordained'. Generally similar accounts are given by other Churches, though sometimes with practically important differences of emphasis. The Roman Catholic opposition to contraception would seem to be partly determined by that Church's insistence that procreation is the primary end of marriage (Lestapis, 1961, pp. 23-5)—the Churches which accept contraception allow the achievement of a satisfactory relationship between the married pair to be an aim of co-equal importance. Where functional assertions have religious or theological connections our earlier contention that functional arguments are *either* invalid (if the premises are factual) or question-begging (if the premises are moral) is perhaps too simple. For theologically supported functional statements, though clearly not factual, are not clearly moral either. Perhaps the most satisfactory conclusion that can be briefly stated is this: that, in so far as functional assertions enjoy religious support, the problem of justification is transferred to the credentials of the religious or theological system in question. This is one of the several points at which religion impinges on morality.

It should be remembered in this connexion that most of the attraction of functional arguments derives from their being supposed to have theologically neutral premises. To the extent that their premises turn out to require theological support their appeal is correspondingly reduced.

(d) *The traditional system of natural law* This is a system of moral rules, supposedly discernible by natural reason (i.e. 'natural' being here opposed to 'revealed'), applicable to all men everywhere, and against which the positive laws of particular communities have to be judged. Natural law is usually conceived as being expressed in rather general terms, and accordingly as leaving room for, and indeed requiring, supplementation by detailed, positive regulations. In the particular field of behaviour which here concerns us auto- and homosexual activity, contraception, abortion, divorce have all been held to be breaches of natural law. This being so, it is hardly reasonable to expect that it should be easier to secure widespread agreement about the content of natural law than it is to get agreement on the controversial issues it is supposed to settle. And this, in its turn, raises a doubt about whether natural law is genuinely accessible to natural, secular reason. This point has been taken by some Roman Catholic writers. There is, for instance, a discussion of the matter by Stevas in the work already referred to (pp. 29-31), in which he cites various authorities, including St. Thomas Aquinas himself, in support of the view that revelation is practically necessary if one is to discover the content of natural law. Theoretically reason should be sufficient. We are, however, but men. We are prejudiced, and can make mistakes, and moreover will without divine guidance. In so far as this view is taken natural law ceases to be an impartial court of appeal to which both members and non-members of the Roman Catholic Church have equal access. It also, as Stevas recognises, precludes Roman Catholics meeting the charge that in supporting, for instance, anti-birth-control legislation they are imposing church rules on non-members, by replying that it is not church law but natural law both *known to* and binding upon all men that they seek to impose.

I should perhaps add that I regard the whole conception of natural law as radically incoherent. It tends to confuse the *descriptive* laws of natural science with *prescriptive* juridical and moral laws and, further, to confuse both prescriptive and descriptive laws with analytic statements. For it is the latter alone that can plausibly, though still misleadingly, be said to be self-evident or discernible by 'right

reason'. It must be emphasised, of course, that this fundamental objection to traditional natural-law doctrines applies with equal force to democratic theories of natural rights. Such 'truths', if that is what they are, as that people should be treated equally, or that they have certain inalienable rights, cannot possibly be self-evident, i.e. in effect, analytic. This is not an objection to the content of natural law, or to any particular list of natural rights. It is an objection to the whole conception of how a moral rule can be justified which is implicit in the doctrines, to the idea that moral rules are somehow given or can be worked out or seen to hold, and do not have to be decided upon. Natural-right and natural-law theories no doubt owe some of their perennial popularity to their seeming to provide a theoretical basis for the criticism of positive law and positive morality (custom). We can, however, criticise existing law and custom on other grounds.

The theoretical opposition between secular utilitarians and adherents of natural-law and natural-rights doctrines is total. There is, nevertheless, in practice room for some fruitful discussion between them. There is some common ground. The relevance of the considerations of prudence, beneficence and justice can be conceded by both sides.

7 SOME RELIGIOUS POSITIONS I have tried in various places above to indicate points at which religious belief may have an important influence on morality. It is, of course, impossible to treat such influences at all completely. Systems of religious belief are very various, and their moral implications no less so. I am conscious of a measure of arbitrariness in selecting for comment the two matters that will mainly be discussed in the present section.

(a) The first concerns what has been called the 'theology' of marriage. The expression 'the indissolubility of marriage' is sometimes interpreted not as the formulation of a moral ideal but rather as a *description* of what marriage really is, namely an unbreakable union between two people. For instance, an Anglican report says of marriage that it 'not only ought not to be dissolved but also involves a moral and a

spiritual bond that cannot finally be terminated save by death'. (Quoted in Winnet's *Divorce and Remarriage in Anglicanism*, p. 219. This book traces the history of 'indissolubism' from the Reformation. For a criticism of the view see Robinson's *Honest to God*, Chapter 6.) Thus conceived, the marriage relationship is a *metaphysical* one, for so far as empirical fact goes marriages manifestly can be, because they are, dissolved. The point of general interest is that this view of marriage evinces the operation of a very common tendency to interpret what are held to be very important moral ideals as facts in the objective world, to project, that is to say, our values into the world of fact. Religious moralists are perhaps particularly prone to this. Robinson himself, even though he would seem to be trying to work out a non-metaphysical Christianity, succumbs to the same temptation when he concludes that it 'is not simply that love *ought to be* the last word about life, but that, despite all appearances, it *is*' (p. 128). The natural-law doctrine discussed above manifests the same tendency, as do those secular moralists who express their conviction that all men *ought to be* treated equally by saying, with literal falsehood, though sometimes great effect, that all men *are* equal.

It will be obvious from what has gone before that the metaphysical conception of marriage is unacceptable to me. It is also, I think, clear that Christian believers are not as such committed to accepting such views, though some do. I think, further, that some people find metaphysical arguments worrying because they do not know how to deal with them. This is not surprising. It is characteristic of metaphysical assertions that it is unclear what would count for or against them, establish or refute them. One thing can, however, be said with some confidence, namely that when a metaphysical assertion is employed in support of a moral conclusion any reasonable doubts that there may be about that conclusion are immediately transferred to the metaphysical premise. Thus, in the particular case we are concerned with, if it is argued that there should be no legal provision for divorce *because* marriage is (metaphysically) indissoluble, anyone who thinks that there are good grounds for divorce can reasonably reply that marriage cannot be in the required sense indissoluble *because* there are good

grounds for rejecting one of the implications of this doctrine. The *relevance* of this sort of reply cannot be denied so long as it is maintained that the indissolubility-of-marriage doctrine implies that there should be a ban on divorce.

(b) Some religious believers are led by their faith to adopt an extreme agent-centred, anti-rule moral attitude. There is 'nothing prescribed—except love', as Robinson puts it in the work recently referred to (p. 116). There is perhaps no need to say more about this approach to the problems of conduct than was said in Chapter 2, section 8, above. Though there have always been individual Christians to take this sort of view, the great institutional Churches have more characteristically gone to the other extreme, taking a rule-centred, even legalistic, view of morality.

(c) With regard to the institutional Churches it is worth noting that their members, like the members of other organisations, are exposed to appeals to their loyalty. They may, that is to say, feel obliged to obey regulations which are, in their personal opinion, ill-judged or unjust. Most people think that such an attitude is in principle reasonable where the State and other authorities are concerned, at least so long as the regulations in question are not *morally* objectionable. For the members of some Churches this clash between loyalty and personal judgment may extend into the moral field. And if the Church in question is fairly tightly organised the problem can become practically acute. It is bound to arise when an ecclesiastical organisation claims to be an authority and to lay down regulations in moral matters.

8 THE SCOPE OF LEGISLATION How far the law should seek to regulate individual conduct is too general a question to admit of a sensible answer. Such questions can be usefully considered only in regard to particular types of society. The salient feature of the societies of Western Europe and North America which is here relevant is that their members are divided on moral and religious issues. They contain, at any rate, substantial minorities who are opposed to

one provision or another of the positive moral code. This is very clearly the case with regard to sexual morality, and attempts to enforce by law the whole of the 'official' sexual code would run contrary to the conscientious convictions of considerable groups of people.

A persuasive view of the proper scope of legislation in such morally pluralistic societies was given its classical expression by John Stuart Mill in his *Liberty* (1859). He held that the only ground on which the majority should attempt by law to restrict the freedom of action of any member of society was self-defence. Immoral behaviour, in the sense of behaviour contrary to the received, majority code, should not be legislated against unless it was also clearly and directly harmful to other people. Mill recognises a sphere of private conduct, a sphere within which what people do affects directly only themselves and their willing associates, and holds that the law should not trespass within it. This may be called the *individualist position*.

The position is subject to some internal difficulties. How, for instance, is one to draw the line between acts which affect only the individuals engaged and acts which, since they affect other people, are proper objects for legislative interference? There is no simple answer, and consequently small reason to hope, as Mill perhaps did, that one could definitively mark off a sector of human behaviour as being for ever outside the scope of the law. Nevertheless, the general temper of Mill's attitude is, it seems to me, clear enough. What it amounts to is that the presumption is always *against* trying by legislation to stop people doing what they want to do. The onus of proof is always on the person who would intervene, and what he has to prove is that a real and otherwise unavoidable evil would certainly be eliminated or diminished by legislation.

The individualistic position has many adherents in Britain and the United States, but it is not fully nor consistently expressed in their legal codes. Some acts, notably homosexual acts between consenting adults, are illegal, simply it must be supposed because they are held to be immoral, for they have certainly not been shown to be, and can hardly be reasonably believed to be, harmful to people who do not freely engage in them. Anti-contraceptive laws, where they

exist, and the laws which virtually forbid abortion are inconsistent with the individualist approach.

Mill himself was opposed not only to 'anti-vice' legislation but also to paternalistic legislation, i.e. laws designed to prevent people from harming themselves rather than other people, and to all but the minimum of socialistic regulation of economic affairs. Most contemporary, developed nations tolerate a much greater measure of paternalism and socialism than Mill would have approved of. The three strands in his views are, however, logically separable, and those who cannot follow him with regard to paternal and socialistic legislation can with perfect consistency continue to oppose legislating against vice or sin as such.

It should not be forgotten that the rights and wrongs of morality legislation are different in unitary and federal political systems. In the U.S.A. morality legislation appears, almost exclusively, to belong to the constituent States of the Union, and the position accordingly varies somewhat from state to state. Such legislation is less oppressive when it can be evaded by crossing state boundaries. In a unitary state like the United Kingdom there is no such simple way out.

At the opposite extreme from individualism is the view, nowadays perhaps more commonly held than explicitly avowed, that moral wrong, immorality, vice or sin should be prevented by any means it can, and hence legislated against in so far as this is feasible and likely to be effective. The conflict between these two positions will have to be considered in some detail in Chapter 6 below. There need not, however, be policy disagreements on all particular, practical issues. The moralists may sometimes have to recognise that they cannot prevent what the individualists would not want to try to prevent.

4

Free-love

I THE SCOPE OF THE CHAPTER There are a number of possible courses of conduct that can be referred to by the question-begging phrase 'free-love'—'promiscuity' is, of course, question-begging in the opposite sense. It is desirable, both for clarity of thought and convenience of exposition, to try to discuss them separately. This may, however, involve some artificiality and repetition, for very similar types of argument are used on different issues. I will try to keep repetition to a minimum. The main possibilities that will be discussed are three: pre-marital unions, free-love or promiscuity, extra-marital unions. In addition I shall find a little to say about 'petting' and trial marriages, recourse to prostitutes and the double standard, and the rationale of sex education.

The terminology used should perhaps be explained. By *pre-marital unions* I understand serious, loving heterosexual relationships, involving sexual intercourse, between young people who either cannot marry or would have difficulty in doing so because of economic dependence, educational commitments, and the like. I do not want to restrict the application of the term to couples who positively intend to marry at a later date, although I take that to be the normal case, and I certainly should withhold the term in cases where the parties were consciously simply amusing themselves. Pre-marital unions have to be durable, but it is not necessary that they should be permanent or turn into marriages.

Though it is essential to know what we are talking about,

it is not too important to give precise definitions. It will suffice if we mark off distinguishable patterns of behaviour from one another, always remembering that there will be many intermediate cases.

Free-love or *promiscuity*, I cannot think of a wholly neutral term, I use to refer to less durable, less serious heterosexual liaisons, again between unmarried people, in which there is on both sides the intention to keep deep emotional involvement and personal commitment to a minimum. Fidelity, even to the current partner, is not necessarily involved.

Extra-marital unions I take to be sexual associations between people one or both of whom are married to others. Such relationships can obviously be more or less serious, approximating in this respect more closely to the pre-marital union as characterised above or to the casual sexual encounter. It is simply the fact that married people are involved that puts them in a class by themselves.

2 PRE-MARITAL UNIONS

(1) The rights and wrongs of pre-marital unions clearly constitute a live moral issue. It seems probable that associations of this sort are fairly common among morally serious young people, and that the pressures towards them are increasing. No doubt the situation, and the ways in which it is changing, is different for different social groups. The age of puberty is widely held to be falling, whilst the age of full social maturity, the age at which marriage is possible or conventionally acceptable, is rising for some groups of young people. School-leaving ages are being raised, a great expansion in higher education is in train, the increasing demand for trained workpeople probably means that an increasing proportion of those in the later adolescent age groups will be engaged in full-time vocational training. Kinsey's finding that the peak of sexual activity occurs in the late teens is highly significant in this connexion. And if the pressures towards pre-marital sexual associations have increased, so too have the opportunities. Sex segregation in schools and universities in Great Britain is becoming less common (in the U.S.A., co-education has long been the rule

though meetings between the sexes in private rooms are often restricted), and chaperonage has virtually died out. The behaviour of the more responsible people may well also be influenced by the fact that knowledge of birth control is fairly widespread, and some sorts of apparatus easy to obtain. The incidence of church membership may be a factor too. Kinsey suggested that it influenced, at any rate, the sort of 'outlet' chosen.

Discussion of the ethics of pre-marital unions normally assume that they will be childless. Obviously they are in intention, but even more obviously not always in fact. The reliability of contraceptives is, therefore, something that has to be taken into account. And since at present contraceptives are not in practice 100 per cent efficient, whether from inherent defects or misuse, any serious consideration of pre-marital associations must face the question what is to be done about contraceptive failures. Abortion will have to be looked at, as will the rights and wrongs of forced or accelerated marriages, and indeed of early marriages generally, and the problems associated with illegitimacy and adoption. Discussions of the central issue of pre-marital unions can be graded in point of *responsibility* by the extent to which they take cognisance of these consequential issues.

Most of the arguments that will be considered below are moral in the narrow sense of being addressed to the young people likely to be concerned or to public opinion generally. Their object is to influence individual behaviour and public attitudes, rather than the law. The heterosexual activity of people over the age of consent does not at present fall within the effective scope of the law in Britain and the United States. But we shall find that it is impossible to leave the law altogether out of account. Some of the consequential issues, abortion and illegitimacy, for instance, do involve the law; and some writers on the topic, for example Russell and Lindsey, have made suggestions for legal and institutional change. I do not myself think that morality in this field can be sensibly or responsibly discussed out of all relation to the law. We cannot determine where the boundaries of morality should run unless we are prepared to take a look at what might lie beyond them. Accordingly, at the end of this section, I shall attempt a brief account of the Swedish

attempt to work out some of the legal and institutional implications of countenancing a 'liberal' attitude to pre-marital sexual activity.

(2) *The ban on pre-marital unions*

This ban, which is I think still part of our 'official' morality, is frequently defended on utilitarian grounds. This approach will be considered, fairly briefly, first. Next I shall consider an alternative approach to sexual morality which countenances pre-marital unions, or at any rate does not rule them out in principle. And after that look in turn at a variety of particular arguments that have been brought to bear on the topic.

The utilitarian objections to pre-marital unions derive from the feeling, not seriously challenged in our society, that the monogamous family unit affords the ideal setting for sexual relationships and for the procreation and upbringing of children. Pre-marital unions are accordingly, in the first place, exceptionable in so far as they involve the risk of pregnancy occurring outside marriage. This argument is often stated in the narrowest, prudential terms, the unwanted pregnancy being thought of exclusively as a disaster or serious difficulty to the parents involved. So indeed such a pregnancy often is, and the narrowness of the argument does not make it a bad one. But, of course, an extra-marital pregnancy should also be looked on as a misfortune to the unwanted child who may subsequently be born. The disadvantages of illegitimacy in our society, though perhaps somewhat diminished, are still real enough. And the illegitimate child is likely to suffer further disadvantages as a result of his mother's difficulties in supporting and accommodating him. Interpreted in this way, the argument is not one in prudence but rather in beneficence and responsibility. Its appeal is not to self-regard but to our more generous sentiments.

These arguments are, I believe, very impressive. But at least two further factors have to be taken into account. One is the magnitude of the risk of unwanted pregnancies, i.e. the effectiveness of contraceptives (this will be considered further below). Another is the possibility of reducing the disvalue of such pregnancies. It is essential to remember

that their disastrousness derives in large measure from their being regarded as the 'wages of sin'. I mean it is at least in part *because* there is an 'official' ban on pre-marital unions that pre-marital pregnancies are so objectionable for all concerned, and not *vice versa*. It is for the same reason that an illegitimate pregnancy is a much more serious interruption to a career or course of training than a mere illness. The same applies too to the disvalue of abortion. For the poor, at least, it is dangerous. But the danger of it is hardly a ground for holding it to be wrong or for keeping it illegal. If it were legal it would not have to be dangerous.

Thus, to a considerable extent, the prudential and utilitarian objections to pre-marital associations that we have been considering presuppose that there is a ban on such associations. They do not, therefore, afford independent support to it. It remains the case, though, that now, and in the short term, they have great force.

A second common utilitarian line of argument against sexual relationships outside marriage is that they threaten the institution of marriage itself. The thought used to be that men would have small incentive to marry if they could obtain sexual partners without assuming domestic responsibilities. The attitudes presumed to be normal by this argument are rather disagreeable, but it may have had some force in the days before family limitation. Nowadays, whether on account of developments in that field or for other reasons, it no longer applies. Marriage is an increasingly popular institution in Britain and the U.S.A. The proportion of married people in the relevant age groups has never been so high. (The Irish Republic is exceptional in this respect.) Accordingly, a different line is now taken. It is argued that experience of pre-marital unions will make people more ready to engage in adulterous affairs after marriage, and consequently threaten the stability and durability of marriages. The important question to ask here is the obvious one: Is this in fact so? And the answer to it is not to be found by speculating about the psychological possibilities and necessities involved. What one needs to know to begin with is whether the incidence of marriage breakdowns is higher among couples one or both of whom have had sexual associations before marriage than among couples

who have not. There are difficulties of definition to be overcome, and difficulties in acquiring the relevant information. It is also difficult, even supposing statistical correlations have been established, to discern the lines of cause and effect. It would appear, for instance, as we shall see in the chapter on divorce below, that the legal availability of divorce, and the possibility of people seeking it obtaining legal aid, have such a dramatic effect on the divorce rate (which is one of the more obvious pointers to the marriage-breakdown rate) as to mask all other influences.

Not so far proven must be the verdict on this sort of argument. Even if the facts were established there would still be evaluative questions concerning loss and gain to be considered.

In all cases when a social rule, like the ban on pre-marital unions, is defended by utilitarian arguments it will be possible to conceive particular breaches of it which are unlikely to lead to the consequences considered deplorable, and also possible to conceive of the rule's generating hard cases. It may accordingly seem reasonable to set aside the rule at least in exceptional circumstances. This is a perfectly general point which applies to all social rules. On the other hand, morally serious people sometimes feel obliged to observe a rule, even in cases in which breaking it would do no direct harm, 'for the sake of example', as they might put it. This attitude might be adopted to the rule we are here concerned with. The ground of objection to prudent and responsible pre-marital unions might be that they would encourage imprudent and irresponsible ones. Some of the attacks on the crudity and externality of the ban on pre-marital unions seem to me to neglect this consideration. The rule is no different from other social rules in this respect, and some of the objections made to it would apply to all such rules. To be worth taking seriously objections must be more specialised than this.

I do not mean, of course, that we should simply accept stories about the effects of a 'bad' example. Obviously one should try to find out what they are likely to be—propositions with unknown truth or probability values are no use in moral or any other sorts of argument. I want simply to

draw attention to a consideration which should, so far as is possible, be taken account of.

(3) *A different approach to sexual morality—the argument from personal relationships*

This is an attempt to state a moral ideal for sexual relationships generally, an ideal which does not necessarily exclude their being acceptable outside marriage. It is to be found in, among other places, the following works: J. MacMurray, *Reason and Emotion* (1935); K. Walker and P. Fletcher, *Sex and Society* (1955); K. C. Barnes, *He and She* (1958); A. Heron (Ed.), *Towards a Quaker View of Sex* (1963); and in D. M. Mackinnon (Ed.), *God, Sex and War* (1963).

There are divergences amongst these writers. Some of them appear to want to get away from a morality of rules altogether—MacMurray, Walker and Fletcher, and perhaps the authors of the Quaker pamphlet. In others, whatever the ultimate objective may be, the emphasis is rather on the fact that, humanly speaking, pre-marital unions will occur; that reiteration of the old rule, whether it is justifiable or not, will not cut any ice; that some pre-marital unions are more valuable, or at least less objectionable, than others; and that accordingly it is expedient to adopt a moral position from which such unions can be appraised as relatively better or worse. To condemn them out of hand is in effect to refuse to make moral distinctions *within* an area of conduct which has great, perhaps the greatest, importance for many young people. An absolute and unqualified condemnation of pre-marital unions, seen in this light, looks, as does absolute pacifism, very like refusing to take seriously the moral issues that actually present themselves.

I will look at MacMurray's version of the argument first, since the other writers refer back to him, and then consider some of the other versions in order to illustrate the variety of its alleged implications.

MacMurray's argument (Page references are to the paperback edition of *Reason and Emotion*. They all fall within Chapters 6 and 7. My comments are enclosed in square brackets, and should perhaps be ignored on the first reading of MacMurray's argument.) Personal relationships are contrasted with functional ones, the former being said to involve

our whole selves, the latter not. Relationships with one's employers or employees, with tradesmen, doctors, lawyers, etc., are functional. They concern only a limited area of need, interest or activity, and are participated in for the sake of some end beyond themselves. A personal relationship, on the other hand, is one in which each party can be his 'whole self', and which is entered into for its own sake, for no ulterior purpose (pp. 93-7).

[There seems to be no reason in logic or in fact why *both* a personal *and* a functional relationship should not hold between the same two people. Barnes allows this possibility, see p. 96.]

Next, we are told (a) that society exists for the sake of personal relationships, and not *vice versa* (p. 102); (b) that everyone will agree that sexual unions present a problem for the personal and not for the social/functional life (p. 107); and (c) that not everyone accepts the implication of this, namely that the primary consideration where sexual relationships are concerned cannot be the maintenance of marriage and the family. They are institutions which exist for the sake of the personal life (pp. 108-9).

[Assertion (a) is a value judgment, a proposition in morality not sociology. (b) is unlikely to be a correct account of what everybody feels if the personal and the functional are held to exclude one another. Whilst the implication (c) would seem to follow only if they are regarded as exclusive. It is true, though, as we noted above, that marriage and the family are normally appraised as serving ends beyond themselves.]

Personal relationships, which we have already learnt involve the whole man or woman, are further characterised by freedom and equality (p. 111). A truly moral attitude to sex involves getting sexual relationships on to the personal level, making them and keeping them free and equal. It involves thinking that it is less important to prevent people from having sexual relations except under the approved conditions, than to make possible the full development of the personal life. To let the morality of sexual relationships depend on whether the parties are married is to base morality on something external (p. 122). The common insistence that love is the only proper basis for marriage [which is pre-

sumably a step in the right direction] is neither very effective nor very sincere. The true basis for sexual morality is not an external rule, nor the fact of marriage, but *chastity* interpreted as *emotional sincerity* (p. 128).

[Note the persuasive definition of 'chastity'. As traditionally used the word does not refer exclusively to outward behaviour, but the idea is very clearly incompatible with participation in 'irregular' unions.]

According to the ethic of emotional sincerity, love is the only proper basis for a human/personal relationship between a man and a woman. Sexual desire in itself is not sufficient, not even if it is mutual. People in that situation are still treating one another as means, not as ends or persons (p. 136). A distinction is made between enjoying the other and enjoying oneself through the other, the former being morally acceptable, the latter not—the distinction itself, we are informed, is not to be argued so much as felt (pp. 141–2). Mutual love excludes bargains, claims and promises, which are attempts to replace it by something else.

From all this it is held to follow that the morality of sexual intercourse has nothing to do with the fact of marriage. It may be moral outside it, and immoral within it. 'The fact of marriage cannot make chaste what is in itself unchaste. I would hazard the guess, without much fear that I was wrong, that there is as much sexual immorality inside marriage as outside it. Morality does not rest on externals' (pp. 138–9). Sexual intercourse is held to be only one expression of love, not to be singled out either for exaltation or denigration (p. 138).

