

3

SEXUAL ETHICS

Chapter checklist

This chapter considers the various definitions of human sexuality and gender, what is normal and what is deviant. Religious and non-religious attitudes to marriage and divorce (including annulment) are discussed as well as various types of cohabitation relationships. The ethics of contraception are reviewed. The second part of the chapter discusses the ethics and politics of homosexual and non-heterosexual relationships. The chapter concludes by looking at various normative ethical responses to sexual ethics.

1 Sexuality

Key question

What is sexual integrity?

Case study

Sex and personal integrity

Joseph Fletcher, a moral philosopher, describes a time when discussing a moral dilemma with a young woman:

Her problem? 'OK. This is it. One of our intelligence agencies wants me to be a kind of counterespionage agent, to lure an enemy spy into blackmail by using my sex.' To test her Christian sophistication, I asked if she believed Paul's teaching about how our sex faculties are to be used, as in First Corinthians. Quickly she said, 'Yes, if you mean that bit in the sixth chapter – your body is the temple of the Holy Spirit – but...', she added, '...the trouble is that Paul also says, "The powers that be are ordained of God".'

The defense agency wanted her to take a secretary's job in a Western European city, and under that cover 'involve' a married man who was working for a rival power. Married men are as vulnerable to blackmail as homosexuals. They did not put strong pressure on her. When she protested that she couldn't put her

personal integrity on the block, as sex for hire, they would only say: 'We understand. It's like your brother risking his life or limb in Korea. We are sure this job can't be done any other way. It's bad if we have to turn to somebody less competent and discreet than you are.'

So. We discussed it as a question of patriotic prostitution and personal integrity. In this case, how was she to balance loyalty and gratitude as an American citizen against her ideal of sexual integrity?

(Joseph Fletcher, *Situation Ethics*, pages 163–164)



Fletcher's case study illustrates the power and contradictions of human sexuality. On the one hand preserving sexual purity is essential to one's sense of personal integrity, but on the other hand for others using one's body sexually as a means to an end is no great deal. The power of the sex drive can be exploited; it can lead to betrayal; it can be directed to others of the same sex or the opposite sex; but it is unclear where this is appropriate and where the boundaries lie. Sex is clearly more than procreation; it is an essential aspect of personal identity and social life.

a) Sex and gender

It has become almost commonplace among many that sex and gender are entirely separate. Whereas sex refers to what one is biologically, gender is determined by one's environment. For example, the feminist writer Ann Oakley writes:

Key question

Are sex and gender the same?

Cross-reference

See pages 30–31 on Ann Oakley.

Key words

Intersexual describes those who have an extra sex chromosome (for example, XXY) and whose sex is therefore neither fully male or female. About two per cent of the population are intersexual.

Essentialists believe that there are intrinsic masculine and feminine characteristics. They reject the view that gender is entirely the product of environment.

Sexuality refers to sexual identity.

Key people

Michel Foucault (1926–1984) was a French philosopher, historian and sociologist. Through his multi-disciplinary analysis of prison, madness and medicine he developed his distinctive view of power and knowledge (deeply influenced by Nietzsche). This approach was developed in his seminal three volumes: *The History of Sexuality* (1976–1984).

Key question

Should we reject the idea of there being a normal sexual identity?

Key word

Discourse is any written or spoken communication but Foucault understands discourse to be the way in which language symbols and practices are put together in a particular way.

Much of the confusion in the debate about sex roles comes from the fact that we tend to speak of 'sex differences' when we are really talking about differences of gender. Because of this the rationale of a society based on liberation from conventional gender roles is written off as an impossibility.

(Ann Oakley, *Sex, Gender and Society*, page 189)

But the matter is not easily resolved. Customs associated with gender may well be cultural, such as clothes, hairstyle and social roles, but writers, ancient and modern, have long suggested that the way in which societies are constructed in terms of morality, law and religion is based on an *objective* understanding of the individual sexual body.

Biologically, the process of sex is determined by the relationship of chromosomes, hormones (notably testosterone and Müllerian inhibiting factor) and environment in the womb. Normally, a person is female if their sex chromosomes are typically XX and male if their chromosomes are typically XY. There are some minority of **intersexual** cases, such as Klinefelter's syndrome, where a person's sex is indeterminate or ambiguous.

Some have argued that gender is indeed partly determined by environment but cannot be entirely separate from biology. **Essentialists** such as Freud, argue that gender is largely a result of a person's biological/psychological development.

More recently there are those who have questioned whether it is even possible to talk about sex and gender, and have preferred to think in terms of **sexuality**, which covers a wide spectrum of sexual identities – heterosexual, bisexual, homosexual, lesbian and so on.

b) What is normal?

The French philosopher and historian **Michel Foucault** has been particularly influential in developing a view which challenges whether it is even possible to talk of gender. His analysis of history and human institutions illustrates the constant tension between the open-ended way in which people naturally think of themselves sexually and the tendency of society's institutions to control how people behave. Foucault is interested in the 'production of ideas'. Every age develops its own **discourse** – a mixture