What are we to make of all this? As an *argument* I find it unconvincing, but there is no need to repeat the criticisms I have already interpolated. Convincing or not, it does, I think, very largely succeed in expressing an attitude, an attitude which I find partly attractive, partly irritating. (Clearly, not everybody will react to it in the same way.) Attractive in that it repudiates mechanical rule-following, irritating because of its, to my mind, extraordinary lack of concern with behaviour. I am reluctant to attach a high value to emotional sincerity in the absence of any idea of the sort of behaviour it might be expected to lead to, nor

am I very sure of my own, or anybody's, capacity to distinguish between mutual sexual desire and love, or between enjoying others and enjoying oneself through them. I cannot, as I interpolated above, see that functional and personal relationships exclude one another, nor, as regards marriage, why its functional aspects should not support the personal relationship which we all hope will develop and endure.

There are three main elements in MacMurray's view: (1) A heavy emphasis on personal attitude as opposed to behaviour—it is an extreme agent-ethic, to employ the terminology introduced above; (2) A marked intolerance of external rules; And (3) it is not in principle permissive—it is intended to be in some respects, i.e. within marriage, more restrictive than the received morality of external rules. These three components fit fairly well together, but they can be dissociated, and their relative importance differently assessed.

Walker and Fletcher share MacMurray's intolerance of external rules, professing themselves unable to see how Churches which accept contraception can object to loving pre-marital unions. 'It would be difficult, we think, to find any religious defence for the contention that personal love between a man and a woman comes into being at the moment when they make their vows before the altar or present themselves at the office of the Registrar; and still more difficult to contend that the spiritual integrity of such a relationship is contingent upon matrimony' (pp. 113-14). No doubt it would be difficult to support these contentions, but neither has to be supported by anyone who thinks sexual relationships should be confined within marriage, not, at any rate, unless he first concedes that absolute importance is to be attached to the establishment of personal relationships, emotional sincerity or spiritual integrity—which is just the point at issue. There is no general reason why moral rights and duties should not be in part dependent upon public undertakings given and received. Where property is concerned it is generally agreed that they are. We have here a good illustration of the way in which moral rights and duties can be related to, without being the same as, legal rights and duties. It is a mistake to assume that because they are different in some respects they must be different in all. For instance, a contract which is not drawn up in the

proper form will not be legally binding, whilst, if the defect is purely formal and so long as the two parties at the time of signature knew what they were about, we should probably hold that each was still morally obliged to keep it if the other wanted him to. In the sexual field too, whilst no doubt everyone would agree that the rights and wrongs of two people's behaviour together are largely independent of whether their marriage is valid in a strictly legal sense, it does not follow that they do not depend on the 'spirit' of the undertakings they have given each other and the public at large.

It is in the matter of permissiveness in sexual relations that our authors differ most among themselves. Walker and Fletcher, whilst sharing MacMurray's conception of the ideal personal relationship, seem to be fairly tolerant of sexual experimentation on the way to it. The Quaker pamphlet, however, is very emphatic in the other direction. 'We do not, however, encourage anyone to think that it would be "perfectly all right" to make love with a charming friend who equally desires the experience' (p. 44). It is, of course, open to question how far this theoretical rigour is distinguishable in practice from mere permissiveness. The old morality of external rules was no doubt open to exploitation in their own interest by people who never transgressed the letter of the law; the new morality of emotional sincerity is perhaps not wholly proof against self-deception.

The morality of personal relations is *in principle* compatible with pre-marital unions, and all the authors so far considered allow that at any rate some such unions are morally acceptable *in fact*. Some religious writers (e.g. in *God, Sex and War* and in *No New Morality* by Canon Rhymes), however, whilst conceding the principle, have doubts about there ever being an acceptable pre-marital union in fact. Such a union would have to be free and equal, non-exploitative, responsible and not involve taking great risks with the other party's welfare or happiness. The conditions for acceptable pre-marital unions are thus held to approximate to marriage. In the extreme, sexual associations outside marriage might be held to be acceptable in theory only, never in fact.

It may be that a worthwhile personal relationship is more

likely to be achieved inside rather than outside marriage. This ought to be in principle a factual question, to be settled by investigation not speculation. It would, however, be a very difficult matter to investigate. We should have to get our conception of a worthwhile personal relationship rather precise before investigation could begin, and in trying to get it precise it is likely that we should find that we disagreed about it. The point of more immediate interest is, however, this: that there is no guarantee in advance of investigation that it would be discovered that worthwhile personal relationships are hard or impossible to attain outside marriage. It is not easy to resist the impression that some people, who are strongly committed to the view that sexual activity should be reserved for married couples, have taken up with the personal relationships argument only because they suppose that it will appeal to people outside the religious fold. So it may, but the argument has the more than countervailing disadvantage that there is no knowing whether it will yield the conclusion desired.

There is a different, though connected, point to be considered. The conception of a personal, as opposed to a functional, relationship is not wholly precise. Consequently, it is hard to assess claims to the effect that it is only under certain conditions that fully personal relationships can develop, and there is a danger that we shall, in effect, allow our notions of an acceptable form of association between two people to determine what we shall count as a properly personal relationship. If we are anxious to maintain the orthodox view about marriage we may very well succumb to the temptation of deciding that only relationships between married pairs are to be counted as fully personal. The argument from personal relationships is thus apt to become viciously tautological. Compare the point made above that conceptions of happiness or welfare are socially conditioned and hence not independent touchstones by which institutions can be judged. For a means/end argument to have any force it must be possible to conceive the end independently of what are held to be the means to it.

The most striking thing about the personal-relationships argument to my mind is the indeterminacy of its central conception. This is manifested by the considerable

differences there are among users of the argument in attitude and practical judgment. At one extreme are writers like Walker and Fletcher, permissive in attitude, and apparently opposed to giving any weight to functional criteria where choice of marriage partner is concerned (p. 122). At the other extreme are the religious moralists who employ the argument in support of distinctly orthodox conclusions, to which only minor exceptions are theoretically conceded. Somewhere in between are writers like Barnes who, in effect, build into their conception of a fully personal relationship the moral requirements of, to use the terminology we adopted above, beneficence, fairness, and responsibility. Barnes, indeed, does not forbear to give weight to considerations of prudence. Witness his warnings about the unwisdom of people, between whom love-making is undesirable, getting into situations in which experience suggests it is likely to take place (cf. pp. 85-6, p. 162).

Naturally, I have nothing against the personal-relationships argument when it is so interpreted as to give due weight to the considerations I think relevant and important. Equally naturally, I remain suspicious of it in so far as it does not have to be interpreted in this way.

It is interesting to compare with the personal-relationships argument the formally rather similar argument from romantic love to be found in Russell's *Marriage and Morals* (1929, page references are to the Unwin paperback edition of 1961). The author's starting point is a high evaluation of romantic love, which he believes to be the source of some of the keenest delights life has to offer (Chapter 7, p. 41). It is, therefore, desirable that the social system should permit these delights to be enjoyed. Romantic love, though important, is only an ingredient in life and not its main purpose, and, to the extent that children are involved, sexual love becomes the concern of society. 'There has to be a social ethic connected with children which may, where there is conflict, override the claims of passionate love. . . . To secure as little interference with love as is compatible with the interests of children should be one of the main purposes of a wise sexual ethic' (Chapter 9, pp. 66-7). The practical implications of this position are tolerably clear. Where there are no children love should be entirely free. Pre-marital

unions are entirely acceptable. And, though Russell is not advocating promiscuity, and in fact rates sexual intercourse without love rather low (Chapter 9, p. 66), he does not object to sexual experimentation as a prelude to love. Extra-marital unions, too, he finds acceptable, holding, in line with this, that adultery in itself should not normally be a ground for divorce (Chapter 16, p. 116). His ideal is the intentionally life-long, but not exclusive, loving union.

A celebrated, or notorious, American judge, the late B. B. Lindsey, expressed a somewhat similar view in his books *The Revolt of Modern Youth* (1925) and *Companionate Marriage* (1927)—both with W. Evans as co-author. Lindsey's personal ideal is more exclusively monogamous than Russell's, but he is remarkably tolerant of deviations from it by other people. For instance, he writes :

Our racial experience seems to show that monogamy is better fitted to the needs of most human beings than any other form of relationship between the sexes. I feel sure that it will predominate in marriage by reason of its own inherent merits—if *given a chance*. Where we make our mistake is in thinking that it can be forced, and that any departure from it on the part of any number of individuals will destroy it. What destroys it is our system of forcing it on people whether they think they want it or not. [*Companionate Marriage*, p. 97, author's italics.]

Where Russell seems positively to welcome the weakening of the received sexual code, Lindsey rather accepts it as a fact and addresses himself to the situation that results. Companionate marriage seems not to amount to more in institutional terms than easy divorce without alimony for childless couples and the legal acceptance of contraception.

It appears to me that the Russell-Lindsey view is superior in point of clarity and social realism to the argument from personal relationships as it is frequently presented. Romantic love is a relatively easily recognisable phenomenon, and their permissiveness is at least consistent and candid. The rather solemn and high-minded personal relationships' approach might well in practice be interpreted as sanctioning

the sort of behaviour that Russell and Lindsey frankly accept.

There are, however, a few places in the Russell-Lindsey view where questions are in place. Russell perhaps underestimates the strain the acceptance of extra-marital affairs would impose upon habitual attitudes. Lindsey, who pleads for tolerance of such affairs in the early years of marriage, seems to believe—though not dogmatically—that most people will in due course settle down to monogamy. And Russell again, whose declared object is to devise a sexual ethic which takes account of contraception and the social and economic emancipation of women, seems rather too easily to suppose that the former is effective and the latter complete. Easy divorce for childless couples cannot be responsibly advocated in a society where a substantial proportion of, at any rate, the older childless wives are completely dependent economically on their husbands. Russell, writing in the twenties, no doubt assumed that the problem presented by imperfectly emancipated wives would diminish with the years, but in the sixties it clearly still is a serious one. As for the other assumption, it is necessary to have a view about contraceptive failures which will occur. Russell contends that no marriage should be binding until the wife's first pregnancy is established (Chaper 12, p. 86), and I suppose he thinks that it automatically should become binding when pregnancy occurs. Lindsey pronounces on this matter as follows: that 'society should educate [couples] to a firm, courageous, and whole-hearted acceptance of the fact that in the event, either of deliberate pregnancy, or of *accidental pregnancy*, they are expected by society, and by their own sense of what is right, to accept the responsibility that such pregnancy involves. Also that abortion is shirking in such cases' (*Companionate Marriage*, p. 148, author's italics. Lindsey goes on to explain that he would like to see the demand for abortion reduced by legalising contraception and reducing the stigma of illegitimate maternity). Thus, as things now are, with contraceptives less than 100 per cent efficient, the *limited* liability, which distinguishes companionate marriage (or Russell's marriage with divorce at will for childless couples) from marriage as we now have

it, is always likely to be extended by events outside the couple's control.

A perfect contraceptive would make it possible to separate the delights of love from the responsibilities of parenthood. But we have not got it yet.

(4) *Some specific arguments*

I have already, whether directly or by implication, commented on some of these arguments. Nevertheless, in the interests of completeness, it will be worth while to look at them more closely, and one at a time. Most of them are arguments *against* the acceptability of pre-marital intercourse. This is to be expected and does not in itself entail that the case against is stronger than the case for. The main argument for is too obvious to need statement. The greater burden of proof falls on whoever argues that people ought not to do what they want. The obvious strategy for anyone proposing the lifting of a prohibition is to show that the arguments by which the prohibition is defended are defective.

(a) *The threat to marriage* This is the argument that the social acceptance of pre-marital unions will encourage people to engage in extra-marital unions in later life and thus impair the stability of marriages. The argument is in beneficence. It assumes, what would no doubt be widely granted, that stable marriages are good, perhaps in themselves, certainly for the sake of the children. The main question, as we have already noticed, is whether the acceptance of pre-marital unions will *in fact* have this effect. In the absence of a well-evidenced answer, one or two observations may still be in place. The first is that the argument will have no force at all for people who are willing to accept an increased frequency of extra-marital affairs. Russell's position is not threatened by it, nor is the position of anyone prepared to sacrifice marriage stability to the cultivation of personal relationships. The second point is that, even if it could be shown that the acceptance of pre-marital unions did tend to lead to marriage breakdowns it would not follow that this was the only such influence or the strongest of them. Even if literally everyone agreed that marital stability was a good

thing, hardly anyone is likely to think that it is the only good thing. It would be necessary to consider whether loss here might not be balanced by gain elsewhere.

The threat to marriage argument is, as things stand, largely speculative. At best it could not be decisive.

(b) *The risk of venereal disease* It is difficult to see why pre-marital unions as we have defined them should involve any greater risk of venereal disease than do marriages. The argument must be supposed to be indirect, namely that to sanction pre-marital unions will encourage promiscuity and that the latter does tend to increase the chances of contracting venereal disease. The one thing could, no doubt, very well lead to another in the way suggested. The first question that has to be asked, however, is whether it does. And the answer to it is, as too often with crucial questions, obscure. It may also be noted that if there is anything at all in the argument considered under 'e' below, the acceptance of pre-marital associations might actually reduce the pressure to seek the more dangerous sorts of sexual contact. Occasional promiscuous contacts and intercourse with prostitutes are more likely to lead to venereal disease than relatively durable pre-marital unions.

The argument from the risk of venereal disease is mainly prudential, though, of course, anyone who is himself infected has an obligation in beneficence and justice to avoid infecting his partner. And, it might reasonably be felt, there is a general obligation in beneficence to avoid doing anything that might encourage the spread of venereal diseases. Where they differ from, say, lung cancer is that they may be spread by irresponsible people to wholly innocent victims. Lung cancer, on the evidence at present available, threatens only the smokers themselves. It may be unpleasant to breathe second-hand cigarette smoke, but it does not appear to be particularly dangerous. Accordingly, smokers are faced with a fairly straightforward personal choice in prudence. Recklessness where venereal disease is concerned is not a purely personal affair.

A by now familiar point applies here too. Some of the disvalue of venereal disease, together with much of the difficulty of detecting it, treating it, discovering the incidence of

ix, arises from the fact that it is regarded as one of the 'wages of sin'. The peculiar horror in which it is often held is only partially explicable by the dreadful effects it can have on the sufferer and, perhaps, his offspring too. These effects are, after all, largely avoidable with early diagnosis and proper treatment. It is not just that certain sexual practices are objectionable because they are likely to lead to venereal disease. It is partly that the latter is objected to because it is held to be a sort of visible proof of sin.

Finally, on this topic, even granted that a certain form of sexual behaviour does increase the risk of venereal disease, it does not follow that the only course is to abandon the practice in question. It is equally rational to try to get the halfpennies whilst avoiding the kicks—in this case by concentrating on developing efficient prophylactic systems, some form of immunisation, or swifter and more acceptable methods of treatment. The venereal diseases are not the only ones which spread because our social habits are what they are.

(c) *The risk of pregnancy* Though usually thought of as an argument in prudence, this should, as we have already noted, also be regarded as an argument in beneficence or justice. The following matters are relevant: the effectiveness of contraceptives, abortion, forced or accelerated marriages, illegitimacy and adoption. These will be considered in turn.

(i) *The effectiveness of contraceptives* There is no doubt at all about the effectiveness of the widespread use of contraceptives in reducing average family size. This is amply demonstrated in such studies as *Family Limitation* (London 1949). It is not, however, this that is crucially relevant in the present connexion, for it could come about as a result of the employment of contraceptive methods which were not predictably effective in any particular case. What one needs to know is whether there is a contraceptive method which is certain to be effective every time it is properly used. So far as I have been able to discover, absolute security cannot be had. There are some very reliable methods, but these are unlikely to be easily available to unmarried people in Britain, and probably not in the U.S.A. either. It is, for in-

stance, quite common to find medical writers referring to success rates of 90-95 per cent as 'good', though it is not always apparent how far carelessness in using a method may contribute to the failures. Nor is it unusual to hear of contraceptive failures in married couples from the highest educational groups, but again some of these will be cases where people are not trying very hard. The British Consumers' Association Research Organisation (*Which? Supplement*, 15 November 1963) tested various types of contraceptive and found that the types of apparatus most commonly used (sheath or condom, with or without chemical) were fairly likely to be defective. Failure rates for condoms ranged from 3-4 per cent for the best, through 12 per cent for the very poor, to 19 per cent for the worst, whilst only just over half of the contraceptive creams designed to be used in conjunction with them were at all effective. The potentially more effective pill and cap-plus-chemical methods require medical supervision or skilled fitting, which effectively puts them beyond the reach of the bulk of young, unmarried people, and both methods leave some scope for user error. It is further to be noted that people likely to form pre-marital unions will normally be in their most fertile years.

It seems impossible to escape the conclusion that there will always be some risk of pregnancy. Very careful use of contraceptives may reduce it greatly but will not eliminate it.

One may wonder why this particular risk should be taken so much more note of than greater risks in other fields. People are not usually censured for rock-climbing or motor-cycle racing even though the risks of death or serious injury are considerable. The point of general importance is that the rationality of engaging in a course of conduct is determined not only by the chance of an unwelcome result (the 'risk') but also by the disvalue of the result in question. Thus a *large* risk of a not very bad result may be perfectly acceptable, but a *small* risk of a very bad result wholly unacceptable. Since for very many people an extra-marital pregnancy is a very bad result indeed, those people are not justified in running even a small risk of it. But, even though the *general* point be taken, it may still be asked whether an illegitimate pregnancy is *really* so much worse than death

on the mountains or the race-track. What, however, does this question mean? If it is whether illegitimate pregnancies are in fact held to be worse than accidental deaths the answer can only be: Yes, by some people, in some places. An element of moral disgrace belongs to the one, but not to death in the course of an admired pursuit. But, of course, the question may rather be whether the relative valuation of the two sorts of result is *correct*. This is a matter on which we have to make up our minds. Even if we decide that the current valuation of extra-marital pregnancies is incorrect, that too grave a view is taken of them, this will not alter the fact that an effective way of avoiding moral disgrace is not to risk them.

(ii) *Abortion* Because of the low view taken of extra-marital pregnancies in many groups in our society unmarried couples in this unhappy situation may well consider abortion. It is difficult to give a brief, accurate statement of the legal position, but it appears that in the United Kingdom and most American jurisdictions only therapeutic abortions are legally permissible, that this is more certainly so where the grounds alleged in support of the abortion are physical rather than psychological, and that an unmarried mother's desire to avoid the disgrace of bearing an illegitimate child would not normally make her eligible for a therapeutic abortion, though it might if her distress were extreme. It also appears to be possible for people in the upper-income and social groups to obtain abortions fairly easily, and to have skilled medical attention for them; and it is virtually certain that a large number of illegal abortions are performed annually by unqualified people for the benefit of the poor. (There is a discussion of the legal and moral aspects of abortion in Glanville Williams, *The Sanctity of Life and the Criminal Law*, London, 1958.)

One point that may be made here is that if abortion is held to be unacceptable, or believed to be unavailable, then the case against pre-marital sexual intercourse is to that extent strengthened. This is the more so if the parties concerned are quite unable to marry.

As for the ethics of abortion itself, it is, in the first place, possible to hold that there is a moral obligation to obey the

law as such. This would exclude abortion as a means of avoiding the consequences of sexual intercourse outside marriage. I would not myself wish to defend the present law on abortion, but it may be held that even bad laws should be obeyed. Law and practice being what they are, however, such scrupulousness seems excessive. Secondly, the conditions under which abortion is available to the majority of people make it physically dangerous. It is manifestly grossly imprudent to submit oneself to the attentions of the back-street abortionist. Thirdly, even supposing the physical conditions ideal, it is frequently claimed that a woman who undergoes an abortion suffers severe psychological shock, and possibly lasting psychological damage. (This is presumably the more so when an apparently viable and potentially healthy child is destroyed in the womb. One would expect the situation to be different if the foetus is grossly malformed, since it would then be plausible to argue that the psychologically less damaging course had been taken.) How far this is true I do not know—the evidence in Gebhard, 1959, pp. 203–14, suggests that both the psychological and the physical dangers can be exaggerated. They are, nevertheless, no doubt sufficiently great to justify serious warnings to anyone contemplating an abortion, but I find it hard to believe that they are great enough to support a total prohibition. After all, we do not in general think it right to prevent people taking great physical and psychological risks in pursuance of what they, even mistakenly, take to be their interests.

So far I have been considering the morality of abortion in the light of its effects on the mother. There is, however, another party to take account of—the unborn child. Abortion is most usually opposed as an invasion of that child's right to life, as a violation of the prohibition on the taking of innocent human life, as, in effect, a species of murder. This prohibition is, unfortunately, imprecise at just the point at which it bears upon the present case. True, we all agree that human life is sacred, but when does it begin? At conception, at some stage in pregnancy—the 'quickening' perhaps—at birth, or at some stage after birth? Different societies have taken different decisions. Some American jurisdictions apparently still regard abortion before quickening as no crime

(Williams, p. 149). Essentially there is a line-drawing problem involved here, and we should beware of being browbeaten by such pronouncements as 'The only *logical* place to draw the line is at conception'. There is no principle of logic which forces us to conclude, from the impossibility of justifying the precise placing of the line within the area where we want it, that the line must go where we clearly do not want it. Twenty-one is the usual age of legal maturity. It might just as well be twenty or twenty-two. It does not follow that the only logical place to draw it is at birth or puberty.

But, surely, it might be replied, a foetus either is or is not a human being. This is a matter of fact, an object of enquiry, not of decision. Certainly we could look at the matter in this light (I shall give reason for holding that we should not). We should need to get clear what is meant by 'human being', and then it would simply be a question of fact whether a foetus, at a given stage of development, measured up to the definition or not. The term 'human being' may be more precise than I have suggested above. My present point, however, is that, if it is morality we are concerned with, this lexicographical approach is at best superfluous, and at worst muddling and question-begging. We do not want to have our moral judgments made for us by what the dictionary-makers might find out about the meaning of a phrase. We should rather consider the question of abortion on its individual and social merits and demerits.

A similar objection applies to framing the moral question about abortion as the question whether it is or is not murder. (Lawyers often have to consider questions in this form, but moralists happily do not have to imitate them.) Abortion is not *obviously* murder, any more than suicide is, otherwise there would be no moral controversy about it. There are morally relevant differences between abortion and suicide and murder as ordinarily understood—for example, abortion cannot put potential victims in terror of suffering a like fate, and with suicide killer and victim are the same person. It might, of course, be possible to persuade people that, with only a little stretching, the term 'murder' may be got to fit suicide and abortion. But to spend time on this can only deflect attention from the substantial issues.

(iii) *Forced marriages* Literally forced marriages are clearly objectionable. Couples may reasonably, and so far as is practicable, be made to take financial and other responsibilities for their offspring, but it is hard to see much good and easy to see harm coming from forcing unwilling partners to embark on married life together. A reluctant marriage of this sort would not, however, be a very likely outcome of pre-marital intercourse as we have defined it. It is supposed to have taken place between a loving couple, who most likely contemplated marrying one another in due course. What they have to face, if their union proves embarrassingly fertile, is not forced but an accelerated marriage. There may be some awkwardness about this, and it is not the happiest start to married life, but my impression is that some couples foresee this sort of situation as a possibility and accept it cheerfully if it arises. It does not seem to me that the pre-marital behaviour of such couples is seriously exceptionable. They will not have behaved irresponsibly in that they have worked out a policy to cope with likely contingencies. They will at worst have been mildly imprudent. The situation is, of course, very different if earlier marriage is absolutely impossible.

Doubts may be felt about the wisdom of early marriages, which accelerated marriages will often be, either on the grounds that marriages between immature people are specially likely to be unstable or because early marriage, especially if children are born, tends severely to restrict the social opportunities of one or both partners. As to the former ground, the evidence is that teenage brides are more likely to have their marriages end in divorce than older brides. The great majority of teenage marriages, over 80 per cent, do not end in divorce, however (Rowntree, 1962). The second possible disadvantage of early marriage seems to me to be a serious one for some social groups at the present time, for example, for undergraduates. But one will not reverse the trend towards earlier marriage, which there appears to be, by drawing attention to some of the snags. It may become necessary to adjust to marriage before the completion of education or training becoming the rule rather than the exception.

(iv) *Illegitimacy and adoption* It appears to me obvious that at present to bring an illegitimate child into the world is to do him no great service. The disabilities suffered by illegitimate children clearly should be removed so far as possible. Meantime they are very real. They can, of course, be greatly eased by money. But illegitimacy and poverty are frequently associated in our society. One can only admire the devotion and self-sacrifice of women who do their best for their illegitimate offspring in difficult circumstances. But I cannot feel that such sacrifice should be expected of anybody, nor that it is a particularly good thing for the child who is the object of it, though it may be the best of a bad job. Adoption very shortly after birth would seem potentially at least to be the best solution from the point of view of the child. I should not, however, myself feel able to try to persuade a woman to go through with a pregnancy in order to give birth to a child she would subsequently have nothing to do with.

It will be clear from what has been said above that I consider the argument from the risk of pregnancy to have great force. It need not, however, unduly worry couples who intend to and can marry in the near future—and this is a typical, if not the normal, case of a pre-marital union. It is, moreover, possible to conclude from the argument not so much that pre-marital associations are to be avoided as that effective contraceptives ought to be made more easily available, and that the abortion laws ought to be eased.

(d) *The 'psychological argument'* This is the argument, based on the difference there is claimed to be between the sexual natures of men and women, that pre-marital sexual activity imposes undue psychological strains on the woman. Addressed to men it appeals to considerations of beneficence and justice (and conceivably of prudence, too, in so far as it emphasises the risk a man runs of finding himself committed to marrying a determined young woman); as addressed to women the argument is in prudence.

Many writers stress the differences between male and female sexuality. Men, it is said, may regard sexual intercourse as an end in itself, whereas for women it is much

more likely to be seen as but a prelude to something more. Women, in the present state of society, will very likely from an early stage in an association want marriage and children. For men, accordingly, a sexual association outside marriage need not be very distracting; for women it may become disablingly so. It may be held that the differences between men and women in this regard are biologically determined, or that they are largely the result of social conditioning. Men have commonly in practice been able to dissociate sex and paternity, it is only comparatively recently that the development of contraceptives has made it possible for women to do the same.

Suppose that some such story as the above is broadly true. What follows? On the face of it such stories are a better basis for advice and warning than for absolute prohibitions. People are in other fields allowed to run psychological risks, to violate and neglect deep-rooted psychological desires and needs. Why should a higher degree of caution be required in the sexual field? It is in any event hardly to be expected that all women are exactly the same in the relevant respect. Obviously, in so far as she is rational, a woman will take account of the psychological risks allegedly involved, but if she then comes to think the game is worth the candle there would seem no special reason why she should not be allowed to play.

This argument, whatever force it may be allowed to have, applies less obviously to pre-marital than to promiscuous unions. In so far as the former are literally anticipations of intended marriages, the psychological risks run by the female parties to them are reduced.

Trial marriages The pre-marital union we have had in mind in the course of this chapter is, I think, distinguishable from a trial marriage. Lindsey insisted that his companionate marriage was not a trial marriage (*Companionate Marriage*, p. 139), I think reasonably. No doubt if a pre-marital union does not work out, the parties will try again with other partners. But their original commitment to one another was not conditional, there was no suggestion of it being some sort of test. Trial marriage is often thought of as an attempt to assess sexual compatibility before embarking on

a legally binding union. It is frequently, and I think plausibly, objected (e.g. by Barnes, pp. 144-5) that a test situation is not one in which sexual adjustment is likely to be achieved. Satisfactory adjustment may only gradually be achieved over many months even within the security of marriage.

(e) *The one-'outlet'-or-another argument* This is an argument for the social acceptance of pre-marital unions based on the contention that if this outlet is not allowed other less acceptable ones will be taken. Lindsey has something of this attitude. He wants companionate associations socially recognised so that they may be open to a measure of social supervision. And there is some support in the Kinsey Reports for the suggestion that restricting one sexual outlet will lead to greater use being made of others. It is there claimed that restraint on pre-marital heterosexual sexual contacts is liable to lead to the development of homosexual tendencies, as well as to encourage masturbation and pre-marital 'petting' (i.e. sexual play not carried through to full intercourse, though possibly involving orgasm). A similar, though inevitably less impressively evidenced, claim is made in Mr. J. Wilson's *Public Schools and Private Practice*, which includes some account of sexual behaviour in boys' boarding schools.

Of the same order is the claim, made for example by Russell (op. cit., p. 47 and p. 80), that the only alternative to acceptance of free-love for both sexes is reversion to the double standard and prostitution.

Such arguments rest mainly upon factual claims whose truth needs to be, but is not easily, established. Perhaps at present not much more need be said than that they draw attention to the fact that in a discussion of the morality of pre-marital unions it is relevant to consider the effective alternatives to them. And that the Kinsey findings suggest that strong opposition to pre-marital unions consorts rather ill with the utter repudiation of such 'perversions' as masturbation, homosexual activity, and 'petting'. It is not, incidentally, at all clear why a grave view should be taken of masturbation. Of all sexual acts it is capable of doing the least social harm. Though no doubt rather futile, it appears to do no harm to the practitioner either, unless he feels very

guilty about it. Petting, too, would seem to be, or perhaps to have been—I have the impression that it is going out in our more emancipated times—a natural response to the problems posed by a culture which allows young people of opposite sex to associate freely, takes the strongest exception to illegitimate maternity, and makes no very strenuous efforts to place effective contraceptives within young people's reach. Anyone who has doubts about the acceptability of a practice not engaged in by primitive men will be reassured to find that it was practised by the Kikuyu described in Jomo Kenyatta's *Facing Mount Kenya* (Chapter 7).

(5) *Some institutional implications of the social acceptance of pre-marital intercourse*

It may be of interest in this present connexion to consider briefly a series of proposals which were made in Sweden in the 1930's, and which to a great extent found expression in legislation. They are described in considerable detail in Mrs. Myrdal's *Nation and Family* (London, 1945, published in Swedish, 1940). The proposals in question had their place in a comprehensive population policy which was designed to arrest a decline in population. There was no direct intention to facilitate extra-marital intercourse, but there was a candid recognition, even in official reports, that it did and would continue to occur, and that not all instances of it were morally highly objectionable. One such report, on *Sex Education* (1936), distinguished between more and less valuable extra-marital relationships, and commented :

These pre-marital relations entered into between socially equal individuals on grounds of personal love cannot be summarily condemned for ethical reasons, according to the opinion of the Commission. Under the circumstances this is from ethical, and definitely from hygienic and social, viewpoints a better solution of a complicated human problem than was the old double standard [Myrdal, pp. 194-5].

Among the proposals made in the various reports produced by the population commission between 1935 and

1938 were the following: women were to be legally protected against dismissal from employment on marriage or after childbirth, *whether the child was legitimate or not*. The official moral teaching in schools was to be that sexual relations should be founded on love and fidelity, but not necessarily confined to marriage. Contraception was firmly accepted, and it was proposed that instruction in it should be made widely available. As for abortion, it was proposed *both* to extend the grounds on which it was legally available *and* to reduce the demand for it by, for instance, relieving poverty, especially the differential poverty of parents, and by reducing the stigma of illegitimacy. Some restrictions on abortion were retained. An abortion is not permissible simply because a contraceptive method has failed in an individual case.

I am not pretending thoroughly to describe, still less to assess, Swedish policy in the sexual field. My sole purpose is to illustrate social possibilities as a way of drawing attention to the institutional implications of the social acceptance of pre-marital intercourse. Implications on the domestic front are illustrated by the following extracts from a letter which appeared in the *Guardian* of 1 February 1964:

. . . Thirty years ago the man I was in love with, who was then an undergraduate, and I chose to 'live in sin', as it was known in those days. We later married and produced three delightful children.

When the eldest . . . announced that she was in love with a man, and that they were sleeping together, and hoped to marry in a year or two's time, I had not the slightest hesitation in inviting her to bring him home and in making up a double bed for them. They have now been married for over three years. . . .

The next of my offspring, a boy, announced in the summer that he had met the girl he hopes to marry, and could he bring her home at Christmas. I assured him I would be delighted to meet her, and said that although I would not like to suggest he should sleep with her, that, had he already done so, I felt it would be foolish to go through the pretence of making up separate beds, and that I hoped they would be very happy. . . .

Thirty years ago I thought we were doing the right thing, and see no reason now to pretend to my children that this sort of thing didn't go on. I do know that I have a very real relationship with my children, who treat me with great respect and consideration, unlike many of their friends, who apparently have no meeting point at all with their parents.

This was signed 'A realistic mother'.

(6) *Conclusions on pre-marital unions*

Of the arguments *against*, the prudential argument, with the arguments in beneficence and justice to which it gives rise, has considerable force, except for couples who fairly easily could marry and are prepared to do so, if they 'have to'. It has in any event to be recognised that pre-marital intercourse cannot be argued out of existence. It would accordingly be desirable that contraceptive advice and reliable equipment should be more readily available to unmarried young people.

3 FREE-LOVE OR PROMISCUITY We have already noticed the argument that the tolerance of pre-marital unions might encourage promiscuity. (In fairness we should also consider the possibility that it is largely because authority bears so heavily upon the young in the sexual field that their inevitable reaction to the attitudes of their seniors should express itself in sexual deviance.) The prudential arguments against pre-marital unions apply with greater force to promiscuity, especially the argument from the risk of venereal disease. Some additional arguments are also employed. First, that indulgence in casual sexual encounters reduces one's capacity for forming deeper and more satisfying relationships. The authors of the Quaker pamphlet already referred to express themselves as follows:

Sexual actions can never be primitively 'innocent'. We are not in the Garden of Eden. We are a complex race of people with the imprint of a long history on our spirits. . . . There is an almost overwhelming urge throughout society

towards the trivialising of sexual actions and the separating of them from the rest of life. . . . We think it probable that to use one's capacity for loving in a relationship that is personally so tenuous is to reduce ultimately one's capacity for any depth of feeling or commitment. For in many such liaisons there is a deliberate intention to steer clear of being involved, to have fun without commitment [pp. 44-5].

Another argument that is fairly often encountered is to the effect that casual sexual unions are unsatisfying because they are expressions of immaturity or insecurity. Those who are content with them are, as it were, stuck at a rather juvenile stage of sexual development, or are trying to convince themselves of their sexual potency or responsiveness.

I do not want to deny that such psychological stories may be true (evidence clearly is required), but simply to comment that arguments based on them have considerably less force than might be supposed. One may warn people that in their pursuit of short-term pleasures they are missing, and impairing their capacity to enjoy, greater and more durable ones. But suppose they prefer their way of life? What is there left to say to them? There are some, in other respects sensible and responsible people, who are sexually adventurous to the point of being promiscuous. I am not defending their way of life, merely observing that it would seem strange to think of telling *them* that they do not really prefer it.

Very often the promiscuous individual is having fun at somebody else's expense, deceiving his partner about the depth of his interest and commitment, and in due course letting her down. The traffic is not always in one direction, either sex can exploit the other in this way. And this *is* morally objectionable, but because it is exploitation not because it is sexual promiscuity. If both parties are quite clear-sightedly simply having fun they cannot be condemned for exploiting each other. The promiscuous are a menace to faithful, hitherto neglected souls, who fear that love may be passing them by; they are not the same sort of menace to one another.

We drew attention above (Chapter 2, section 9) to the

possibility of distinguishing between morality and personal preference or ideals, morality being conceivable as a rather down-to-earth affair of avoiding harming people and dealing fairly with them. The sexually promiscuous life may fall far short of one's ideal, but it need not be immoral, in a narrow but possible sense of the term, in that it need not involve harming others or treating them unjustly. Probably in practice it nearly always does. Perhaps innocent free-love is little more than a theoretical possibility. It is, however, necessary to consider theoretical possibilities if we are to get the basis of our moral judgments clear.

4 EXTRA-MARITAL ASSOCIATIONS Russell, as noted above, consistently with his high evaluation of romantic love (which was, incidentally, in its medieval origin characteristically adulterous), is happy to accept married people having childless sexual associations outside their marriage. Lindsey too, though less enthusiastic, is very tolerant of what he calls 'stepping out of line'. The Quaker pamphlet, also, consistently with its authors' ethic of personal relationships, observes that adulterous associations can be morally acceptable. Of the 'so-called "triangular situation",' they write, 'this is too often thought of as a wholly destructive and irresponsible relationship, the third party being at the very least an intruder and at worst an unscrupulous thief. . . . Not sufficient recognition is given to the fact that a triangular situation can and often does arise in which all three persons behave responsibly, are deeply conscious of the difficulties and equally anxious to avoid injury to the others' (p. 20).

From the point of view of a teleological ethic or end-ethic, as opposed to a rule-centred ethic (see Chapter 2, sections 6 and 7, above, for a discussion of this distinction) no type of behaviour can be held to be in itself, absolutely, in all conceivable situations immoral. This perfectly general point is emphasised in its application to adultery by Professor Nowell-Smith in his paper 'Morality: Religious and Secular' (1961). For the teleological moralist the objection to adultery will be that it tends to be an act of disloyalty, likely to disrupt a valuable union. Mostly, no doubt, it is just that. But

by the same token if, in a particular case, it involves no disloyalty because the other spouse accepts it or does not care, or if the marriage bond has already been broken in fact if not in law, adultery will not be wrong at all.

It is, I think, useful to consider the rule/end divide in moral theory in connexion with adultery as well as with pre-marital unions. In the latter case very many people are doubtful whether the rule we have is the right one, or whether we need to have a rule at all. The prohibition on adultery is a rule that is rarely seriously challenged. It is only reasonable to consider cases in which a rule morality is likely to be popular, as well as cases in which it is not.

I should perhaps add, in order to make my own position clear, that the moral tolerance of adultery is for us hardly an open option in the way that the tolerance of pre-marital unions is. There is, accordingly, not much practical, though some theoretical, point in discussing it. *Ménages à trois* that are acceptable to all the parties involved are sufficiently rare for there to be no occasion even to consider making legislative provision for them, and most of the more durable adulterous associations remain so only because the parties cannot get divorced from their legal partners. Adultery has to be considered in connexion with the law of divorce, but it does not appear to me to be a currently serious problem in practical morality.

5 RECOURSE TO PROSTITUTES AND THE DOUBLE STANDARD Female prostitution has been a feature of all communities, at any rate all 'civilised' ones, and, although the importance of it and the social status of the prostitute have varied from time to time and place to place, it is hard to believe that it will ever disappear entirely. It appears probable that in the contemporary Western world a considerable proportion of men have associated with prostitutes on occasion. (See Kinsey, 1948. There is a convenient summary of information on this topic in *Men and Prostitutes*, T. C. N. Gibbens (1963), together with some useful references.) Prostitution would seem to be virtually inevitable when large bodies of young men are denied more 'normal' sexual con-

tacts, for example when armies are stationed on foreign soil, or when immigrant male workers are denied perhaps because of racial or cultural prejudices, the chance of associating with respectable members of the native female population. Heavy demand for prostitutes will tend to call forth a supply. And, conversely, when there is a supply, experimentally minded young men, men whose jobs take them away from home, business men at conferences, and so forth, are likely to take advantage of it. But, though the proportion of men who have had occasional recourse to prostitutes is high, regular customers are much fewer. Some of these are incapable of other sexual contacts because of deformity, or feelings of inferiority associated with it, or perversion; but many are apparently respectable, rather passive individuals, often in regular jobs, often married. Sexual activity and affectionate personal relationships are largely dissociated for them, as, of course, has to be the case with the professional sexual services of the prostitute herself.

It seems likely to be the case that prostitutes and their *regular* customers will be sexually defective or inadequate in one respect or another. It does not, of course, follow that they will be either 'curable' or anxious to be 'cured'—rather the reverse.

We have already noticed the suggestion that the effective alternative to accepting sexual relationships between young people before marriage is a return to prostitution and the double standard of sexual behaviour for men and women. There is some statistical support for it in Kinsey's finding that one of the few differences between the current generation of young men and their fathers is that the younger men consorted less frequently with prostitutes. The frequency of their sexual contacts remained the same, their choice of partners alone was different. It is hard not to see such a change as an improvement, at worst the substitution of a lesser for a greater evil. The double standard imposes an inferior status on women, whether by artificially protecting the respectable many or by sexually exploiting the disreputable few. It feeds the attitudes which perpetuate it, making it difficult for men to have sexual relationships with

women they respect, and restricts the opportunities of respectable women for sexual enjoyment. It breeds unhappiness and frustration all round. One could not be sorry to see it go.

Prostitution, 'commercial sex', as I have seen it described, is probably ineradicable. We have seen reason to suppose that there will be a steady demand from regular customers even in normal times. The practical problem it poses is how to regulate it in the public interest. It is not too easy to do this effectively without giving legislative support to an institution it is hardly in the public interest to maintain, and without turning prostitutes, or worse still suspected prostitutes or former prostitutes, into second-class citizens, subject to arbitrary arrest, compulsory medical examination, and the like. It seems unfair to discriminate legally between prostitutes and their clients.

The Wolfenden Committee on Homosexual Offences and Prostitution (1957) concentrated on trying to reduce the amount of soliciting by prostitutes in the public streets. To this end they recommended that it should no longer be necessary to prove 'annoyance' before a woman could be convicted for soliciting—it is practically impossible to secure convictions if annoyance has seriously to be established, as men will not give the necessary evidence. Another recommendation was that fines for soliciting should be substantially increased. They anticipated the objection that they were discriminating against the prostitute by contending that the need to 'clear the streets' should take precedence over the rights of prostitutes—and their clients, too, for that matter. The Committee recognised that their street-clearing proposals, if implemented, might lead to an extension of the less publicly conspicuous 'call-girl' system—hence the charge that they were content to sweep the dirt under the carpet. Other proposals were made, for example that a woman cautioned for soliciting for the first time should be referred to a welfare worker, with the object of facilitating the reclamation at any rate of beginners from prostitution. The Committee rejected the adoption of any system of licensed brothels because, among other reasons, they held that it was ineffective in impeding the transmission of

venereal diseases, and because they held that the system tended to lead to traffic in women and young girls.

It would be out of place in the present book to try to assess the value of these particular proposals, or of the legislation dealing with prostitution in Britain and other countries. I have noted them simply as an illustration of what it is reasonable to hope to achieve by legislation in matters of this sort. There will be a more extended discussion of 'anti-vice' legislation, in connexion with homosexuality, in Chapter 6 below.

6 THE RATIONALE OF SEX EDUCATION Sex education may be understood to cover both imparting information, introducing children to the so-called 'facts of life', and moral teaching. One might think that there was little room for dispute about the need for the former, but people are, of course, suspicious of it because moral attitudes tend to get expressed along with the facts. This is probably inevitable in our society. There has to be something special about sex instruction. Children, especially urban children, cannot pick up the facts of life in the course of their daily lives. Quite apart from vestiges of our long tradition of deliberate concealment, it happens that most sexual activity takes place in private, behind closed doors, Western society contrasting very markedly in this respect with Dr. Mead's Samoa. One can, of course, and it is probably desirable that one should, acquaint children with the basic facts of copulation and reproduction before puberty, before, that is, they have become matters of absorbing personal interest to them. But what children are not specially interested in they get muddled about, and it will remain necessary to check after adolescence that they have got things straight. In addition to anatomical and physiological information it seems to me important that children should be told something about the variety of actual behaviour in the sexual field, even though facts of this sort are especially difficult to impart in a morally neutral way.

Parents clearly should see that their children receive adequate instruction in sexual matters, but it seems very doubtful whether they can be relied upon to do so. The

only way of making sure that all children receive instruction is to give it in schools. It seems reasonable that it should be given there. It is in the public interest that all young people should be properly informed about this very important department of human activity, so full of possibilities both for good and for ill. There is no reason to suppose that universal sex instruction will solve all sexual problems, but it is necessary, if not sufficient, that people should be informed, and, since they fairly easily can be, they should be.

How sex instruction should be given in schools, whether directly in special lessons, perhaps given by specialist instructors, or incidentally in the course of the ordinary curriculum, is a question in educational method which I am not competent to answer. I find it hard to believe, however, that one can be sure of imparting the necessary information universally without special lessons. And I am quite sure that the information given to adolescents, at any rate, must be not merely accurate, but also relevant and complete. I have seen an instructional film intended for teenage girls which gave an elaborate account of the development of the foetus from conception to parturition. All very well in its way. But it is obviously much more to the point to remove misunderstandings about copulation and conception, than to instil an outline knowledge of embryology. To be complete, sex instruction in schools must include information about contraception and venereal disease.

What of moral teaching about sex? Here many people seem to want to indoctrinate children with the received moral principles or the particular variation on them that they favour. I do not like dogmatic teaching in any field, and certainly not in this. More to the point, perhaps, it cannot possibly be effective. It is simply the fact that there is in our society widespread disagreement on some items of sexual morality. Once it is realised, and it cannot be indefinitely concealed, that alternative sets of principles are accepted by different people with equal sincerity, it becomes impossible to present one set as obvious truths, and it has to be recognised that principles can be argued about, reasons given for and against them.

I do not see how anyone can progress very far in moral understanding without becoming able to see morality as a

social phenomenon. This may not be the whole story, but on any view it is part of it. There is no reason why children should not be encouraged to see that different moral principles have been and are accepted in different societies, and in different sub-groups, social, educational, religious or whatever they might be, in our own society. There is, it seems to me, plenty of room for more instruction in positive and comparative morality in schools. The possibility of such instruction has, where British schools are concerned, been obscured by the notion that morality is necessarily an aspect, and moreover an uncontroversial aspect, of religion. This has its attraction for anyone who has to cope with denominational disputes about religious instruction in school. The procedure adopted has been to try to extract a sort of highest-common-factor Christianity from the competing creeds, and to teach it as an 'agreed syllabus'. Morality is conceived, in effect, as part of the ground common to the denominations, and nobody wants to recognise the existence of moral disagreements for fear of reawakening denominational strife.

What has been advocated so far is instruction *about* morality. Is there any room for instruction *in* it? Not very much, in my view, if instruction is to be distinguished from indoctrination or conditioning. But there is plenty of room for moral discussion, about sex as about other topics. Children can be encouraged to address themselves to moral issues, to consider the things said, reasons given, on one side and another, and helped to assess their truth, consistency and cogency. There is no guarantee that they will reach the conclusions we want them to, but at least moral positions they have thought out so far as maybe for themselves are likely to be reflected in their conduct. This is more useful than offering them principles to parrot and then ignore—a practice which is not only ineffective in influencing conduct but which inspires the malign conviction that thought about problems of behaviour is not required.

This sort of non-directive, open discussion of problems of behaviour is sometimes objected to as a shirking of responsibility. The burden of decision is insupportable, it is said, especially for the young. They need to be, and at bottom want to be, told what to do. I sympathise with this to the

extent of thinking it essential to spell out in rather plain behavioural terms the implications of contrasting moral attitudes. I mean, for instance, that if in sexual contexts we preach responsibility and regard for others as persons with equal rights we must make it clear whether we think that this attitude is or is not compatible with sexual intercourse taking place outside marriage. To leave our audience to work that one out for themselves is an evasion of responsibility. And if we have not made up our own minds about such behavioural implications we had better keep silent until we have. But beyond such necessary exercises in clarity, I see little advantage in telling people exactly what they should or should not do. Even if there really is a widespread appetite for such directives I do not see why we should pander to it—it is not as if there were much chance of their being obeyed. Laying down the law is one thing, practical advice, suggestions about what is reasonable or desirable, about how to cope with difficulties, is another. Indulgence in the former pretty well disqualifies one from effectively offering the latter, for which the need really is beyond dispute. To label a wide area of conduct immoral precludes one from sensibly offering advice within it. It is too much like advising people how to sin effectively. The problems of love and sex are to a great extent the same in kind as other practical problems, it does not help to mark them off for wholly special treatment, to think of them more in terms of wrongs and sins than errors and misjudgments. Sexual morality and morality generally come within the scope of intelligence. Moral thinking is continuous with humane, practical common sense.

5

Divorce

I THE ISSUES TO BE DISCUSSED This chapter will be mainly concerned with controversy about the legal bases for divorce, though in addition some attention will be given to marriages between relations by affinity, to the legitimisation of children born to unmarried couples, and to the principles and practice of marriage counselling. Most of the matters discussed relate to the marriage and divorce law of England specifically. This may seem a somewhat arbitrary, and even parochial, restriction of scope, but it is made virtually inevitable by, on the one hand, the need to consider concrete proposals and arguments, and, on the other, by the enormous variety that there is amongst the provisions of different legal systems. There are even some important differences between the laws of England and Scotland. In some European countries—Eire, Italy, Spain—divorce proper (i.e. with the right to re-marry) is not available at all, whilst in others it can be obtained fairly easily. In federal or semi-federal states there are, moreover, often differences among the marriage and divorce laws of the constituent states or provinces. This is the case, for example, in Canada, Australia and the U.S.A.

Although the discussion is thus aligned to the English legal situation, I have tried to concentrate it on matters of fairly general principle in the hope that the results will be of more than purely local interest. The deliberations of the Royal Commission on Marriage and Divorce, which reported in 1956, provide a convenient starting point. The occasion

for the appointment of the Commission was a bill, introduced in the House of Commons by Mrs. Eirene White, M.P., in 1951, which would have permitted divorce against the opposition of the 'innocent' party after a couple had lived separately for a term of years. The bill was withdrawn on the promise of a Royal Commission. Although it is absolutely obvious that the main opposition in principle to divorce, and *a fortiori* to any extension of the grounds on which it is available, comes from some of the Churches, the Royal Commission, whilst taking evidence from religious bodies, professed to be considering marriage and divorce from a purely secular point of view: 'We have . . . conceived it to be our duty to examine the problems before us from the point of view of the State, which has to legislate for all its citizens, whatever their religious beliefs may be' (para. 38, p. 8). Many of the Churches' witnesses before the Commission accepted this secular approach, insisting that their proposals were designed to promote social well-being (cf. McGregor, p. 129). It is, of course, only consistent for believers in a beneficent God to hold that whatever is pleasing to Him will also be beneficial to mankind. But whether they are in fact, and not merely in appearance, in the same discussion with unbelievers depends on the direction in which they are prepared to argue. If from the socially beneficial to the religiously acceptable, they are; if they argue exclusively the other way, they are not. The pronouncement of the then Archbishop of Canterbury (Lord Fisher) about 'the disastrous consequences for human society which the violation of any natural law must, in the long run, entail' (*Church and Marriage*, p. 31) makes it hard to believe that he was allowing any independent weight to considerations of secular human welfare. His earlier statement that it must be 'the desire of all responsible people that . . . the national standards and habits should approximate as far as possible to the Christian standard' (p. 5) involves a quite preposterous (implicit) persuasive definition on the term 'responsible', and ignores the fact that there is disagreement even among believers about what *exactly* the Christian standard requires in the matter of marriage and divorce.

The Royal Commission was very worried by the prevalence, as its members saw it, of divorce, and by the con-

temporary instability of marriage. Some members clearly felt that the ideal response to such a situation would be to make divorce harder or impossible, but all recognised that this was impracticable in view of public opinion, and concluded that the more promising approach to the problems of marital instability was by way of education and marriage counselling.

The Commission's gloomy estimate of the contemporary marriage situation has been disputed. A good source for such criticisms is O. R. McGregor's *Divorce in England* (1957), Chapter 2—the story is summarised in Fletcher's *The Family and Marriage* (1962), Chapter 4. The institution of marriage, McGregor contends, has never been so popular. In 1954 not more than 6.7 per cent of marriages were ending in divorce, and a higher proportion of the population was married than ever before. Divorce is no indication that a person takes a low view of the state of matrimony; divorced people have a higher marriage rate than any other group. It is true that the absolute number of divorces and the divorce rate have been rising over the years, but conclusions drawn from this fact about the instability of marriage have been greatly exaggerated. It is, for instance, probable that many broken cohabitations, which were formerly unrecorded, now inflate the divorce figures. The grounds on which divorce is available have been extended on various occasions since the first English divorce act in 1857. Much the most important factor influencing the divorce figures recently has been the introduction of the Legal Aid Scheme in 1949. This has brought divorce within the reach of many people of limited resources, and they have taken advantage of it—but this does not mean that the marriage-failure rate in this group has increased. Again, according to McGregor, the records lend no support to the contention that marriages are nowadays lightly made and lightly broken. The most interesting statistic, that of the re-marriage-failure rate among divorced people, is unfortunately not available, but a high proportion of divorces terminate long-established marriages. Fifty-nine per cent of divorces occur in marriages of over ten years' duration, and 20 per cent of them in marriages which have lasted twenty years or more. (On the other side, though, it has to be admitted that there is both a higher

divorce rate for people who marry very young and a tendency for the average age of marriage to fall.) As for the damage often held to be done by divorce to the interests of the children involved, it is notable that for more than fifty years as many as 33 per cent of all divorces have separated childless couples; and, in view of the figures earlier given for the duration of marriages before divorce, the children will in a substantial number of other cases be grown up before their parents are divorced.

It has frequently been pointed out that current expectations of marriage are very, perhaps unrealistically, high; and that the intense, personal, many-sided relationship demanded is *potentially* unstable. But according to McGregor, Fletcher and others who think with them, and in spite of the views of the Royal Commission, the evidence is that contemporary marriage is not unstable in fact.

The striking thing about this dispute is that, although factual questions are involved, the facts are in the last analysis neutral. A divorce rate of 6.7 per cent is seen by some people as so monstrously high as to imperil the institution of marriage itself, whereas others see a marriage success rate of 93.3 per cent as evidence of marital stability. Again, the highly plausible point that an increase in the divorce rate does not, given easier divorce, necessarily reflect an increase in the proportion of unhappy marriages, can be taken in different ways. It can be seen, as by McGregor, as an indication that the substance of things has not changed very much, despite legal changes; or it can be seen, as by some members of the Royal Commission, as proof that people care less about the institution of marriage. Moral discussion must take account of the facts, but moral judgments, moral assessments of a situation, are not to be dictated by the facts.

2 THE GROUNDS FOR DIVORCE At present in England, and many other places, divorce law is based upon the *principle of the matrimonial offence*. That is to say, a marriage remains legally in being unless one or other partner commits some recognised offence, such as adultery, cruelty or desertion. Divorce may then be available as a remedy to

the aggrieved partner. If the aggrieved partner does not want a divorce the marriage continues. The Royal Commission considered various suggestions for abandoning, or to a greater or lesser extent departing from, the above principle in favour of the *marriage-breakdown principle*. The idea here is that divorce should be available when, and perhaps only when, a marriage has irretrievably broken down, in the sense that there has ceased to be any serious possibility of the parties living together again. There are two main ways in which the marriage-breakdown principle might be adopted. It could *either* be accepted as the sole basis for divorce, in which case the old grounds, adultery, cruelty, and the like, would cease to give entitlement to divorce, except in so far as they were treated as symptoms of marriage breakdown. Or the marriage-breakdown principle could be grafted on to the existing law as a new ground of divorce. In whatever form the marriage-breakdown principle is taken up, the question arises whether it is to be interpreted as requiring the consent of both parties before a divorce can be granted or whether divorce is to be allowed on the breakdown of a marriage even against the opposition of one of the parties.

It is of some interest, though not centrally important for our present purpose, to report what the Royal Commission recommended on these matters. It agreed by a majority of eighteen to one to retain the matrimonial offence as the basis of divorce, and divided nine to nine on whether marriage breakdown should be introduced as a new ground of divorce. The nine innovators supported divorce on the breakdown of marriage subject to the qualification that the other spouse did not object, although four of them were prepared to support the more radical proposal that a divorce should be granted against the will of the other spouse, provided it could be established that he had contributed to the breakdown of the marriage by his unreasonable conduct. An attempt by Mr. Abse in 1963 to get a proposal on these lines enacted failed, as Mrs. White's earlier attempt had also done.

Among the matters at issue in this dispute about the grounds of divorce are the rule and end conceptions of morality which we have already distinguished in several

places above. The conservatives, the supporters of matrimonial-offence principle, see sexual relationships as subject to certain rules, which are not to be altered at the will of the people they apply to; rules of which the observance should guarantee continuation in the married state, whilst breaking them gives the wronged party the right of divorce. The innovators, on the other hand, are less concerned with rules than with welfare. They see that some people get into difficulties, and are much more interested in helping them out than in enquiring who was the more to blame. My personal sympathies are very largely with the innovators here, but on the other side it has to be admitted that the topic of discussion is what the *law* of divorce should be, and that the rule-and-act approach to the appraisal of conduct is seen at its most persuasive in legal contexts. In the interests of personal freedom and security we demand of the law that it should be such that we know where we stand, that we should be left in no doubt what the legal consequences will be if we do this or that. The procedure of the courts, moreover, reflects what is expected of the law. Whether an offence has been committed, whether such and such an act is an offence within the meaning of the act, are matters which can be settled by the courts. Welfare considerations are outside their sphere of effective operation. Such conceptions of the scope of the law and the competence of the courts are influential in leading people to oppose the introduction of the marriage-breakdown principle into the law of divorce.

3 THE MARRIAGE-BREAKDOWN PRINCIPLE The case for accepting this principle in one form or another is essentially that it would enable legal recognition to be given to a number of cohabitations which are at present illicit but in all other respects worth while, and consequently reduce the frustrations, disabilities, deceptions, suffered and practised by the partners in such unions and their children. The following quotation expresses the spirit of the innovators' intentions:

We see no benefit to society, to the individual or to the State in maintaining marriages in name which are no

longer, and on all foreseeable estimates will never be, marriages in fact and which secure few or none of the purposes for which marriage was designed. There are many persons living together in illicit unions, which have all the potentialities of a happy, permanent marriage, who are unable to marry because of a pre-existing marriage which has completely broken down, and because the 'innocent' spouse from spite, religious scruple or some other reason, is not prepared to take proceedings for divorce [*Royal Commission Report*, p. 25].

The main objections to any acceptance of the marriage-breakdown principle are the following: (1) that 'in whatever form that principle might be introduced it would entail the recognition of divorce by consent', and (2) that 'in its more fully developed forms it would entail the recognition of divorce against the will of a spouse who had committed no recognised matrimonial offence' (*Royal Commission Report*, p. 14).

(1) *Objections to divorce by consent*

It is possible to distinguish three main lines of objection. I will try briefly to illustrate them and comment on them in turn.

(a) That divorce by consent is inconsistent with the present concept of marriage:

We believe that it is fundamentally incompatible with the concept of marriage as a union for life for the parties to be able to put an end to it by agreement. . . . For marriage is not merely a civil contract between the parties to it. It is a status arising out of that contract, and, as a status, it concerns the community as well as the parties [*Royal Commission Report*, p. 15].

Here one may comment, first, that the argument is question-begging. It does no more than underline the unsurprising fact that acceptance of the marriage-breakdown principle would amount to a change in our conception of marriage, and *assumes*, what is the point at issue, that such

a change is for the worse. In the second place, it is taken for granted, probably correctly, that 'divorce by consent' is something that most people object to, and the offensive label is then applied to the proposed introduction of the marriage-breakdown principle without any consideration being given to the question whether it really fits. In fact it does not fit at all well the actual proposal before the Commission, which was for divorce, subject to the consent of the spouses concerned, after marriage breakdown as evidenced by no less than seven years' separation! One is reminded of the equally extreme extension of the application of the term 'consent', which is fairly common in political theory, by which a man is held to consent to the law, and hence to be justly subjected to it, merely because he lives in the territory over which it is enforced. It may, moreover, be very plausibly held that the present system, based on the doctrine of the matrimonial offence, offers divorce by consent to all couples willing to commit offences in order to get it.

(b) That divorce by consent has bad social consequences:

To give people a right to divorce themselves would be to foster a change in the attitude to marriage which would be disastrous for the nation. . . . [It] would be fatal to stability and security in marriage, which in the end would come to be regarded as a temporary relationship, with divorce as a normal incident of life [*Royal Commission Report*, p. 15].

Here a factual claim is being made which requires to be supported by evidence, but is not.

(c) An argument from the function of the law:

The argument that divorce by consent provides a dignified and honourable means of release is perhaps the most insidious of all. There could be no subtler temptation to divorce than the belief that there was a wholly blameless way of terminating a marriage. In our view it is not the function of the law to provide such a means of release;

its proper function is to give relief where a wrong has been done [*Royal Commission Report*, p. 16].

This, like argument (a), simply begs the question. It is astonishing that the conservatives on the Royal Commission used so much energy in preparing arguments like (a) and (c), and so little in seeking evidential support for the clearly relevant type of argument of which (b) is an instance.

(2) *Objections to divorce against the will of the 'innocent' partner*

(a) One set of objections is to the effect that acceptance of any such proposal would involve injustice: e.g.

To vest in a husband or wife the right to divorce a spouse who, *ex hypothesi*, had committed no recognised matrimonial offence, and who did not want a divorce, would result in grave injustice. It would, for example, allow a man who had committed adultery or had been cruel to his wife to leave her and subsequently to divorce her against her will. This would violate a principle which has been long-established in the law, namely, that a man shall not be allowed 'to take advantage of his own wrong' [*Royal Commission Report*, p. 17].

This argument, which like others we have considered assumes what it purports to prove, together with the associated argument that acceptance of the proposal under discussion would mean that nobody would have any security against being divorced, illustrate the way in which any radical innovation can fairly persuasively be held to involve injustice (cf. Chapter 3, section 5, above). What is proposed is indeed unjust—in the light of the principles of the existing system. But, then, the proposal is intended to modify those very principles. They are not therefore available to support an *argument* against the proposal.

(b) Another, and very different, line of argument against the acceptance of divorce without the consent of the 'innocent' party is that it will be difficult to ensure that adequate

financial provision is made for the wife and children of the first marriage (*Royal Commission Report*, pp. 17-18). The argument already mentioned, about the loss of the certainty of staying married provided one does not 'misbehave', is also relevant here. It is clearly very desirable that adequate provision should be made for the dependent parties of the first marriage, and remains so whether or not one attaches importance, as the people who use this argument normally do, to the consideration that the first wife may be entirely 'innocent' of any matrimonial offence.

It is, of course, relevant to ask whether the present system of divorce as a remedy for a matrimonial offence is any better, except in the question-begging sense that under it 'innocent' parties in divorce have rights to maintenance that guilty ones do not. Notoriously there is at present great difficulty in getting legally errant husbands and ex-husbands to maintain their former partners. There are, moreover, possibilities of substantial injustice as formidable as those cited against acceptance of the marriage-breakdown principle. On the latter system, it is said, a woman, divorced after a long period of mostly satisfactory married life, may see the widow's pension go to a second, younger, more economically self-sufficient wife, who may have been married for a very short time. But, on the present system, a woman who has lived apart from her husband since the very early days of the marriage, but who has not divorced him, will remain entitled to a pension as his widow, whilst the other woman who may have lived with him for years, borne his children, and been in all respects—except legally—a model wife, has no claim at all.

There are real problems here, both for the present and for any other system that might be proposed. Both Mrs. White's and Mr. Abse's bills stipulated that divorces on marriage breakdown should be conditional upon satisfactory maintenance arrangements being made for the dependent parties. But, as has frequently been pointed out, there is the very serious difficulty that few men are economically capable of supporting more than one wife and family.

It is not easy to reach a sensible conclusion on this argument without raising many questions of fact and present law which it would be inappropriate to go into here. It is

clear, however, that the maintenance question is both crucial and difficult. It is less clear that the difficulty would be increased by departing from the present system towards one based on the marriage-breakdown principle. It is, moreover, the case that the task of promoting the maximum of welfare all round is not eased by complicating it with questions of guilt and innocence. If the welfare problems could be looked at by themselves they might be easier to solve. To the extent that advocates of some introduction of the marriage-breakdown principle are seeking to move in this direction, the present argument hardly tells against them.

It will have become clear that the opponents of the marriage-breakdown principle are opposed to *any* introduction of it whatever. The 'moderate' proposal for divorce after seven years' separation, provided the other spouse does not object, is rejected as divorce by consent; the extreme proposal is still worse because it is divorce without consent. Such opponents are clearly not going to be conciliated by moderation. It may therefore be asked whether there is anything at all to be said for the more moderate proposal *in itself*. Its critics did not fail to point out that it offers release only to that rather limited number of people whose spouses are not unwilling to let them go. In the commoner and harder cases, where the other spouse does object, it is no help at all.

So far as I can see, the only distinctive merit of the moderate proposal is that it eases the moral difficulty of a deserted or otherwise wronged husband or wife who has conscientious objections, which will usually be religiously based, to divorce. At present such a person, who may be well disposed towards the errant partner and who may have no desire to hold him against his will, can release him only by *initiating* divorce proceedings. This is asking rather a lot of a person sincerely and seriously opposed to divorce, and it is likely to get him into trouble with his church authorities. If the proposal under consideration were implemented, such a person would not have to *do* anything about divorcing his partner, but simply to *refrain* from opposing the divorce. Though he would, on divorce, become legally entitled to re-marry, he would remain under an obligation

in conscience not to do so. But that would be entirely his affair.

Looked at in this light, the moderate proposal has some merit, real enough, if limited in application. It is not, however, to be expected that opponents of the marriage-breakdown principle will recognise it. I have been in effect assuming that it is good, other things being equal, that people should be released from marriages which have in substance broken down. They reject this assumption. They do not see divorce as merely the legal recognition of something—no doubt very unfortunate and perhaps the result of human wickedness—which has happened in fact. They see it as an additional, independent evil which may follow upon marriage breakdown. The two sides in this dispute about the proper legal bases for divorce are very far apart indeed—that is why so many of the arguments employed are so little compelling. The extreme tenderness shown by opponents of divorce to people with conscientious scruples about it is a case in point. In general, in our society, it is allowed that people should be exempted from certain obligations if they have conscientious objections to discharging them. But, in this case, what is defended is that a person professing conscientiously to object to divorce should have an absolute right to prevent another particular adult person from doing what he wants to do, and would otherwise be free to do. Conscientious objectors to military service had to satisfy a quasi-judicial tribunal of their sincerity, but it is never suggested that any enquiry should be made into the motives of those claiming conscientious objections to divorce. What is really felt is surely that conscientious scruples about divorce should be respected because divorce is wrong, and not, though this is what is said, that one reason for not making divorce easier is that some people are conscientiously opposed to it.

It seems rather easily to be forgotten that you do not much help an unpopular cause by supporting it with bad, because question-begging, arguments.

4 THE NEED FOR AN INTELLIGIBLE PRINCIPLE The evidence submitted to the Royal Commission by the then

Archbishop of Canterbury urged the Commission to proceed in accordance with some general principle concerning the significance of marriage, and not simply to content itself with trying to relieve particular sorts of hard cases (*Church and Marriage*, p. 3). Fisher, though opposed to divorce, was moderately content with the principle of the matrimonial offence so long as no new offences were recognised as grounds for divorce (p. 7). And half of the members of the Royal Commission found the matrimonial offence principle 'clear and intelligible', despite some artificiality, and neither objectionably rigid nor inapplicable to new circumstances at that (*Royal Commission Report*, p. 21).

Lord Walker, one of the members of the Commission, was so strongly convinced of the need for some single, general principle as the basis for the law of divorce that, although he himself favoured some form of marriage-breakdown principle, he nevertheless preferred, if that proved unacceptable *in toto*, to revert to the principle of the matrimonial offence, and *to adhere to it as strictly as possible* (*Royal Commission Report*, p. 341). Failing the total acceptance of the principle he preferred, he wanted no concessions made to it all. Half a loaf was worse than no bread. McGregor, in somewhat the same spirit, observes that it would be absurd to try to combine in some way the matrimonial offence and marriage-breakdown principles (1957, p. 192). And the former Lord Altrincham, now Mr. John Grigg, commenting on Abse's divorce bill, which in its original form attempted to do just that, observed that the 'bill represents, therefore, a typically "British compromise" between two theories of divorce which are logically and morally incompatible' (*Guardian*, 14 February 1963).

There is, then, to all appearances a widespread belief, among people whose views on divorce are otherwise divergent, that the law of divorce should be 'consistent' or 'logical', i.e. based on a single, general principle. It is, however, hard to be wholly consistent. For instance, it is in line with the matrimonial offence principle that collusion and condonation are bars to divorce. Divorce is a remedy available to an innocent party against whom an offence was committed, but if there was collusion he was not innocent, if condonation he did not regard the other party's act as an

offence. It has for a long time and on all sides been recognised that the effect of these bars is unfortunate. The condonation rule hinders attempts at reconciliation, and the collusion rule makes it difficult for the parties to a divorce to discuss arrangements for their children, the disposal of the matrimonial home, and the like. Nevertheless, the Royal Commission resisted proposals for the abolition of these bars, or for the conversion of them into defences which could be raised by the respondent in a divorce suit, on the grounds that the bars are consonant with the doctrine of the matrimonial offence. They nevertheless, by majorities, try to reduce the disadvantages of the present system by proposing (a) that condonation should be so understood as to be compatible with the resumption of cohabitation for a trial period in the hope of achieving reconciliation (*Royal Commission Report*, p. 72—a proposal in a similar sense is made with respect to the ground of desertion p. 46)—proposals on these lines were enacted in 1963; and (b) that collusion should not be interpreted as precluding the reasonable discussion of arrangements about children, etc., between parties to a divorce. There is much sense in such proposals but no very impressive adherence to simple principles.

Another point at which it is difficult to stick very closely to the principle of the matrimonial offence is in regard to insanity as a possible defence for someone charged with cruelty or desertion. Insanity is in general a defence, why then should it not be one where matrimonial offences are concerned? Manifestly it cannot be accepted. If we want to allow people to end their marriages with cruel partners it is hardly reasonable to insist that they stay married to such partners who are also insane. The Royal Commission did, in effect, recommend that insanity should not be admissible as a defence in the cases in question (Chapter 7). Again, very rightly, but without an officious regard for simple consistency.

There are no doubt some practical advantages in having the law based on simple, general principles: and some aesthetic satisfaction to be obtained by contemplating them. But simplicity and generality are not worth having at any price. The Archbishop's position is not too hard to under-

stand, since the only simple principle that had much chance of acceptance was the one he was prepared to put up with. Walker's position, however, seems to me to be very strange. Whyever reject slightly complex compromises which give you some of what you want in favour of simple principles which offer nothing at all? I cannot share the attitude, but there is no denying that some people admire, or talk as if they admire, adherence to principle for its own sake, largely irrespective of what the principles are.

One reason for this, I think, is that it is quite often mistakenly believed, witness Grigg's talk of *logical* incompatibility, that logic requires one to be guided only by simple principles. (It is no wonder that people who think this despise logic!) But complex principles can be consistent as well as simple cases. It is indeed logically impossible, contradictory, to have the law of divorce based both *exclusively* on the principle of the matrimonial offence and *exclusively* on the marriage-breakdown principle. But there is no offence to logic in basing the law *partly* on the one principle and *partly* on the other.

This misconception about logic is in fact deeply ingrained in the ruling conventions of public debate. Would-be innovators search the records for precedents, and feel once they can say that their principle has been accepted in some measure that the day is more than half won. The conservatives, on the other hand, are for ever on the alert for the 'thin end of the wedge'. In the particular issue we are concerned with, the radicals think that their claim has been conceded in principle in so far as insanity is held not to be a defence for someone against whom a matrimonial offence has been alleged. Whilst their opponents will not concede divorce on marriage breakdown, not even when it is evidenced by seven years' separation—surely in itself an ample safeguard against marriage being undertaken lightly in the expectation of easy divorce—because they fear that they will be unable to resist demands for the progressive reduction of the period. In logic they certainly can resist them. Logic permits us to draw lines where we want them to go. But they may be right, the conventions being what they are, to think that they may not be able to do so in fact.

I do not know whether I am more exasperated or impressed by this situation. On the one hand, it is maddening to have people opposing moderate and reasonable proposals because it is thought that they will open the way for immoderate and unreasonable ones. But, on the other hand, it is a very good thing that there are conventions of public debate, which make it possible for people deeply divided in their moral convictions to talk peaceably together with some show of rationality.

5 MARRIAGE BETWEEN RELATIONS BY AFFINITY This, like the topic of legitimisation which will be glanced at next, is a peripheral matter, which nevertheless illustrates some points of general interest. It brings out very clearly the difference in attitude between those whose direct concern is first and foremost with welfare and those whose first care is the protection of the institution of marriage.

The situation with which the Royal Commission had to deal was as follows: Marriage had long been forbidden between various relations by affinity (i.e. 'in-laws' in their various degrees), although statutory exceptions had from time to time been made, the most notable being the lifting of the bans on marriages with a deceased wife's sister and deceased husband's brother. (Some of the quainter arguments employed against these statutes are reported in Mr. E. S. Turner's *Roads to Ruin*.) The exceptions were, however, explicitly restricted to permitting marriage with the in-laws in question only on the *death* of a spouse. One could not in England marry one's *divorced* wife's sister or *divorced* husband's brother.

The Royal Commission considered two proposals on the matter. The first was to permit marriage after divorce in all cases in which it was allowed after the death of a spouse. The second, more extreme one, was to abolish all restrictions on marriage between relations by affinity, thus enabling, for example, a widow to marry her stepson, or father-in-law, or son-in-law. The former proposal in fact found favour with the Commission, and became part of the law in 1960. The wider proposal was not accepted.

The case for the moderate proposal was simply that there

were a few hard cases which would be relieved by it. The case against was more complex. It was alleged that acceptance of the proposal would threaten the stability of the family by increasing sexual tensions among the members of it. Fisher, the Archbishop, argued thus:

. . . the family is and ought to be a secure, stable unit from which is excluded by universal custom any sex interest between its members. . . . It is supremely important for the stability of the family unit and for the protection of its members from indulging in unlicensed thoughts or desires that there should be the strongest possible barrier against any thought or possibility of marriage with the brothers and sisters of a partner. The proposal hitherto has been for marriage with a divorced wife's sister or divorced husband's brother; but there would be no ground for excluding marriage with nieces or nephews of the divorced partner, and thus extending the area within which complications could arise.

Death is one thing: it is not likely that one partner would actively desire the death of the other partner; still less that he or she would seek to cause death. . . .

The ending of a marriage by divorce is an altogether different matter. . . . It can be planned for and brought about. The possibility of marrying a divorced partner's brother or sister casts a terrible shadow backwards. The 'triangle' of emotions is taken into the circle of the family. . . .

All this is a special danger today in those many cases where a married couple is living with 'in-laws' [*Royal Commission Report*, pp. 299-300; and *Church and Marriage*, Appendix B].

This argument is utilitarian in form but hardly in substance. It is designed to appeal to utilitarians but was not constructed by one. As the majority of the Royal Commission comment (p. 301), the hard cases that would be relieved by the acceptance of the proposal are fact, whereas the threat to family stability is speculation. No serious attempt has been made to enquire whether permitting marriages with a divorced partner's siblings would in fact

significantly increase sexual tensions within the family. It might, sibling jealousy being the potent force it is, or it might not: we do not know. On the other hand, and in fairness to Fisher, it must be allowed that the prohibition on incest, which hardly anybody wants to relax, must derive some of its support from the sort of considerations Fisher refers to. The horror incest inspires surely goes beyond what is reasonable in the light of the genetic dangers of fertile unions between near blood-relations.

6 THE LEGITIMISATION OF CHILDREN ON THE MARRIAGE OF THEIR PARENTS The issue here was the relatively straightforward one whether children should automatically become legitimate on the marriage of their parents. Before 1959, when the law was changed, in England children were legitimised by their parents' marriage only if the parents had been free to marry at the time of the child's birth—the more exacting Scots made it the time of conception! The Royal Commission, by a majority, recommended against a change in the then law. On the one side was the simple welfare consideration that changing the law would tend to reduce the number of illegitimate children, on the other anxiety not to weaken respect for marriage. 'The issue', it was felt, 'is fundamental but perfectly plain. If children born in adultery may subsequently acquire the status of legitimate children, an essential distinction between lawful marriages and illicit unions disappears' (*Royal Commission Report*, p. 305).

Some utilitarian arguments were employed too: it was a little half-heartedly suggested that changing the law would reduce the disincentives to contracting illicit unions, but it is obvious that the opponents of change were not so interested in what the social consequences of change were actually likely to be as in maintaining the present form of marriage.

7 MARRIAGE COUNSELLING The possibility of changing people's attitudes by legislation is acknowledged on all sides to be very limited. The Royal Commission accordingly looked elsewhere for the remedy for that instability it dis-

cerned in contemporary marriage. It pinned its hopes on education and marriage guidance. We have already considered some of the problems posed for moral education by a morally divided society (Chapter 4, section 6). Here we shall see how marriage-guidance agencies try to perform their task in face of the deep moral divergences there are among people with regard to marriage and divorce. It will appear that there is a marked contrast between, *on the one hand*, the rather partisan moral hopes entertained of these agencies, and, indeed, the very definite moral standpoint adopted by one group of them; and, *on the other hand*, the non-directive, 'non-judgmental' approach they make to their clients and, it would seem, have to take if they are to be at all effective.

There is no attempt at moral neutrality in the attitude of the National Marriage Guidance Council as expressed in the statement of its principles and aims (*Marriage Counselling*, T. H. Wallis and H. S. Booker, London 1958, p. 100). One of the aims is to give guidance to young people with a view to promoting '*right* relationships in friendship, courtship, marriage and parenthood' (my italics). And one of the principles is that 'The right basis for personal and social life is that sexual intercourse should take place only within marriage'. By contrast, the Family Discussion Bureau of the Family Welfare Association, which attempts something closer to psychoanalytical therapy than does the Marriage Guidance Council, is much less moralistic in its statement of aims (*Social Casework in Marital Problems*, K. Bannister, etc., London 1955, p. viii). Its concern is merely to help with marriage problems. Despite this difference in aim, the two organisations are closely similar in their approaches to their clients. The work of the Marriage Guidance Council was, one reads, 'not originally conceived in terms of giving advice to people as to their duty or behaviour, but as obtaining the right treatment for a disorder causing pain and unhappiness and loss of efficiency' (Wallis and Booker, p. 9). The Council is, moreover, at pains to impress upon its trainees as a basic principle that 'The purpose of counselling is not mainly to give advice' (op. cit., p. 67).

So much for the contrast between the aims and methods of the Marriage Guidance Council. The Royal Commission itself felt obliged to recognise that reconciliation was not

something that could be imposed upon a married pair from outside (*Royal Commission Report*, p. 96). Most of their witnesses were of the opinion that schemes in force in other countries, whereby the parties to a divorce suit were compelled to present themselves before some conciliation agency, served no useful purpose. The non-authoritarian approach of the marriage counsellors is dictated by the nature of their task.

One may ask what attitude a counsellor is expected to adopt to divorce and separation. It is easy to see that he might feel some embarrassment at this point. His function is to preserve marriages that have run into trouble, and to have to recognise that divorce is the only or best solution is virtually an admission of failure. Yet, on the other hand, he is uniquely well placed to see that it may in certain cases be inevitable. This question is discussed in both the books mentioned, and the line taken with it is to reiterate that the job of the counsellor is not to give advice but to help people to make their own decisions (Wallis and Booker, pp. 93-4). The Family Discussion Bureau workers, too, are emphatic that decisions about whether the continuance of a marriage is possible or desirable have ultimately to be taken by clients themselves (p. 165).

Marriage-guidance counsellors see themselves as occupying the same sort of position as a doctor. He cannot fail to realise that some illnesses leave no room for recovery, but he does not advise such patients to give up and resign themselves to death. His job is to cure people, if he can. As a man he may or may not approve of euthanasia, but to advise it in his capacity as a doctor is felt to be incompatible with his healing role. So perhaps it is with marriage-guidance counsellors and divorce, although there is no doubt that divorce is somewhat less generally disapproved of than death.

To stress the narrowness and specialised nature of the counselling function is to emphasise the possibility of developing expertise, professional skill, in the exercise of it; and is also, in effect, to stake a claim for freedom from moralistic interference. Accordingly, the workers of the Family Discussion Bureau try to avoid getting involved in the religious and moral problems of their clients. They advise them to get in touch with clergy of the appropriate

denominations, and express themselves as follows with regard to the moral problems of clients: 'The caseworker's task with the client is confined to helping him to understand and to overcome the emotional conflicts which make it so difficult for him to act in the way he believes to be right. The question of what he believes to be right is a matter which only the client can decide, and which the worker must strive to accept fully as a genuine and essential aspect of his individuality' (Bannister, p. 163). They refuse, in effect, to engage in moral discussion with their clients, and try to see their moral beliefs simply as facts about them.

This, then, is the aim, how far it is realised is another matter. Moral neutrality is not easily maintained with respect to the affairs of people with whom we are closely associated, and one may accordingly wonder whether marriage counsellors do not indirectly, and no doubt unconsciously, give guidance to their clients. I shall not attempt to discuss this question here. (It is considered at some length in a forthcoming book, *The Faith of the Counsellors*, by my colleague Dr. P. Halmos.) The Family Discussion Bureau workers recognise that whilst advice about behaviour (moral advice) may cause resentment, refusal to give it may increase their clients' anxiety. The only way out of this dilemma that they can see is to present the issue squarely to their clients (Bannister, pp. 163-4). They comment interestingly that leaving people to make their own moral judgments does not, in fact, encourage moral nonconformity (p. 165). Rather the reverse. People 'progress' during the counselling process in the direction of conformity with the standards of their social group. Marked resistance to those standards they see as normally a sign of disturbance in their clients.

6

Homosexuality

I INTRODUCTION As with divorce, a convenient starting point for the discussion of homosexuality is a government report, in this case the Report of the Wolfenden Committee on Homosexual Offences and Prostitution (1957). I shall arrange what I have to say under three main headings: first, the function of the criminal law in general; next, the particular recommendation made by the Wolfenden Committee that homosexual acts between consenting male adults in private should cease to be illegal; and, thirdly, the morality of homosexual behaviour. This last was not much discussed by the Committee. They repeatedly affirmed that homosexual behaviour was immoral, but addressed themselves almost exclusively to the question what attitude the law should therefore adopt to it. We should not, however, ignore the moral question, if only because a good many people cannot follow the Committee in their sharp distinction between law and morals, crime and sin.

A little needs to be said about the incidence of homosexuality and the extent to which it appears that the condition can be modified. Kinsey found that 4 per cent of white male adults were exclusively homosexual, that 10 per cent had been exclusively homosexual for periods of at least three years between the ages of seventeen and sixty-five, and that as many as 37 per cent had engaged in homosexual activity to the point of orgasm on some occasion between adolescence and old age. D. J. West (*Homosexuality*, London 1960, p. 30) thinks that up to 5 per cent of males are predominantly homosexual. Homosexuality in itself would

seem to be too widespread to be regarded as a species of disease (cf. Walker and Fletcher, p. 179), though the difficulties experienced by homosexuals, the need for concealment imposed by public attitudes, may make them specially prone to mental disturbance. It appears that almost everybody has homosexual as well as heterosexual elements in his make-up, and it is to be expected that 'normal' men will sometimes engage in homosexual practices in abnormal circumstances—prisons, armies, single-sex boarding schools. On the other hand, exclusive homosexuality, like *regular* consorting with prostitutes, might be regarded as abnormal. All the same, West, who mentions this possibility (p. 12), also observes that 'In many cases the mature homosexual suffers from his efficiently repressed heterosexuality no more than the mature married man suffers from the complete repression of homosexuality' (p. 136).

The Wolfenden Committee were unable to agree with one another whether the incidence of homosexual practice was increasing. The rise in the number of prosecutions is not, of course, in itself a very reliable indication. It might simply reflect increased police activity.

The question, already touched upon, concerning whether homosexuality can be regarded as a disease derives most of its practical importance from its bearing upon the issue of responsibility. If it is a disease, it might be felt, homosexuals are sick people who need to be cured; if not, they are sinners, and perhaps to be punished by law. The Wolfenden Committee (*Report*, p. 16) were not persuaded that homosexuality was a disease, at any rate not to the extent that anyone suffering from it was necessarily and as such in a condition of diminished responsibility. Some homosexual behaviour no doubt is compulsive, and to a lesser or greater extent outside the individual's control. But then so also is some heterosexual behaviour. The activities of both homosexuals and heterosexuals would seem alike to be *possible* objects for moral judgment, and indeed for legal restriction.

There are two main grounds upon which people may be held not to be responsible for what would otherwise be culpable actions—compulsion and ignorance. If you really could not help yourself, then you are not to blame. But by no means all homosexual actions fall into this category.

Again, if you really did not know what you were doing, or what its effects would be, or, more doubtfully, that it was (held to be) wrong, you are not to blame. We have already noticed (Chapter 2, section 6, above) Bailey's contention that some homosexuals may be regarded as invincibly ignorant of the objective wrongfulness of their actions. This appears to me to be a somewhat misleading recognition of the fact that some homosexuals, and others too for that matter, dissent from that article of current positive morality, according to which homosexual activity is as such morally wrong.

We have now dismissed, at least as being generally applicable, two grounds—compulsion and ignorance—upon which homosexuals as such might be supposed not to be responsible for their sexual actions. There is, however, another contention, which is sometimes misexpressed as a point about responsibility, namely that homosexuals should not be blamed for homosexual activity *in itself* (i.e. if it does not involve seduction or exploitation), because in engaging in it they are simply taking the only sexual outlet open to them. Here the point surely is that it would be unfair or unreasonable or inhumane to blame them. Most of us can hope to express ourselves sexually in ways that society does not condemn. Is it, then, becoming in us, fortunate as we are, to insist that homosexuals should forgo all physical satisfaction?

The genesis of homosexuality is not wholly clear. Hereditary influences cannot be altogether discounted, though to the extent that it appears that most people are capable of experiencing both homosexual and heterosexual inclinations, and indeed in our culture normally go through a homosexual phase in adolescence, it would seem that social and family influences are more important. A dominant, possessive mother features in many homosexual histories.

There is some disagreement about prospects of 'treatment'. Drugs—male and female hormones—are not effective in redirecting sexual preferences, though they can have some influence on the intensity of sexual desire, and may accordingly be used to help people with deviant sexual impulses to keep out of trouble. The Wolfenden Committee took a very gloomy view about the possibility of changing the direction of a homosexual's sexual desires (pp. 64–72), though two

of their medical members were more hopeful (pp. 72-6). Psycho-analytical treatments normally aim at helping the homosexual to adjust to his condition. Their effectiveness depends on the 'patient' being willing to co-operate, as many homosexuals are not. It is possible that more effective treatments will be developed in due course, but how far these would affect the social problems presented by homosexuality cannot very easily be foreseen. At present, to all appearances, many homosexuals, not regarding themselves as ill, do not want treatment. And, by most standards, the idea of compulsory treatment is morally repugnant. Rather different is the idea of making people who have shown themselves persistently inclined to make homosexual, or for that matter heterosexual, assaults on minors—in short, people who do harm, undergo treatment as a condition of remaining at large. This may well be a lesser evil to the individuals concerned than permanent confinement. It would be necessary to devise safeguards against the obvious risks of abuse.

2 THE FUNCTION OF THE CRIMINAL LAW The Wolfenden Committee took the view that they were concerned with the law and offences against it, and did not think that they were required to enter into matters of private moral conduct except in so far as they directly affected the public good. They formulated their view of the function of the law in the field they were concerned with thus:

In this field, [the law's] function . . . is to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official or economic dependence.

It is not in our view the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour, further than is necessary to carry out the purposes we have outlined [*Report*, pp. 9-10].

It will be seen that the Committee's view about the relationship between law and morality is very close to that of Mill, as described in Chapter 3, section 8, above. It should be noted, though, that whereas the Committee was concerned very largely with limiting *legislative* interference with individual freedom of action, Mill himself was as much, or more, worried about *social* pressures. Social pressures can sometimes be reduced by legislation, an example being the Swedish law already referred to which protects an unmarried mother from being dismissed from her employment. Again, it might conceivably be expedient to legislate against 'objectively' harmless conduct to which public opinion takes extreme exception. This could, on utilitarian principles, be the lesser of two evils, though Mill, a professed utilitarian, would have had none of it. I do not, of course, think that repeal of the ban on homosexual activity in private would bring lynch mobs out in the British streets.

A prominent critic of the principles of the Wolfenden Report is Lord Devlin (*The Enforcement of Morals*, 1959). A much earlier and in some respects similar protest against Mill's *Liberty* was made by James FitzJames Stephens in 1873 (*Liberty, Equality and Fraternity*). There is a useful discussion of the issues raised by Stephens and Devlin in Professor Hart's *Law, Liberty and Morality* (1963).

Devlin advances three main contentions:

- (a) The first of these is that there are provisions in the law as it is which are intelligible only on the supposition that it is part of the function of the law to enforce positive morality. For instance, a man charged with a crime against another person is not in general allowed to plead the consent of his victim as a defence. The only explanation of this, in Devlin's view, is that society expects certain standards of behaviour to be maintained irrespective of whether or not breaking them harms other particular individuals. Hart (*op. cit.*, pp. 30-4) observes that Devlin's explanation of the rule concerning the consent of the victim is not, strictly speaking, the only one. It could be regarded as deriving from a paternalistic attitude, rather than from a desire to enforce morality as such. Even if we discount this, Devlin's line of argument could not in any case be conclusive. The question

is whether the law *should*, not whether it *does*, enforce morality. Though, of course, if we find that some of its fundamental principles have this tendency this is a reason for considering seriously whether there might not be value in its doing so.

Devlin further claims that if the Mill-Wolfenden principles were accepted the following acts would all have to be permitted by law: euthanasia, suicide, attempted suicide, suicide pacts, duelling, abortion, brother-sister incest. They can all be performed in private, and none need involve corruption or exploitation of others. It is supposed that we should all want most of these acts to fall within the scope of the law, and contended that they can only be brought within it if it is allowed that the law should enforce morality as such.

Whatever may be the case with the supposition, the contention is not correct. To some of the acts in question Hart's point about paternalistic as opposed to moralistic intervention would apply. To others, a point frequently made in his history of moral philosophy, though very strangely neglected in recent debates—the point, namely, that they are acts which if generally practised do great harm to others, even though in particular instances they need harm no one, who is not willingly involved. Duelling is perhaps the clearest example. If two otherwise sane adults, without dependants or public responsibilities, choose to fight to the death, nobody will be harmed against his will. But, notoriously, if duelling becomes the general practice, people with dependants and responsibilities are then forced to engage in it, and great social harm results. It is, it seems to me, perfectly compatible with Mill-Wolfenden principles to recognise that there are some acts which are harmless on particular occasions but harmful if generally practised, and that, therefore, legislation may be directed against them.

We have here a possible interpretation of Devlin's somewhat mysterious distinction, between offences against individuals and offences against society as a whole, on which his second contention depends.

(b) This is his claim that (positively) immoral acts, even though they may not be harmful to non-consenting in-

dividuals, are harmful to society as a whole. Whence he concludes that 'society may use the law to preserve morality in the same way as it uses it to safeguard anything else that is essential to its existence' (op. cit., p. 13). The purpose of the law is not simply, as on the Mill-Wolfenden view, the protection of individuals, but the protection of society. Accordingly, Devlin cannot agree that special circumstances have to be established in order to justify legislative interference with a positively immoral act. It is rather that anyone who opposes intervention in a particular case must show special cause for not doing so. Thus the reason for not making adultery and fornication illegal is that it is not practicable to do so.

One can see in these instances how Devlin can reach the same conclusion as Wolfenden in particular cases. On the other hand it is very clear that it will never be desirable, on Devlin's view, to repeal legislation which happens to exist against a positively immoral act, unless that legislation is manifestly causing enormous social harm.

I have already suggested one thing that an 'offence against society as a whole' might be taken to be. Legislation against such offences so understood would be justifiable for the protection of individuals, and in any event it would be a question of fact whether any particular type of action came into the category. My guess is that duelling does. About homosexual acts, as we shall see, different opinions have been entertained. Devlin, however, seems to think that positively immoral acts are *as such* offences against society as a whole. (Our conjectural interpretation of this notion is thus not the whole story.) His argument appears to be that without shared ideas on morals no society can exist (op. cit., pp. 11-12). It is not wholly clear whether this should be regarded as an analytic proposition stemming from the reflection that we should not want to *call* a group of people a society unless they had some convictions about behaviour in common, or whether it purports to be a synthetic sociological proposition to the effect that no group can *as a matter of fact* hang together for long without some community of ideas. But in neither case does it follow that the survival of a society is bound up with the successful legal enforcement of every single article of the received morality.

As Hart points out (op. cit., p. 51), it is not by any means an established truth that people who depart from current morality in, say, sexual matters will be hostile to society in other ways. Persecution may, however, make them so.

(c) Devlin would draw the boundaries of toleration somewhat differently from the Wolfenden Committee. Like them he attaches importance to individual freedom and privacy, but would not feel obliged to establish that a positively immoral practice did actual harm before supporting legislation against it—or, more exactly perhaps, his notion of the offence against society as a whole means that he has a much extended conception of what actual harm consists in. Devlin would think it proper to legislate against actions whose mere performance, even in private, is widely and deeply felt to be an offence. He would accordingly be readier to make concessions to popular feeling than Wolfenden, and, since popular feeling manifestly is not so, he would not attach the same importance to legislation being consistent. He will concede that some sorts of adultery are as harmful to the 'social fabric' as homosexuality, but 'the fact that adultery, fornication, and lesbianism are untouched by the criminal law does not prove that homosexuality ought not to be touched' (op. cit., pp. 22–3).

I have considered Devlin's views at some length, even though my personal sympathies are not with them, because, whatever the demerits of particular arguments used, they add up to an impressive expression of a possible attitude to law and morals. I prefer the different view of Mill and the Wolfenden Committee, and hope others will think likewise, but I do not think one can decisively *refute* Devlin. Here is a point at which one has to choose one's side. There are, moreover, some, to my mind not too serious, weak spots in the Mill-Wolfenden position. Its supporters seem sometimes to be a little doctrinaire in their conception of the purely private sphere of behaviour. I am doubtful whether the essential distinction here involved between the direct and indirect effects of an action on other, non-consenting, people will take the weight. I should, however, hope to be able to reach the same conclusion as the Wolfenden Committee on the particular matter of homosexuality from the principle

that the burden of proof falls on whoever wants to impose restrictions on people.

3 PRIVATE HOMOSEXUAL ACTS BETWEEN CONSENTING ADULTS In its report the Wolfenden Committee lists and tries to rebut various arguments in favour of retaining the prohibition on private homosexual acts between men, and then expresses its own 'decisive' counter-argument, namely:

. . . the importance which society and the law ought to give to individual freedom of choice and action in matters of private morality. Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business. To say this is not to condone or encourage private immorality [*Report*, p. 24].

This standpoint was discussed in the previous section. Here we shall look at particular arguments on the other side.

(a) *That homosexual practices are a menace to the health of society* Homosexual practice is held to be a symptom of social decadence, and a cause of social decay. The Wolfenden Committee comment, forbearing to observe that 'health' is used metaphorically and none too clearly when applied to society, that they have found no evidence to support this view, and go on to say that this argument is 'often no more than the expression of revulsion against what is regarded as unnatural, sinful or disgusting' (*Report*, p. 22). It is difficult not to agree with them.

(b) A second argument that is used is *that homosexual practice has damaging effects on family life*. Here the Wolfenden Committee accept the fact alleged, but deny that homosexual behaviour is more damaging in its effects than adultery, female homosexuality (lesbianism) and fornication, which are not illegal (*Report*, p. 22). The counter-argument is for consistency in the law, and perhaps too for

justice—the line of thought being that it is unfair that homosexuals should be punishable by law, when other offenders against the received sexual code are not, even though they may do just as much harm. We have already seen how one writer is unimpressed by demands for consistency in the law, and it will be well to remember (cf. Chapter 3, section 5) that arguments in justice and consistency can cut both ways. The argument yields the desired conclusions only if it is assumed that legislating against fornication, adultery and lesbianism is out of the question.

It seems hardly possible to deny that some instances of adultery and lesbianism may do more damage to family life than some cases of male homosexuality. It may, however, be held that what is more relevant to questions of legislation is the general tendency of such activities. The late Earl Winterton's pronouncement in the House of Lords Debate on 19 May 1954 may be disregarded as no more than an expression of personal distaste: 'Fornication and adultery are evils; but I completely contest the view that they are more evil and more harmful to the individual and the community than the filthy, disgusting, unnatural vice of homosexuality.' What some people do feel, with some show of reason, is that, however harmful in particular cases adultery and fornication may be, the practice of them does not inhibit from or disqualify people for marriage, since they are sexual activities of the same sort as those exercised in marriage. Whereas homosexual activity does. It is not clear, however, why this should be held to support the legal prohibition of male homosexual behaviour. Even if it is desirable (is it?) to have as many people married as possible there is not much reason to suppose that the legal prohibition will encourage homosexuals to marry, and none to suppose that good would come of it if they did. Inasmuch as homosexuals cannot make a success of marriage it might be thought better, in the interests of marriage and family life, to leave them free to engage in the sexual activity they prefer.

As for the rights and wrongs of legal discrimination between male and female homosexuality, we have already considered the arguments in consistency and justice. These apart, there might be a utilitarian ground for discrimination,

in that homosexuality is rarer in women than in men; is rarely exclusive; and, because of the more passive female role in heterosexual intercourse, is not so fatal an obstacle to marriage as male homosexuality (cf. West, *op. cit.*, pp. 36-7). There is, indeed, said to be a high incidence of lesbianism among female prostitutes (e.g. Chesser, *Live and Let Live*, p. 93). I do not myself think that we should discriminate between male and female homosexuality on this count, since there seems to me no utilitarian ground for legislating against even male homosexuality in itself.

(c) A third argument considered by the Wolfenden Committee was to the effect that *if homosexuals were permitted to consort with adults they might thereby be encouraged to turn to boys*, who, it is agreed on all hands, should be protected by the law from homosexual importuning and assault. Rees gives some weight to this argument (Rees and Usill, pp. 13-14). The Committee comment that, according to their reading of the evidence, there are two distinct types of male homosexual: a majority who are attracted to men, and a substantial minority who are attracted to boys—there being only a tiny minority (3 per cent) who are attracted to both (*Report*, pp. 22-3). This is an excellent example of how a moral issue can turn on a question of fact. If the facts here were different, if there were not two sorts of male homosexual, it would be harder to justify the legal discrimination between homosexual acts with fellow men, which the Wolfenden Committee wish to permit, and homosexual acts between men and boys, which they wish to prohibit.

The above were the main arguments discussed by the Wolfenden Committee. There are some other arguments, again mostly noted by the Committee, which, though subsidiary and not specific in their application to homosexuality, raise some points of general interest.

(d) *The 'opening the floodgates' argument* (*Report*, pp. 23-4), or 'the time is not ripe' argument. In its present application this is the argument that, even though there is no 'objective' necessity to legislate against homosexuality, to repeal the legislation at the present time could only be

interpreted by the public as an invitation to engage in deviant sexual activity, and would in fact lead to an increase in such activity. It is a type of argument popular with conservatives, but, like most such arguments, has nothing wrong with it in principle. What is wrong is to suppose it applies to every legal change. It may well be that it can be shown, in a particular case, that repealing a law, which is unnecessary or objectionable in itself, will have worse effects than leaving it on the statute book and even enforcing it. But this would have to be shown in detail for every particular case. The *presumption*, to anyone who cares for individual freedom and well-being, must always be for repeal of unnecessary laws which bear hardly on even a few individuals.

(e) *The historical argument or genetic fallacy* 'Gross indecency', i.e. homosexual activity between males falling short of anal intercourse, first became illegal in England in 1885. It has sometimes been alleged that the provision in question was enacted without adequate consideration by Parliament, or even that Parliament was misled—the intended implication being, of course, that these are good reasons for repealing the provision. The truth of these particular allegations is not important. More interesting is the question of their relevance, for allegations of this sort are frequently made, no doubt sometimes truly, in controversies on a great many topics. It is, I think, obvious, once the question is put, that the origins of a controversial provision in the law have no direct bearing on its present merits and demerits. Laws passed in absence of mind, laws with effects contrary to the intentions of the original legislators, may be good: laws with exactly the effects intended may be bad. When you can talk to the original legislator it may be worth while suggesting that what came about was different from what he intended, for you might get him to support repeal—but the argument from origins is understandably most popular when the origins have been largely obscured by the mists of time.

(f) *The unique opportunity for blackmail argument* It has sometimes been suggested that an important objection to the legislation which at present exists in England and other

common-law jurisdictions against male homosexual activity of a private, non-exploitative character is that it affords unique opportunities for blackmail. I do not know whether the opportunities really are unique, though they are doubtless considerable. The interesting point is that they derive as much from public attitudes as from the law. Any offence which attracts a severe penalty on conviction is potentially an occasion for blackmail. What marks out the homosexual offence as a special case is that the distaste, not to say neurotic hatred, which many people feel for homosexuality exceeds that felt for blackmail, with the result that homosexuals who are being blackmailed cannot seek help from the police for fear of prosecution. No doubt the police have a duty to prosecute when they have reason to believe an offence has been committed, but it appears that some police authorities are exceptionally zealous in searching out homosexual offences, and will prosecute even when the offence happened a long time ago. Again it appears probable that what makes homosexuals pay blackmailers is not merely their fear of prosecution and the penalties, rather variable and sometimes very severe, which conviction will involve, but also the public obloquy and social ostracism which will result if their sexual behaviour becomes generally known. It is by no means clear that the difficulties of homosexuals would be over if the existing legislation were repealed. This is not, of course, an argument against repeal.

(g) *Offences in disciplinary services and establishments* The Wolfenden Committee recognised (p. 53) that in certain services and establishments 'it may be necessary for the sake of good management and the preservation of discipline and for the protection of those of subordinate rank or position, to regard homosexual behaviour, even by consenting adults in private, as an offence'. One of the members of the Committee, in a dissenting opinion (p. 122 of the *Report*), observed that it was undesirable to impose upon servicemen restrictions from which civilians would be exempt, intending this as an objection to the Committee's main recommendations. But it would seem inevitable that restrictions will sometimes have to be placed on the sexual behaviour of members of organisations which are not imposed upon the

public at large. This applies to heterosexual as much as to homosexual behaviour. Doctors are supposed not to enter into sexual relationships with their patients, nor teachers with their pupils. Typically such prohibitions, which may, of course, be imposed by the regulations or customs of a profession rather than by the law, are thought of as barring 'illicit' sexual relationships, but it would be misleading to consider them in this connexion only. The general point is that sexual relationships, which may be perfectly acceptable in themselves, can be objectionable in special circumstances. This can apply even to marriages. It can be a source of reasonable concern to members of an organisation that, for instance, the head of it is married to his deputy, or his deputy's deputy, or to one of the typists. Clearly a good deal depends on the nature of the organisation in question. Sometimes sexual relationships between members threaten no more than minor awkwardness, other times they are potentially so disruptive that they have to be controlled by regulation.

In some cases in which there would be no objection to an overt sexual relationship—a marriage or an engagement—there might be worries about a covert one. It is an important ingredient in personal security to know in what relationships one's associates and colleagues stand to one another. Homosexual relationships, and to a lesser extent 'illicit' heterosexual ones, will normally have to be covert. Any specially disruptive effect that they have may derive primarily from the secrecy that is usually maintained about them. Here as elsewhere one must beware of confusing cause and effect, of misinterpreting as reasons for outlawing homosexual associations, either generally or in special circumstances, what are substantially consequences of such associations being already outside the law.

4 THE MORALITY OF HOMOSEXUAL BEHAVIOUR The Wolfenden Committee did not spend much time on the question of morality of homosexual behaviour. Possibly they felt that in any way to question its immorality would only arouse opposition to their recommendation concerning the attitude to be taken to it by the law. They are emphatic that,

in staking a claim for a sphere of private morality and immorality beyond the reach of the law, they do not wish to be understood as condoning private immorality. Moreover, in so far as the concern is with *positive* morality, the received code of behaviour such as it is, there is no doubt at all that homosexual activity is immoral. But can one avoid asking the question whether positive morality is right on this matter? Suppose, as the Wolfenden Committee thought, that there may be homosexual acts which do no harm to non-consenting non-adults, and which, being private, are no affront to public decency—on what grounds could they be held to be morally wrong?

Not on utilitarian grounds, obviously; nor, leaving out of account the present state of the law and public opinion, on prudential grounds either. People do not choose to become homosexuals, they rather find that they are: and even if they should then want to change the direction of their sexual inclinations, which they may not, there would at present seem to be no certainty that this can be successfully accomplished. To deny one's sexual nature all physical expression, still ignoring the consequences homosexuals may suffer from law and public opinion, goes beyond, if not contrary to, the demands of prudence.

It may be that, in fact, many homosexual relationships present morally objectionable features: they may involve seduction, and exploitation of the young. But the evidence noticed above suggests that most do not, and that the risk of a homosexual who practises with fellow adults turning to boys is comparatively small. It is, moreover, relevant to the assessment of the moral importance of such risk as there is to point out that the harm done by seduction, or even assault, to young boys can easily be exaggerated—as can the damage done by heterosexual interference with small girls. In both cases the extreme reactions of parents, understandable though they may be, tend to increase the harm. And the likelihood of a boy being turned into a homosexual by seduction would not seem to be very great, as home influences are more important than outside encounters in determining one's sexual orientation. Most men who engage in homosexual activity in special circumstances—school, prison, the army—appear to abandon it when heterosexual

opportunities become available. Some, much, even most homosexual activity may be morally exceptionable: so too is a good deal of heterosexual activity. In neither case is this necessarily so. Nor does it appear that homosexual relationships in themselves are necessarily more objectionable than heterosexual ones. I can see no good reason to doubt that it is possible for a homosexual to conduct his sexual life with prudence, beneficence, fairness and responsibility. If he does, there is no ground for moral complaint.

Another claim that is often made is that homosexual relationships are apt to be morally worthless or of little worth, to fall very far short of the ideal form of human relationship. (It is important to distinguish this complaint from the previous one. *That* was to the effect that they offended against, so to say, 'basic morality': *this* is to the effect that they are not ideal. See above, Chapter 2, section 9, for a discussion of the distinction between morality and personal preference.) Homosexual relations seem normally to be of brief duration, and homosexual promiscuity to be common. They seem, that is to say, to resemble those heterosexual relationships which are held to be least worth while. This sort of contention has great rhetorical force. It purports to make a lavish concession, to allow, as, of course, many people do not, that homosexual relationships are to be judged on the *same footing* as heterosexual ones, and yet still contrives to find them objectionable. How far must we go along with it?

Two comments are in place. The first, and less important one, is that the unworthwhile features manifested by some homosexual relationships may largely be the result of the public attitude to them. The result of, and hence not the justification for, that attitude. Stable relationships are hardly possible when all homosexual associations are condemned out of hand. The more important point is that, low though casual sexual encounters may be on the heterosexual's scale of preference, they may still be the best or only form of sexual association available to the homosexuals involved. The basic morality of avoiding harm and unfairness to others we may reasonably demand of everybody: our ideals in so far as they go beyond this are for the guidance of our own, not other people's, conduct. In general we do not blame

people, or hold them to be wicked or immoral, for not sharing our ideals; at worst we may hold them misguided or mistaken, or that they are 'missing something'. It is doubtful, in fact, whether even such mild criticisms or commiserations fit the case of the homosexual, who has not chosen his condition and probably cannot change it.

It may further be noted that from the point of view of the morality of personal relationships, which was considered in a different connexion above (Chapter 4, section 2), homosexual associations as such cannot be held to be immoral. The authors of the Quaker pamphlet recognise this with characteristic candour:

. . . we see no reason why the physical nature of a sexual act should be the criterion by which the question whether it is moral should be decided. An act which (for example) expresses true affection between two individuals and gives pleasure to them both, does not seem to us to be sinful by reason *alone* of the fact that it is homosexual. The same criteria seem to us to apply whether a relationship is heterosexual or homosexual [p. 36].

I expressed some doubt above about the responsibility of viewing heterosexual associations exclusively from the agent-centred ethic of personal relationships. This seemed to me to take insufficient account of the possibility of children being conceived. This consideration does not arise where homosexual associations are concerned.

It is true, of course, that many people find the thought of homosexual practice deeply disgusting. It is sometimes suggested that this is the result of over-compensation for their own latent homosexuality, but whatever the explanation of it, the fact remains. One cannot, however, allow any simple inference from the disgusting to the immoral. In fact, surely, in this case the movement of thought is the other way. Homosexual practices are felt to be peculiarly disgusting because they are held to be exceptionally sinful or immoral. They disgust because they are 'unnatural'.

No one who thinks like this will be induced to improve his view of homosexual activity by such claims as that made by Chesser (*Live and Let Live*, pp. 30-1) that the most

abominated homosexual act, anal intercourse, is probably commoner among married than homosexual couples. The act is felt to be abominable whenever and between whomsoever it occurs. What puts homosexuals utterly beyond the pale is that *all* their physical sexual activities are necessarily unnatural in some degree, even if not in the very highest.

It is, as already suggested (Chapter 3, section 6), a matter of great difficulty to grasp the rationale of this way of thinking, to make sense of the notions of *nature* and *the natural* involved. As a beginning one has to suppose that the purpose or function of sex is mainly procreation. It would seem to follow that heterosexual intercourse which is intended to be fertile is the ideally natural sexual act. This is not, however, exactly the conclusion usually desired, for such intercourse clearly could take place outside marriage or even a loving relationship. Consequently sex has to be allowed a second, non-procreative, 'relational' or companionate purpose, which may then be held to be achievable only within marriage. Provided not too much is made of the relational purpose, provided that it is kept firmly subordinate to the procreational one, homosexual activity is still bound to come out as unnatural—it cannot fulfil procreational purposes at all. But, as we shall see in connexion with contraception in the next chapter, there are snags in emphasising the importance of the procreational purpose. Suppose we want to allow deliberately infertile heterosexual intercourse within marriage. Even in this case it is still possible to pay some regard to the claims of procreation by insisting that couples should not refuse to have children altogether, even though they may use contraceptives for a large proportion of their married life. This is a typically Anglican attitude, expressed for instance by Dr. D. S. Bailey in his 'Homosexuality and Christian Morals' (in Rees & Usill). From this point of view homosexual activity can still consistently be held to be unnatural. I do not, however, see how it can be by anyone prepared to allow permanently childless marriages, or intentionally infertile heterosexual relationships outside marriage.

It is, in my opinion, *possible* consistently to hold homosexual activity to be unnatural. Much care and ingenuity

are, however, required, and I suspect that many people who do regard it as unnatural are, in fact, inconsistent at one point or another. Nor, rare though it is, is consistency enough. The *truth* of the premises concerning the purposes of sex, and the relative importance of the purposes assigned, is crucial too. And yet, as observed above, it is very difficult to see how it is to be ascertained. They are not empirical premises, of which the truth could be assessed by some sort of morally neutral scientific enquiry—biological, psychological, sociological, or whatever it might be. The relevant form of enquiry is, perhaps, theological—but whether there is a subject-matter for theology is itself a controversial question. There is no ground, even in principle, for expecting reasonable men to agree on matters of theology, as there is on matters of biology, psychology and sociology. The credentials of theology as a subject are in dispute. And the propositions of natural theology are just as uncertain as those of revealed.

Accordingly, to the unbeliever, arguing to moral conclusions from theologically based premises about the nature or purpose of sex seems to be little more than a matter of arbitrarily selecting those premises which yield the moral conclusions desired. If you want to condemn contraception and homosexuality you have to emphasise the procreational purpose. If you want to permit contraception you must give greater weight to non-procreational purposes. To the believer, on the other hand, it does not seem like this at all. He must believe that questions about the nature and purpose of sex relate to matters of (non-empirical) fact. He will not see himself as arbitrarily choosing answers that are in line with moral judgments he has reached on other grounds, but rather, when he differs from his predecessors in moral theology, as correcting their mistakes of emphasis. These mistakes he may see as the result of prejudices resulting from local and temporary features of his predecessors' situation. If they attributed undue importance to procreation this will be because they did not write from the vantage point of a potentially over-populated world. The truth will never change, but our view of it does, perhaps getting nearer to it all the time.

I have myself no enthusiasm at all for appraising human

conduct as natural or unnatural. I have, however, tried to draw attention to the *complexity* of the notion of the natural employed by moral theologians, mainly in order to show how different it is from that implicit in the popular condemnation of homosexual behaviour as unnatural. In the popular view the unnatural and the disgusting are closely connected, and judging something to be unnatural is felt to be the simple, direct, inevitable reaction of the 'healthy' mind to it. But there can be nothing simple in any notion of the natural which will admit of application over the whole range of sexual behaviour, which will serve as the key idea in a comprehensive sexual morality. Nor will there be any necessary connexion between the corresponding notion of the *unnatural* and the disgusting.

Contraception and Artificial Insemination

I CONTRACEPTION

(1) From my own, largely utilitarian, moral point of view there can be no objection to contraceptives as such. They may indeed be used in morally undesirable relationships, but in that case it is the relationship that is objectionable, not the use of contraceptives. Choosing a type of contraceptive will not, from this standpoint, normally involve the exercise of moral judgment. Safety (i.e. absence of side-effects), effectiveness in preventing conception, *mutual* acceptability, are the most obviously relevant considerations; cheapness and convenience in use are not to be despised. To insist on using a method disliked or thought unsafe by one's partner is morally exceptionable, but only because of the inconsiderateness or inequity involved. These characteristics are objectionable in themselves, not just because they are manifested in regard to contraception.

Clearly, there would from this same moral position be no ground for seeking by law to prevent the manufacture or sale of contraceptives. There might, however, be, and probably in fact is, a case for regulating their manufacture by legislation in the interests of securing safety and effectiveness. There could be room, too, for measures requiring contraceptives on sale to be honestly described, in the sort of way that the ingredients of patent medicines have to be stated on the package. Much of the advertising material that

comes through the letter box, though it may be presented as an objective account of 'the facts' and perhaps signed by 'a specialist', is patently designed to recommend the most profitable rather than, from the user's point of view, the best contraceptive. Again, it seems to me that a case might conceivably be made out for imposing restrictions on the places in which and the means by which contraceptives are sold. Objections have, for instance, been made to their being sold from slot machines. I do not myself object in principle to blocking some sales' outlets so long as others remain clear, though I am strongly inclined to think that the ready availability of contraceptives is at worst the lesser evil. Mounting illegitimacy and venereal-disease rates may be indices of increasing sexual promiscuity. They cannot, however, by themselves support the suggestion that easier access to contraceptives has been the main factor bringing it about. A moderate increase in extra-marital sexual activity, even of the more dubious sorts, would be a fair price to pay for increasing the proportion of people engaging in it taking contraceptive precautions.

As for population policies, aiming at more or fewer births according to circumstances, I think governments may reasonably have them. The dissemination of birth-control information and the provision of apparatus might be helpful in reducing population growth, though it is by no means certain that it would always be effective. Suppose the danger is under-population—would it, by the same argument, be acceptable to discourage or even outlaw birth control? Manifestly it is not very easy to express in general terms what the necessities of particular cases might require. But the withholding of contraceptive information and equipment is a very serious interference with individual liberty indeed, and I, at least, would always hope to arrest population decline by increasing the incentives for having children rather than by trying to force people into having them willy-nilly.

Personal reproductive decisions will be largely determined by the special circumstances of particular couples. It seems probable that decisions to have no children at all are often mistaken in the sense that they are subsequently regretted when it is too late. If, however, couples prefer a way of life

which excludes children, the presumption surely is that they are right not to have them. It would seem a very dubious exercise to try to persuade or entrap people into having children against their inclination, even though it may often be that unwanted children are welcomed and well treated on arrival. It is reasonable, other things being equal, that couples should take some account of public need in deciding how many children to have. It is, for instance, possible to work out how many children fertile couples should have in order to maintain the *average* family size at replacement level (see, for instance, the Report of the Royal Commission on Population, 1949). One would not, however, expect considerations of this sort to have more than a marginal influence on the behaviour of most couples.

Acceptance of birth control as morally permissible, at any rate within marriage, is now widespread. In the Western world the only serious opposition to it in principle comes from the Roman Catholic Church. Even that body permits some methods of birth regulation, and it would seem that some of its loyal members would like to see it accept others. There is some evidence that Roman Catholics in considerable numbers do use forbidden methods of birth control (e.g. in *Family Limitation*, 1949, p. 81; and in J. Rock's *The Time Has Come*, 1963, p. 41), and one comes across occasional testimony from Catholics who are using 'artificial' methods with the approval or acquiescence of their confessors (e.g. letter in *Spectator*, 27 September 1963, p. 383).

In what follows we shall be mainly concerned with assessing the Catholic arguments against birth control.

(2) At least four sorts of method of birth control need to be distinguished if one is to make sense of the controversies that go on. There are, *first*, mechanical and chemical methods—sheaths and caps and spermicidal creams, used separately or in combination. *Secondly*, there is 'the pill', a synthetic preparation of female hormone which inhibits ovulation and so makes conception impossible. *Thirdly*, the method of periodic abstinence (or continence), the safe-period or rhythm method, whereby couples avoid intercourse during the woman's fertile period, which occurs round about the time of ovulation. Tables are available for predicting, and

various devices for ascertaining, the time of ovulation, and thus calculating the safe period. *Fourthly*, there are some other methods, of which the main one is *coitus interruptus*, or, more popularly, 'being careful' or withdrawal, in which the penis is withdrawn from the vagina before ejaculation. It does not raise many points of interest, though it may be fairly commonly practised. Another method is *coitus reservatus*, a form of intercourse in which ejaculation is avoided altogether, although some sort of orgasm may be attained (different writers give rather different accounts of the practice)—it was employed in the Oneida Community of John Humphrey Noyes in late nineteenth-century America.

To my mind there is every justification for calling all these methods forms of birth control or contraception. This terminology is intended to be morally neutral, neither eulogistic nor dyslogistic (see above, Chapter 2, section 5). Some writers, however, find the terms offensive in certain applications. Father Lestapis, for example (*Family Planning and Modern Problems*, 1961, p. 136), though he accepts the safe-period method, nevertheless declares himself opposed to *contraceptive* methods of spacing or avoiding births. And in another place (p. 180) he contrasts *birth control* (i.e. use of appliances), which is all wrong, with *birth regulation* (the safe-period system), which is all right. This usage has also been employed in papal pronouncements on the topic (see Rock, p. 35). It is, I think, a mistake to attach too much importance to terminological niceties of this sort. Argument tends to degenerate into competitive persuasive definition. There can be no more futile way of discussing the acceptability of some novel method of preventing conception than to try to determine whether it amounts to control, or is regulation merely. It is of very little more use to enquire whether it is *natural* or *artificial*, for the correct usage of these terms is by no means fixed. So far as ordinary speech goes, the first two methods of preventing conception could well be called artificial, and the two remaining ones natural. The basis for this usage being that man-made equipment or preparations are required in the former cases, but not in the latter. In the usage favoured by writers in the natural-law

tradition, however, only the safe period, or even total abstinence from intercourse, is natural, though there is one Catholic writer, Dr. John Rock, who has, as we shall see, argued that the use of the pill is natural. It is, to my mind, difficult to see how one can consistently accept the pill whilst rejecting appliance methods: but this is not to say that Rock is misusing the term 'natural'. Usage is so fluid that it is not easy to see what could be an incorrect use. Fighting about the naturalness or otherwise of a practice is accordingly but shadow-boxing.

(3) The major argument about birth control takes place between Catholics and others, and to a lesser extent among Catholics themselves, about the permissibility of the first two methods distinguished above, namely appliances and the pill. It is important for non-Catholics, and indeed unbelievers, to pay attention to the Catholic argument, even though it starts from premises they utterly reject. One does not have to accept the premises in order to enquire whether an argument is consistent with itself. Catholic apologists characteristically intend their arguments to conform to the ordinary canons of logic, and in this regard fruitful dialogue is possible between Catholics and non-Catholics—the more so in so far as there is disagreement among Catholics themselves. The influence of the Catholic Church is considerable, and extends to the population policies even of governments of predominantly non-Catholic countries. A relaxing of Catholic opposition to what have hitherto been the most effective and generally most acceptable methods of birth control, or the development of a new method which that Church would accept, would be an event of world-wide importance.

The main question about the consistency of the Catholic position is whether the acceptance of the safe period is compatible with the rejection of appliance methods and the pill.

There is not much strenuous opposition to the safe-period method in itself. Considerable doubts have been expressed about its effectiveness, which seems to vary from couple to couple, and about its attractiveness in view of the long periods of abstinence involved each month, in some cases at times when the woman will most want intercourse, though again women appear to differ in this respect. One might, on

such grounds, advise couples against using the safe period if other methods were open to them; but they would not seem to be grounds for denouncing the method, or for discouraging couples from using it if they liked it.

There is, however, at least one writer who objects to the safe-period method as such, namely Joseph Fletcher in his *Morals and Medicine* (1955). As a rule he welcomes medical and technical innovations when they increase the scope for exercising responsible human choice. Contraceptive methods 1 and 2—appliances and the pill—he accordingly approves of, as enlarging human freedom with regard to intercourse and conception. They enable people to have the one without the other if they wish. But the safe period, the freedom to choose between either fertile intercourse or total or periodic continence, is 'not true freedom at all; it is only an *alternation of necessities*, not a matter of human control . . . biology lays down the conditions, man does not' (page 13).

It is interesting to notice that Fletcher dislikes a feature of the safe-period method that several Roman Catholic writers positively approve of. They welcome the 'discipline' of the calendar. See, for instance, Riquet's preface to the book by Lestapis already referred to, and Lestapis himself on p. 85 and again on p. 213: 'Birth regulation', he there writes, 'makes men and women adults. Contraception keeps them adolescent. Regulation involves human effort. Contraception declares it redundant and eventually deprives it of all value.' Fletcher would presumably reply that *self-discipline* alone has moral value, and that self-discipline is possible only where there is freedom. Lestapis, indeed, appears to think he can have it both ways. He sees the safe-period method not only as requiring discipline but also, in comparison with birth *control*, as offering freedom: "'When one uses contraceptives," a husband once admitted, "one has the impression of being controlled by, rather than of being in control of, a technique"' (p. 194).

I find this argument about freedom, on *both sides*, utterly unhelpful. *Everybody* likes to have the approbatory term 'freedom' on his side! The views attributed to 'a husband', moreover, well illustrate the inadequacies of anecdotal 'evidence'. It is hardly credible that 'a husband's' reactions

are common, certain that they are not universal. Such reactions are not reasons for disapproving of birth control, for only people who already disapprove of it have them. The arguments from 'female delicacy' and even 'working-class propriety', which I have occasionally seen, are in no better case. We respect such scruples only when they deter people from what we have independently decided to be wrong.

As for the remaining two methods, *coitus interruptus* and *coitus reservatus*, the former is generally thought to be unsatisfactory. It is not specially effective, and is apt to conclude the proceedings before the woman has achieved orgasm. It would appear that only a rather insensitive and inconsiderate man would find it acceptable. It is condemned, by Roman Catholic writers among others, as frustrating the relational or unitive end of marriage, as well as the procreational one. From my point of view use of the method is almost inevitably misguided, but need not be morally exceptionable. If, *per impossible*, a couple, *both* of them, of course, are happy with it, I see no objection to their employing it.

Coitus reservatus also is condemned by Catholic writers. Again, from a utilitarian point of view there would seem to be no necessary harm in it. It is not so neglectful of the woman's needs as *coitus interruptus*. On the other hand, there hardly seems to be much point in developing the required expertise when contraceptives are available. I do not find it very easy to see how Lestapis squares his entirely orthodox repudiation of *coitus reservatus* with his acceptance of what he calls *copula reservata* (pp. 169-70). The latter appears to differ from the former in that it does not involve anything approaching an orgasm. I suppose the idea is that in the one case the natural completion of an act of intercourse is avoided by a technique, whilst *copula reservata* does not really count as intercourse at all.

(4) *The Roman Catholic rejection of contraception* This I shall consider first in general terms and in relation to appliance methods, and then in its relation to the pill.

The position is clearly stated by Riquet: 'In regard to the means of spacing or limiting births, the express teaching of Pius XI and Pius XII and indeed of the whole Catholic tradi-

tion, admits only one: chastity either complete or merely limited to the woman's fertile periods' (in Lestapis, pp. xi-xii). It is not demanded that couples have as many children as possible, though it is to be feared that the prohibition on birth control has been interpreted by some of the less sophisticated among the faithful, both clergy and laity, as an injunction to unlimited reproduction. Lestapis, however, is very firm in his repudiation of this interpretation: 'The Catholic Church, faced with the possibility of birth limitation, teaches that there is, in principle, a right, or better, a duty, to practise a form of birth regulation based on careful thought, provided that this regulation is inspired solely by motives of genuine charity, and that it respects the natural order of values inherent in the sexual function and also the pattern of its structural factors' (p. 179). We shall see that there have been papal pronouncements to the same effect. It is, perhaps, legitimate to record that Lestapis, together no doubt with many of his co-religionists, nevertheless thinks the five- or six-child family ideal!

The following passages are quoted from the Papal Encyclical 'On Christian Marriage' (*Casti Connubii*, 1930, page references to Mentor, P. B., 1956):

No reason, however grave, may be put forward by which anything intrinsically against nature may become conformable to nature and morally good. Since, therefore, the conjugal act is destined primarily by nature for the begetting of children, those who in exercising it deliberately frustrate its natural power and purpose sin against nature and commit a deed which is shameful and intrinsically vicious . . . any use whatsoever of matrimony exercised in such a way that the act is deliberately frustrated in its natural power to generate life is an offence against the law of God and of nature, and those who indulge in such are branded with the guilt of a grave sin [p. 239].

The concession with regard to the use of the safe-period method comes in the passage following:

Nor are those considered as acting against nature who in the married state use their right [= have intercourse]

in the proper manner although on account of natural reasons either of time or of certain defects new life cannot be brought forth. For in matrimony as well as in the use of the matrimonial rights there are also secondary ends, such as mutual aid, the cultivating of mutual love, and the quieting of concupiscence which husband and wife are not forbidden to consider so long as they are subordinated to the primary end and so long as the intrinsic nature of the act is preserved [p. 240].

The main objections to the use of appliance methods of contraception seem to be two: (a) that it is contrary to the doctrine of the ends or purposes of marriage, and (b) that it involves interrupting a natural process by artificial means. Many Catholic writers also employ arguments attributing dire psychological or social results to the use of contraceptives. But, as Stevas points out (p. 89), their impact is seriously reduced once the safe period is accepted, and in any event the two arguments noted are the most important.

(a) *The doctrine of the ends of marriage* (see, for instance, Mercier, 1950, Vol. II, Part II, Chapter II, for an extended account of it). The line of argument is, as we have already noted, that, so long as the procreative end is held to be primary, it is illegitimate to frustrate it with *artificial* contraceptive devices. The safe period is *natural*, and it is therefore legitimate to take advantage of it. Those Anglicans who accept the same general approach to the question of contraception, but who think it legitimate, accordingly deny the primacy of the procreative purpose of marriage. The Lambeth Conference of 1958, for instance, explicitly held that the two ends, the procreational and the companionate, were of equal importance.

The Roman Catholic position appears to be that it is legitimate to seek a secondary end by itself (in intention) only when the primary end is unattainable either from natural causes (e.g. in the safe period or after the menopause) or as a result of treatment that was justifiable on its own account (e.g. if a treatment for painful periods has rendered a woman temporarily sterile). Anglicans who accept appliance methods of contraception normally insist that they

should not be used to avoid children altogether, and Roman Catholics similarly hold that the safe-period method should not be used for the whole duration of a marriage except for grave reason. Lestapis, for instance, maintains that for a couple to have frequent intercourse with the set and systematically carried-out purpose of never having children is a sin against married life unless their attitude is determined by a serious motive (p. 133). He further thinks that people have no right to marry on the express condition that they will not have children (p. 161). Some remarks of Pius XII, however, suggest that the permissible grounds for not having children are pretty wide: Couples who sleep together, he holds, should normally have children, but 'from the obligation of making this positive contribution it is possible to be exempt for a long time and even for the whole duration of married life, if there are serious reasons, such as those often provided in the so-called "indications" of the medical, eugenical, economic and social order' (Address to the Italian Catholic Union of Midwives, 1951. Quoted in Rock, p. 37).

So far the Roman Catholic attitude to appliance methods of birth control is self-consistent. It follows from the view taken of the relative importance of the ends of marriage. The objections I have from time to time put to natural-law moralising apply to *all* such views, they are not specific to the particular one under consideration. It is not, of course, necessary to find specific objections. If a view is wrong in general it cannot be right in a particular case. All the same, it may still be interesting to see whether a particular argument is a good or a bad example of its (perhaps fundamentally mistaken) kind. Is it then possible to think of arguments in other fields which resemble the argument against contraception drawn from the doctrine of the ends of marriage?

Lestapis suggests one such. He regards the employment of contraceptives as analogous to replacing one's natural eyes by glass ones in a more fashionable colour (p. 186). There is here a subordination of a primary end (vision) to a secondary one. We should all agree in deploring such conduct, but is the case very like that of contraception? It is hard to imagine anyone wanting to lose his eyes for such a purpose, whilst people frequently want to use contraceptives. And is

not the objection to sacrificing one's eyes to fashion simply that it would be a fantastic folly? It involves abandoning the possibility of achieving a great many purposes for the sake of satisfying a single one that would, we think, be rather low on a wise man's scale of preference. The use of contraceptives is not, however, foolish in any comparable sense. I have tried hard to think of other cases in which one could imagine its being held that a primary end was being subordinated to a secondary one. Would attaching more importance to taste than to nourishment in food be an example? It would appear to be entirely harmless on particular occasions, though manifestly foolish and imprudent if carried on systematically. It is true, obviously, that if everybody used (efficient) contraceptives all the time the human race would die out—a result most of us do not want. But this is no argument against the *occasional* employment of contraceptives, any more than one's unwillingness to die of starvation is a reason for never having a tasty but nutritionally inadequate meal.

I simply cannot think of any reasonably plausible argument which resembles the anti-birth-control argument under consideration.

(b) *Artificial interruptions of natural processes* A further quotation from *Casti Connubii* is relevant here:

. . . Christian doctrine establishes, and the light of human reason makes it most clear, that private individuals have no other power over the members of their bodies than that which pertains to their natural ends; and they are not free to destroy or mutilate their members, or in any other way render themselves unfit for their natural functions, except when no other provision can be made for the good of the whole body . . . [Mentor, P. B., p. 242].

This excludes not only contraception but also *direct* sterilisation, i.e. sterilisation which is not the unsought result of some medical or surgical procedure required for the good of the whole body.

Against that it is sometimes objected that parallel arguments would show surgery, anaesthetics, false teeth, wigs,

etc., to be illegitimate, for all these can be regarded as interfering with natural processes. This, however, is mistaken. 'Natural process' does not in this connexion mean simply 'process in nature'. If it did, the processes of disease would indeed be natural and it would be wrong to try to arrest them. Processes which are natural in the required sense are, roughly, those which tend to a result beneficial, or at any rate not manifestly or generally detrimental, to the organism. Such processes must not be prevented from attaining their natural ends, though it is not in general forbidden to assist them to do so.

It is, of course, very doubtful whether natural-law moralists and utilitarians could reach agreement over much of the range concerning which processes were natural in the required sense, and which not. Nevertheless, one can see that there is a difference between the process of, say, appendicitis—inflammation, perforation and death—and the process of insemination and conception. It is not, therefore, *merely* arbitrary to hold it legitimate to intervene in the one and not the other. Though to say this is not to say much in favour of the argument.

Once again it will be of interest to look for similar arguments in other subject-matters. I suppose the decadent, ancient Roman practice of taking emetics in order to make it possible to continue at the banquet might be regarded as interrupting the natural processes of digestion by artificial means. The practice would, moreover, seem to be objectionable. But for what reason? It strikes one as disgusting, and as conspicuous over-eating in a hungry world might be condemned as evincing a callous indifference to the needs of others. It might, moreover, be considered foolish, as impairing health. But what else could be wrong with it? Here, and in general, it appears to me that although there may be practices which are *both* unnatural in the sense in which contraception is held to be unnatural *and* generally held to be objectionable, it is by no means clear that they are generally objected to *because* they are unnatural.

(5) *The pill* For our present purpose the main interest of the contraceptive pill derives from the possibility that it would constitute an effective, foolproof contraceptive which

is acceptable to the Roman Church. I cannot myself see quite how it can consistently be accepted if other appliance methods continue to be forbidden, though I hope that it will be. Acceptance of it would remove a serious obstacle to effective population policies—birth control is not, as is too often glibly assumed, the complete answer to the population crisis, but it is a necessary part of any answer (cf. Rock, pp. 20-1)—and it would tend to facilitate co-operation between Catholics and non-Catholics in Western countries. One should not be too optimistic in the latter regard, non-Catholics are likely to want to go on using, and receiving advice about, methods which will remain forbidden even if the pill is allowed.

At present there seems to be no Catholic objection to the progesterone pill being used for therapeutic purposes, or to intercourse taking place during the infertile periods resulting from such use. It seems also that the pill may be used for a limited time in order to regularise a woman's periods, so that the safe-period method is made really safe. Lestapis, for instance, supports this use of the pill for the few months after a confinement (p. 211), whilst Rock quotes opinions to the effect that such use is generally permissible (p. 170).

Rock further argues that the pill should be accepted as being on the same footing as the safe-period method of birth regulation. If the one is acceptable so is the other, he holds (p. 172)—a slightly imprudent line to take, as it might lead someone who disliked the conclusion to reject the premise, though I suppose there could be no going back on the safe-period method now. Rock sees the safe period as at present less reliable than the best mechanical methods (pp. 143-4). It is satisfactory for some women, but not for others—a judgment which is borne out by a correspondence on the subject in the *Spectator* between 6 and 27 September 1963: some writers give very favourable testimony, others the reverse. Rock doubts whether the method is reliable enough for cases in which there are strong medical reasons for avoiding conception (p. 186), and adds that 'in its present form, it requires learning, determination, and sexual restraint to a degree that limits its usefulness' (p. 187).

Rock's argument for the acceptability of the pill is

essentially that it is a *natural* or *physiologic* system of fertility control. He writes :

[the pills] provide a natural means of fertility control such as nature uses after ovulation and during pregnancy. . . .

The steroid compounds are the first *physiologic* means of contraception; that is, they prevent reproduction by modifying the time sequences in the body's own functions, rather than by use of an extraneous device or by a wholly artificial chemical action . . . it has been my consistent feeling that, when properly used for conception control, they merely serve as adjuncts to nature, but the Catholic moralists who have thus far expressed themselves on the subject certainly do not share my belief [p. 167].

I can only comment that I cannot see this. True the word 'natural' has many uses (more than enough to impair its utility in moral discussion!), and no doubt one is such as to enable us to call the pill a natural method of contraception. But the relevant sense of 'natural' is that in which appliance methods of birth control are held to be unnatural, as preventing natural processes attaining their appointed ends, and in *this* sense the pill surely is unnatural. I am the sorrier to reach this conclusion in that there is so much in Rock's attitude and approach that I can only applaud. Lestapis, on the other hand, is a whole thought world away.

The view of the Anglican, Canon Warner, affords an interesting comment on Rock's feeling that the pill merely modifies rather than obstructs natural processes. Warner has considerable doubts about oral contraceptives *just because*, as he sees it, they involve a radical interference with the function of an organ. For him the 'extraneous' character of the cap, sheath or chemical is a point in its favour. He thinks accordingly that the pill should not be used if there are less drastic contraceptive means available (*Theology*, 57:8, January 1954). A somewhat similarly based protest by Wayland Young against the thesis that the pill is natural was published in the *Guardian* of 27 May 1964.

Rock has various subsidiary arguments, for instance that

the administration of the pill cannot reasonably be described as sterilisation and so does not fall under the ban on sterilisation (p. 171), and he claims that using the pill is no more a direct interference in the reproductive process than is the safe-period method, and perhaps less so in that by it the unfertilised ova are actually conserved (p. 172). In several places, e.g. on p. 174, he even argues that, just as the body *naturally* protects the fertilised ovum by inhibiting further ovulation, so is it natural to use one's brains to devise procedures which will protect oneself and one's offspring. This last use of 'natural', fair enough in itself, takes one right outside the natural-law frame of thought. In *this* sense of 'natural' it is wholly natural to use appliance methods of contraception if they are available.

Rock is in much the same position as a well-intentioned judge who tries to mitigate the harshness of perverse and obsolete laws by forcing an implausible but more humane interpretation on them. It is a pity that rational men should have to engage in such manoeuvres, which may achieve particular advances, but inevitably muddy still further the stream of moral thought. It would, from all points of view, be much better if the Roman Church could bring itself to revise its attitude to birth control generally, to re-think the theology of marriage at least to the extent of upgrading its non-procreative purposes. All the same, if, as seems all too likely, this is out of the question, acceptance of the pill would still be well worth having.

(6) *Other oral contraceptives* So far discussion has centred on the ethics of the progesterone (female hormone) pill, since this has been furthest developed as a contraceptive, and is already widely used. There are, however, some other possibilities. One might be a pill that produced a very early abortion, so early that it would be from the user's point of view indistinguishable from a normal period. ('Intra-uterine Contraceptive Devices', i.e. coils of wire or plastic inserted in the neck of the uterus, appear to work in this way and might therefore raise the same problems as an abortifacient pill.) What should we think of this? Obviously it would be wholly unacceptable to Roman Catholics, and probably to many other groups too. It would accordingly be inexpedient to pro-

mote the abortifacient pill and so stir up controversy at a time when it seems not wholly impossible that the Roman Church might be coming round to accepting a generally satisfactory contraceptive. But suppose it turned out that the progesterone pill had disastrous effects in the long term on the taker (there seems *in fact* no reason to believe that it will), whilst the abortifacient pill was perfectly safe. What then? There is no pressing practical need to answer this hypothetical question. I do wonder, none the less, whether, theological considerations apart, there is any conclusive reason for regarding the moment of fertilisation as an absolute limit after which no attempt should be made to interrupt the procreative process in the interests of fertility control. One can, of course, accept abortion in the sorts of cases for which it is usually defended, and still be reluctant to tolerate the *regular* procurement of even very early abortions as a means of, or substitute for, contraception.

Another possible form of oral contraceptive would be one which rendered the male temporarily sterile. Presumably, though it would no doubt depend on the particular physiological agents involved, this would be regarded even by Catholics like Rock as an unnatural interruption of the reproductive process. This further illustrates, as it seems to me, the essential arbitrariness of the notions of 'nature' and 'the natural' involved in the Catholic position. From no other point of view would there be reason for differentiating *in principle* between the legitimacy of male and female oral contraceptives. There might be some disadvantages to the masculine pill *in fact*, in that it could, as sterilisation is said sometimes to do (cf. Williams, pp. 96-9), produce functional impotence.

2 THE PRINCIPLE OF DOUBLE EFFECT This principle, also known as the principle of the indirect effect, is of some importance, in so far as it is extensively invoked by Catholic writers discussing topics in sexual morality. The principle is sometimes regarded as an invitation to the worst sort of casuistry, though to my mind it is a necessary adjunct to natural-law morality. Its effect is usually to allow exceptions to general prohibitions in particular cases in which a

result, which it would not be permissible to aim at directly, is the foreseen but unintended consequence of an independently permissible act. Stevas states the principle thus: 'An action, not in itself intrinsically evil, followed by both a good and a bad result, may be performed, provided that the good and not the evil effect is directly intended, and that the good effect is not produced by means of the evil effect, and a grave reason exists for permitting the evil to occur' (p. 190).

Sterilisation and abortion, which are generally forbidden, are thus sometimes acceptable as indirect effects. An hysterectomy (removal of the womb) performed for the usual medical reasons is acceptable, even though it renders the patient sterile, as is the termination of an ectopic (misplaced) pregnancy, or, indeed, an hysterectomy when there is a fertilised ovum in the womb. In the two latter cases the direct killing of the foetus would be impermissible, because the good result in the shape of the patient's survival or return to health would then be the result of an action which is held to be intrinsically evil. Consequently the *time-order* of events is held to be of moral significance. In an hysterectomy the foetus must die as a result of the removal of the womb, it will not do *first* to kill the foetus and *then* to remove the womb.

Though generally not unsympathetic to the principle of double effect, I have to confess to finding such minuteness distasteful.

The importance of the principle in regard to contraception is that it is invoked to permit treatments involving temporary sterility, and to permit the administration of drugs designed to regularise ovulation and so much improve the reliability of the safe period. Stevas (p. 105) reports some Catholic opinions to the effect that the issuing of condoms to troops is permissible, in so far as the intention is to reduce the risk of their contracting venereal disease. Presumably it is only the *issuing* of them that is legitimate. The use of them by the troops in the performance of what would be held to be an intrinsically wrongful act can hardly be legitimate.

On the whole, I regard the principle of double effect as a welcome mitigation of the rigour of a code of ecclesiastical moral legislation. From a utilitarian view the principle does

not always enable one to go far enough, for instance in regard to sterilisation and abortion, and in some cases where it permits what is desirable on utilitarian grounds it does so subject to, from that point of view, irrelevant conditions. It would seem in fact to be an unduly restrictive recognition of the general point that, if our aim is to achieve the best possible result in every case, it will sometimes be necessary in a particular case to do or allow something that would usually be objectionable in order that good may come. This is not to sanction the doing of evil for the sake of good (though this is no worse than a faintly paradoxical way of making a sound point), to do what would *usually* or *otherwise* be evil or bad for the sake of good is not to do evil at all. Acts are not evil, or good, in themselves, out of all relation to the circumstances in which they are performed and the people they affect. Circumstances and relations change. To make a long list of intrinsically wrongful acts, and to commit the prestige of a great, institutional Church to maintaining the list intact, is to import a crippling rigidity into moral thinking.

3 ARTIFICIAL INSEMINATION BY THE HUSBAND Artificial insemination by the husband and artificial insemination by a donor (A.I.H. and A.I.D.) do not raise exactly the same problems. Most of the objections in principle to A.I.H. do, however, apply to A.I.D. too, although there are some objections to A.I.D. which A.I.H. escapes. Accordingly I will consider A.I.H. first, and then have a look at A.I.D.

Artificial insemination is, as its name implies, the procedure of introducing seminal fluid into the female genital tract artificially. In the case of A.I.H. the seminal fluid is obtained from the husband. The indications for A.I.H. may be *either* (a) impotence in the husband, or other obstacles to the couple having intercourse in the ordinary way, or (b) malformations in the woman which prevent or render unlikely conception after normal intercourse, but which do not exclude such intercourse itself. The difference between the two sorts of indication is of some importance, in that a couple's having difficulty in so important a matter as sexual intercourse might well be thought to raise a doubt

about the stability of their marriage, and hence about the moral admissibility of introducing a child into it. This ground for caution is not present when the indications are of the latter sort. But even in the former sort of case particular marriages may in fact be stable and suitable environments for bringing up children despite the presumption to the contrary.

Another reason for distinguishing the two sorts of indication for A.I.H. is that there appears to be no important group which objects in principle so long as the seminal fluid is obtained from the vagina after normal intercourse. (When the couple cannot have intercourse this is obviously out of the question.) Some Roman Catholic writers feel unease lest the 'structure' of the act of intercourse is distorted by medical intervention, but even they do not seem to object to A.I.H. outright (see Stevas, Chapter 5).

The usual method of obtaining semen for A.I.H. is, of course by masturbation on the part of the husband. This act is held to be intrinsically wrongful by Catholic moralists, and consequently not to be admissible under the principle of double effect, despite the acceptability of the intended purpose of procreating a child. This virtually rules out A.I.H. in cases where normal intercourse is impossible. There are other ways of obtaining semen, for example by testicular puncture or prostate massage, but they are all of dubious legitimacy for Catholics and rather doubtfully justifiable from the medical point of view as that is ordinarily conceived. The official Anglican position is that, although masturbation is generally wrong, it may be justifiable in the special circumstances of A.I.H. This difference between the Roman and Anglican positions well illustrates how restrictive resolute adherence to the principle of double effect can be.

Both Churches seem to me to make very heavy weather over masturbation. It is difficult to think of any serious prudential or utilitarian objections to it, and, even if it were objectionable in general, that is no reason why it should not be allowable in a special case. To the extent that this is recognised the Anglican position is superior to the Roman one, but even the Anglicans expend too much agony on the matter. One wonders how it is supposed the semen studied in laboratories is normally obtained. To rest the main weight

of one's case against A.I.H., or A.I.D. for that matter, on the wrongfulness of masturbation seems to me to betray a fantastic lack of moral proportion.

The main objection levelled against masturbation is that it is unnatural, a perversion. We have already discussed this type of view above. Otherwise the activity is held to be disgusting, or degrading as contrary to some ideal of manliness. Here possibly are grounds for not engaging in the practice oneself, or avoiding the overpersuasion of a reluctant partner. But they are hardly objections to A.I.H. if both parties want it and accept the necessity of the means involved.

There would seem to be no strong reason for the law to pay special attention to A.I.H. Some couples who are wholly unsuited to parenthood may succeed in having children by this means, but there is no reason to suppose that they would ever become more than a tiny proportion of the unsuitable parents that there are. A.I.H. is less productive of possible legal embarrassments than A.I.D. There would, however, seem to be sense in the recommendation of the Royal Commission on Marriage and Divorce (*Report*, p. 84) that consent to either A.I.H. or A.I.D. should bar proceedings by either spouse for nullity on the ground of impotence.

4 ARTIFICIAL INSEMINATION BY A DONOR The main indications for A.I.D. are sterility or sub-fertility on the part of the husband, hereditary complaints on the husband's side, rhesus incompatibility. Impotence need not be involved, and there is no reason to suppose that marriages which are barren for the sorts of reason mentioned are liable to be unstable. The A.I.D. child would have as good a chance of entering a satisfactory home as one conceived by the normal procedure. There is, however, a different sort of risk that does not arise in the case of A.I.H., namely that the husband will repudiate the child, or see him or her as a living reminder of his incapacity. It is not clear how serious this risk is. There appear to have been many cases of A.I.D. which have given satisfaction all round. On the other hand Stevas reports Chesser as giving up the administration of A.I.D. because of the psychological risks involved (pp. 153-4). On the face of it the risks might constitute grounds for exercising

care in selecting couples for A.I.D., but not for outlawing the practice altogether.

It is, moreover, possible, when the husband is merely sub-fertile, to blur the paternity issue by employing a mixture of semen from both husband and a donor. The donor's blood group and physical characteristics can be matched with those of the husband. It can be made impossible to show that the husband is not the father of any child that may be conceived. I have read some very extreme reactions to such A.I.D. and H., though, if A.I.D. and A.I.H. are held to be acceptable separately, I cannot see any reason why they should be condemned in combination. Some people clearly find the semen-mixing procedure utterly repulsive, but nobody has to be associated with it who does not want to. I am myself more impressed by the thought that a husband whose self-esteem needs to be bolstered by such subterfuges is perhaps not the most promising subject for A.I.D. The interests of any children who may be born are the paramount consideration from the moral point of view. The issue is in the end an empirical one. My hesitations are not based on any personal experience of A.I.D. and H. cases, and it may well be the fact that many have been wholly successful.

The argument against A.I.H. from its (usually) involving masturbation applies to A.I.D., with the additional twist that questions can be asked about the reputability of the donor's motives. These questions are, however, to my mind, very easily answered. There is no difficulty at all in entertaining the possibility that a donor, who will of course himself approve of A.I.D., might contribute the necessary semen in a spirit of disinterested beneficence. The act is trivial in itself, and there is no irresponsibility involved when A.I.D. is administered by a conscientious practitioner. I find wholly ludicrous the idea that participation in A.I.D. might be seized upon as an opportunity for licensed masturbation. There is, however, the further complication of the attitude of the donor's wife, if he has one. The Feversham Committee (1960) considered the suggestion that contributing semen without one's wife's consent should be a ground for divorce, but decided not on the ground that the offence was not sufficiently serious. It is, however, probable that some wives would regard it as a grave breach of trust.

Perhaps the commonest argument against A.I.D. is that it amounts to adultery. One can see why this might be thought. Before artificial insemination became possible, to conceive a child by a man other than one's husband was proof positive of adultery. Artificial insemination, however, changes the situation. Impregnation is now separable from sexual contact between two people. Since A.I.D. is a new thing, and the concept of adultery an old one necessarily formed without regard to it, the Royal Commission on Marriage and Divorce were wise to decide that A.I.D. did not amount to adultery, and to recommend that it should not be deemed to be adultery by the law of divorce (*Report*, pp. 31-2). They did, however, recommend that A.I.D. without the husband's consent should be a new and distinct ground for divorce.

In opposing the view that A.I.D. amounts to adultery I am not *directly* opposing the conclusion that view is invoked to support, namely that A.I.D. is wrong. The really important consideration is that, right or wrong, A.I.D. is distinguishable from adultery, and should therefore be considered on its individual merits and demerits.

It has further been suggested by Anglican spokesmen (the Archbishop's Commission on Artificial Human Insemination, 1948) that A.I.D. should be made illegal. Against this the obvious argument is that it is not, to the general consent, illegal to conceive a child with, or even without, one's husband's approval, by straightforward adulterous intercourse. This is not, however, conclusive. Considered as a remedy for barren marriage A.I.D. is more attractive than adultery. Since no *personal* association with a third party is involved it is much less likely to disrupt a marriage. It might, therefore, if easily available, be expected to be resorted to more frequently than would adultery. Consequently, anyone who thinks A.I.D. a serious wrong can consistently hold that it should be made illegal even though adultery is not. He will see adultery as an overt threat to his ideal of marriage and parenthood, whereas A.I.D. will present itself to him as a more insidious and therefore more dangerous one.

I do not myself think that A.I.D. should be made illegal, only that *if* it is held to be a grave wrong *then* its outlawing may reasonably be advocated.

The position seems to me to be much the same with regard to another argument used against A.I.D.—the argument, namely, that it increases the risks of incest occurring by multiplying the numbers of unknown blood relations. The possibility of incestuous relationships occurring is, of course, always present when there are children of unknown parentage, whether they are conceived by A.I.D. or in the ordinary way. Still, *if* incest is considered to be a fearful evil *then* it is reasonable enough to advocate the banning of A.I.D. as a means of keeping its incidence at a minimum. But, on the other side, it is not clear that the sort of incest A.I.D. would increase is in any way objectionable. It could hardly constitute a threat to family stability since no one would know it was occurring, and the number of cases likely to occur would not be so great as to present genetic hazards. I have, of course, been assuming that the rejection of incest presupposed in the argument under discussion is absolute and uninfluenceable by considerations of more or less. If, however, the desideratum were merely to keep the number of cases of unintentional incest low, it would not be too difficult to regulate A.I.D. in such a way as to achieve this. One would avoid using one donor for many inseminations, and see that the resulting half-siblings were widely distributed geographically. One could indeed eliminate the unintentional incest risk entirely by indicating biological parentage on the birth certificates of A.I.D. children—a code could be used to preserve the donor's anonymity. This would, of course, involve letting the children know how their conception had been arranged, and also the legal recognition of A.I.D. For those who use the incest argument, and yet object to the legal recognition and regulation of A.I.D., it is clear that the incest argument is not the sole, nor a self-sufficient, argument against A.I.D.

Other arguments against A.I.D. fasten on problems concerning the legitimacy of A.I.D. children and whether they are to be told the truth about their origin. As to legitimacy, it is difficult to see any reason why A.I.D. children should not be regarded as fully legitimate children of a marriage, so long as both partners had consented to the procedure. I think that some opponents of A.I.D. would none the less feel that this could only be an objectionable legal fiction.

Whatever the position in law, A.I.D. children would remain illegitimate *really*! This is yet another illustration of the tendency to regard one's particular, disputable, non-inevitable moral point of view as built into the very structure of the universe, as an aspect of reality. Religious moralists are particularly prone to it, though we probably all feel it on occasion. The notion is, however, in the last resort unintelligible.

Christian moralists will, in Stevas's view (p. 155), which is I am afraid correct, not be in favour of allowing A.I.D. children to be legitimate, as this would tend to equate A.I.D. with normal insemination of wife by husband, and to that extent imply approval of it. We met a similar attitude in the discussion of legitimisation of children on the marriage of their parents in Chapter 5 above. There surely must be better ways of bearing witness to one's ideals of marriage and sexual relationships than by labelling some children as being inferior in origin to their fellows.

The problems of legitimacy, inheritance and the like presented by A.I.D. do not seem very formidable, even to so tepid supporter of the practice as myself. To some lawyers, it must be admitted, they appear very nearly insuperable, as do also the property problems raised by some of the novel proposals concerning marriage and divorce discussed in Chapter 5. These are points at which the artificiality of trying to isolate issues of sexual morality becomes apparent. The two sides which clash in this particular field are in fact divided over a much wider range of issues. One reason why it is often so hard to reach agreement on particular issues is that people fear to make concessions in one place lest they weaken their position elsewhere.

The other problem mentioned, that of telling A.I.D. children the truth about their origin, is a difficult one. It is firmly accepted that adopted children should be told, if only because, birth certificates having the form they have, they are very likely to find out anyway. It is probably more feasible to conceal the fact that a child was conceived by A.I.D., as he is likely to have a normal birth certificate. But should one? Professor Hepburn, in the *Rationalist Annual*, 1959, rather tentatively favours telling the children when they reach a suitable age. It would be interesting to hear how

couples who have had children by A.I.D. have coped with this problem. It does seem to me that, if A.I.D. is to be regarded as generally acceptable, then it ought to be possible to be candid about it to the children concerned. And, conversely, if such candour is out of the question it is doubtful whether A.I.D. should be accepted.

Some opposition to A.I.D. stems from the feeling that it is the thin end of a wedge which, once admitted, will make it impossible to resist the 'stud-breeding' of human beings. It is true enough that artificial insemination would make possible a eugenic policy of breeding only from, say, highly intelligent males. In this way the average level of intelligence could doubtless be raised over the generations, without imposing any restrictions on the rights of the eugenically less admired males to marry and have sexual relationships. They would no doubt have to be sterilised. If it became readily possible to transplant fertilised ova into host mothers, the less intelligent mothers, or strictly their hereditary endowment, could be cut out of the breeding process too. Let it be supposed that we are at one in not wanting to see such science-fiction possibilities realised. It does not mean that we have in 'logic' to oppose the employment of A.I.D. in the types of case for which it is at present proposed. Logic, as we have already noted, allows us to draw lines wherever we like. A.I.D., restricted to offering relief for marriages childless because of the husband's sterility or hereditary defect, is a practical possibility just because its acceptance need involve no vast disruption of our present social practices and attitudes. The case is quite other with the eugenic projects just referred to. They may be technically feasible, but they are outside the bounds of social possibility.

To point out that the stud-breeding of human beings will not come about unless people want it to, and that next to nobody does, is insufficient to quiet the worries that the possibility evokes in some quarters. Stevas, for instance, remarks (p. 45) that the scientific humanist, and presumably the non-Christian generally, have no 'final argument' against the 'stud farms of artificial insemination', however much they, like the Christian, may be repelled by them. He seems to forget that, to the non-Christian, Christian arguments,

too, lack finality. The Christian sees the moral position of the unbeliever as quite without foundation, the unbeliever thinks the Christian moral edifice is erected on wholly imaginary foundations. There is no *neutral* standpoint from which it can be said that Christian arguments are more firmly based than non-Christian ones. We have all, Christians and non-Christians alike, to decide what we are and are not prepared to accept, to decide where we are going to draw the line.

A.I.D. and adoption. It is sometimes suggested that adoption is a socially preferable 'solution' to the problem of childlessness than is A.I.D. Adoption takes a parentless child out of an institution and supplies him with a home, thus very likely improving his lot as well as that of his adoptive parents. I do not know whether the supply of children available for adoption is equal to the demand; it is, in any case, obvious that supply and demand are not always brought together. It is, moreover, manifestly the case that some couples prefer A.I.D. to adopting somebody else's child. It is unlikely that there is much to be gained by trying to force people to adopt by denying them any other outlet for their parental inclinations. Adoption, where there is reasonable hope of its being successful, is clearly a very good thing, but it would not appear to be in competition with A.I.D. over the whole range of cases. One would hope that physicians selecting couples for A.I.D. would exercise at least as much care as do the more reputable adoption societies. The qualifications, though they should be equally high, need not be the same. Good adoptive parents might be bad subjects for A.I.D., and *vice versa*. This is, of course, an empirical matter.

Discussions of A.I.D., involving as they often do suggestions that people have a *right* to have children, rather invite the reflection that children are being regarded as therapeutic agents, as sources of relief for maternal deprivation, and not as persons in their own right. I am not sure, though, that there is much difference in this regard between decisions to have children by A.I.D. and by the normal procedure. On what other bases can one decide to have a child

than that one wants to and can see no good reason why not?

A.I.D. for single women In discussing this matter I assume a normal sex distribution, i.e. that there is a reasonable probability of most people who want to entering monogamous marriages. How the problems presented by a gross overplus of one sex or the other should be coped with is a large question that I shall not begin to consider. It is not a question that actually faces us at present. In the situation as it is, the presumption surely is against single women having children, whether by extra-marital intercourse or A.I.D. The issues that arise in connexion with the latter would seem to be, first, whether, as some would like, it should be made illegal; and, on the other hand, whether it should be accorded legal recognition, to the extent, for instance, that the children of single women conceived by A.I.D. might be regarded as legitimate. My own inclination is to answer both questions in the negative. (I do not want any children to be illegitimate, but I see no ground for discriminating in favour of children conceived by A.I.D.) Those who would answer either question affirmatively are impressed by the consideration that a single woman who has a child by A.I.D. enters into no personal relationship with the father, and so can hardly be said to have committed fornication or adultery as these are normally understood. This, in the view of some, much reduces the moral and social pressures against single women having children. Consequently the practice might become common, and so needs to be stopped by legislation whereas ordinary extra-marital conceptions do not. The argument hardly seems to take account of the illegitimacy rate resulting from normal intercourse. The fears on which it rests are, moreover, purely conjectural, and it is by no means clear that it would be any easier to prevent A.I.D. extra-marital pregnancies by law than to prevent normal ones.

The arguments for licensing A.I.D. for single women—which is in any case outside the bounds of practical possibility—also seem to be very weak. Single parents may do very well by their children, but two parents are normally better, and there would seem to be no ground for actively encouraging the formation of further one-parent families.

Fletcher (*Morals and Medicine*, p. 131) claims that no one would think it right to try to stop a woman conceiving by a husband on the point of death, and this, as far as it goes, tells against making A.I.D. for single women illegal: but does not support making special legal provision for it. He also, very strangely, observes that one parent is better than none. But it is not clear how this is to apply to children yet to be conceived by A.I.D. To be adopted by a single woman is probably better than not being adopted at all, but there is no way of making a reasonable comparison between the respective advantages of, on the one hand, not being born at all and, on the other, being born to a single woman by A.I.D.

Epilogue

As stated in the Introduction this book has two main objects: to show how moral philosophy relates to the problems of practical life and to discuss some current issues in sexual morality for their own sakes. Whether or how far either attempt has been successful is now for the reader to judge. There are, however, one or two matters that I should like to re-emphasise before I finally stop.

The preceding pages have illustrated and, I hope, justified my conviction that moral philosophy can be of great service in clarifying the problems of practical life. Nevertheless it must not be forgotten that its relevance, though of the first importance, is still indirect. Whilst it helps us identify our problems, and assess the relevance and force of the various considerations that are raised in connexion with them, it does not solve them for us. Although it helps us see at what points we have to exercise our practical judgment, it does not do our deciding for us. We have inescapably to make up our own minds, to choose for ourselves. Some of the attraction of philosophy derives from the evergreen hope that it will relieve us of the burden of this responsibility, just as much of the disappointment and frustration it often evokes follows upon the realisation that it will not and cannot do so.

I express, in the course of this book, a fairly definite moral attitude, according great weight to considerations of prudence, beneficence, justice and responsibility, and dissociating myself from other moral principles not reducible to these. In particular I go to some trouble to repudiate natural-law doctrines. My morality is entirely secular and narrowly limited in scope, being distinguished both from the field of legal restraint on the one hand and from that of personal

preference on the other. Such is indeed the moral position I occupy and I commend it to all, and believe that it will in fact prove acceptable, at least so far as it goes, to a good many. But I do not at all want to leave the impression that I think that I have shown, by *philosophical argument*, that my moral position is the only, the right, or the best one. Others may adopt different and opposed moral positions without *philosophical* error of any sort.

Moral philosophy is not the exercising of moral judgment, but the study of it. The conclusions of the subject are not themselves directives for or assessments of conduct, but accounts of such directives and assessments, and of the ways in which they can be rationally supported and rebutted. It is not, however, very profitable to consider moral standpoints in the abstract only. It is much better to have a concrete example to look at, and it is my hope that my own standpoint will have served as such an example, even for those who are opposed to it on moral grounds. We do not, moreover, always explicitly formulate our moral opinions even to ourselves. Hearing somebody else's, even though we cannot share them, may in that case be useful in helping or forcing us to sort out our own. I have myself whilst writing this book acquired opinions on topics on which formerly I had none. I should not think the work wasted even if those opinions do no more than provoke others to form different ones.

In emphasising, as I did in the text above, the importance of prudence and beneficence, I did not have practical concerns alone in mind. Reflection on these considerations, whose *relevance* virtually all moralists accept though there is much disagreement about their proper place in the moral scheme of things, helps to bring out *both* the importance *and* the indecisiveness, in the last analysis, of questions of fact in relation to practical issues. (A sound understanding of the respective roles of fact and value is the necessary beginning of practical wisdom.) On the one hand facts concerning, say, the effects which smoking has on the lining of the lungs, or which a more tolerant attitude to pre-marital sexual activity may have on the stability of subsequent marriages, are of crucial importance in assessing the rights and wrongs of smoking and pre-marital sex. But, on the

other hand, what makes them crucial are just the values and disvalues we place on such things as lung cancer and stable marriages. Our actions bring about changes in the physical and social world in which we live, and consequently facts about that world and the effects of our actions in it are relevant to the assessment of our actions. But it is our preferences, from our likes and dislikes through our moral values to our ideals, which turn some of the facts into *pro's* and others into *con's*. It is hard to say which is the greater error, to ignore factual considerations altogether in judging conduct or to think that they will take one all the way. There is, however, no doubt at all that reason requires us to try to avoid them both.

I have here and there above admitted to being a species of utilitarian. This is not by any means a very determinate description, and I tried to pin it down to some extent by enlarging on the prudence, beneficence, justice and responsibility I take it to involve. But these notions themselves acquire definite content only in their applications. We find out what a man who claims to attach great importance to, for instance, justice stands for only by observing what, in detail, he counts as just. Moral judgment is much less a matter of applying clear-cut general principles than of making up our minds in particular cases and thus giving content to our principles. To exert one's powers of moral judgment over a range of practical issues can thus be a valuable exercise in self-awareness. So long, that is, as the topics are genuinely important and genuinely controversial. So long as they are live issues about which reasonable people differ, and with regard to which different patterns of conduct are within the bounds of social possibility. All this we have seen many problems of sexual behaviour to be. Their practical importance is enhanced by their openness, by the fact that we are prone to feel uncertain and radically to disagree with one another about them. Their openness is, moreover, important from the theoretical point of view too. Moral philosophers have often illustrated their works with references to artificially simple, even trivial, practical problems concerning the returning of borrowed books or the keeping of run-of-the-mill promises. One can see the point of this—the more our feelings are engaged, the harder it no

doubt is to think coolly. But on the other hand the moral philosopher ignores the most important part of his subject-matter if he restricts himself to the examination of those moral judgments which nobody would think of dissenting from.

Decisions concerning sexual behaviour are at once unavoidable and deeply disturbing. We will be the better equipped to take them after a cool, philosophical look at the possibilities of rational argument in the field. But if the practical moralist, which we all have to be, can profit from philosophy, so the philosopher too, on his side of the fence, has much to learn from observing the moralist as he grapples with important and open questions, for there is to be seen moral judgment in its most characteristic exercise.

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Index

- ABORTION, 50, 77, 92-4, 137, 166-7, 168
 Abse, L., 115, 120
 Act and agent ethics, 36-7, 81, 83, 148
 Adultery (cf. Extra-marital intercourse), 16, 26, 27, 28, 38, 86, 103-4, 138, 140, 141, 172-3, 178
 Affinity, marriage between relations by, 48, 126-8
 Analytic statements, 19, 26
 Aquinas, 67
 Arguments, deductive, 15, 17-18, 20; economic, 14; in expediency (prudential), 14, 89-90; moral, 12-15, 16, 17-18, 30; practical, 14, 17-18
 Aristotle, 60
 Artificial insemination donor (A.I.D.), 11, 16, 171-9; husband (A.I.H.), 11, 169-71
 Augustine, 37

 BAIER, K., 32
 Bailey, D. S., 31, 134, 149
 Bannister, K., 129, 131
 Barnes, K. C., 79, 80, 85, 98
 Beneficence (cf. Utilitarianism), 53-9, 76-9, 88, 182
 Blackmail, 143-4
 Booker, H. S., 129, 130

 CHASTITY, 81
 Chesser, E., 142, 148, 171
 Companionate marriage, 86-8
 Contraception, 11, 18, 52, 63, 87, 90-2, Chapter 7, sections 1 and 2
 Crime and sin, 39, 132, 140

 DEDUCTIVE arguments, 15, 17-18, 20
 Definition, 26-9, 63-4, 94, 155
 Descartes, 17
 Devlin, P., 136-9
 Diminished responsibility, 133-4, (cf. 22-3)
 Disgusting, the, 21, 140, 141, 148, 151, 171
 Divorce, 11, 45, 62, 69, 87, Chapter 5, 171
 Double effect, principle of, 160, 167-9, 170
 Double standard, 46, 60, 61, 98, 104-7

 ECONOMIC arguments, 14
 Ends and rules, 24, 33-4, 35-6, 103-4, 115-16
 Ends (purposes) of sex and marriage, 66, 149, 158, 159-162
 Expediency (prudence), distinguished from morality, 20-2, 49-53
 Extra-marital intercourse (cf. Adultery), 49, 74, 86, 103-4

 FACT and value: *see* 'Ought' and 'is'
 Factual and moral truths, 23-6
 Fairness: *see* Justice
 Fallacies, logical, 15-17
 Fisher, G. F. (formerly Archbishop of Canterbury), 28, 29, 112, 123, 124, 127, 128
 Fletcher, J., 157, 178
 Fletcher, P., 79, 82, 85, 133
 Fletcher, R., 65, 66, 113, 114
 Forced marriages, 95
 Fornication (cf. Free-love), 138, 139, 140, 141, 178

- Free-love (cf. Promiscuity), Chapter 4
- Logical fallacies, 15-17
Logically sufficient reasons, 15-20
- GEBHARD, P. H., 93
Genetic fallacy, 66, 143
Gibbens, T. C. N., 104
Grigg, J. (formerly Lord Altrincham), 123, 125
- HALMOS, P., 131
Hare, R. M. 41
Hart, H. L. A., 136, 137, 139
Hepburn, R. W., 175
Heron, A., 79
Hobbes, 62
Homosexual conduct, 11, 23, 50, 98, Chapter 6
Human nature: *see* Natural law
Hume, 25, 55
- IDEALS, 38-41; ostensible and operative, 46
Illegitimacy, 76-7, 96, 128, 174-5, 178
Incest, 128, 137, 174
Individualism, 71-2
Intuitionism, 32
- JUSTICE (Fairness) 59-62, 119-120, 140-1
- KANT, 31, 59
Kenyatta, J., 99
Kinsey, A. C., 22, 59, 60, 74, 75, 98, 104, 105, 132
- LAW, distinguished from morality and personal preference, 38-41; scope of legislation, 70-72, 106-7, 135-40
Legitimation: *see* Illegitimacy
Lesbianism: *see* Homosexual conduct
Lestapis, S. de, 66, 155, 157, 158, 159, 161, 164, 165
Lindsey, B. B., 75, 86-8, 97, 98, 103
- MACKINNON, D. M., 79
MacMurray, J., 79, 82, 83
Marriage, companionate, 86-8; forced, 95; trial, 97-8; between relations by affinity, 48, 126-8; counselling, 128-31
Masturbation 40, 49, 98-9, 170-1, 172
McGregor, O. R., 112, 113, 114, 123
Meaning, descriptive (factual) and evaluative, 27-8
Mercier, Cardinal, 160
Mill, J. S., 71-2, 136, 137, 138, 139
Monogamy, 18, 53, 54, 59
Moral, agreement, 24-5; and factual truths, 23-6; arguments, 12-15, 16, 17-18, 30; judgments, 12; philosophy and practice, 10, 180-3; principles, 14, 20, 23-4, 47, 48; theory, 29-33
Morality, positive, 29-33, 146; and religion, 33-6, 68-70, 109; distinguished from prudence (expediency), 20-2, 49-53; distinguished from law and personal preference, 38-41, 70-2, 103, 106-7, 135-40, 147
Morally sufficient reasons, 20-3
Myrdal, A., 99
- NATURAL law (Human nature), 62-8, 149-51, 155-6, 161-6, 167, 171
Nowell-Smith, P. H., 103-4
- ONTOLOGICAL argument, 17
'Ought' and 'can', 22-3 (cf. 133-4)
'Ought' and 'is' (Fact and value), 17-20, 23-6, 181-2
- PATERNALISM, 72, 136, 137
Personal preference, distinguished from law and morality, 38-41, 103, 147

- Personal relations and sexual morality, 79-88, 148
 Persuasive definitions, 28, 63-4, 94, 155
 'Petting', 98, 99
 Popper, K. R., 56
 Population policies, 153-4, 156, 164
 Practical arguments, 14, 17-18
 Pregnancy, risk of, 90-6
 Pre-marital intercourse, 11, 73, 74-101
 Premises (cf. Reasons), 13; purely factual and merely analytic, 20
 Promiscuity, 43, 49, 52, 74, 89, 97, 101-3
 Prostitution, 46, 104-7
 Prudence (Expediency), distinguished from morality, 20-2, 49-53, 76-9
 Prudential arguments, 14, 89-90

 RASHDALL, H., 54
 Rationalisation: *see* Reasoning
 Reasoning and rationalisation, 41-4
 Reasons (cf. Premises), logically sufficient, 15-20; morally sufficient, 20-3
 Rees, T., 142
 Religion and morality, 33-6, 68-70, 109
 Responsibility, 49, 58, 75, 87; diminished, 133-4 (cf. 22-3)
 Rhymes, D., 23
 Riquet, M., 157, 158
 Robinson, J. A. T. (Bishop of Woolwich), 69, 70
 Rock, J., 154, 155, 156, 161, 164, 165, 166, 167
 Ross, D., 32
 Rowntree, G., 95
 Rules and ends, 24, 33-4, 35-6, 103-4, 115-16
 Russell, B., 59, 75, 85-8, 98, 103

 Sex education, 107-10
 Sidgwick, H., 53, 54, 57
 Sin and crime, 39, 132, 140
 Stephens, J. F., 136
 Sterilisation, 162, 166, 167, 168
 Stevas, N. St. J., 38, 67, 167, 168, 170, 171, 175
 Syllogism, 15
 Synthetic statements: *see* Analytic statements

 TOULMIN, S. E., 32
 Trevett, R. F., 62, 63
 Trial marriages, 97-8
 Truth, 13
 Truths, moral and factual, 23-6
 Turner, E. S., 126

 UTILITARIAN arguments, Utilitarianism (cf. Beneficence), 10-11, 31, 53-9, 76-9, 88, 127, 182

 VALIDITY, 13
 Venereal disease, 49, 52, 89-90, 168

 WALKER, J., 123, 125
 Walker, K., 79, 82, 83, 85, 133
 Wallis, T. H., 129, 130
 Warner, H. C., 165
 West, D. J., 132, 133, 142
 Westermarck, E., 65, 66
 Western norm, the, 45-8, 55, 58
 White, E., 112, 115, 120
 Williams, G., 92, 94, 167
 Wilson, J., 98
 Winnet, A. R., 69
 Wolfenden Committee, 106, Chapter 6

 YOUNG, W., 165

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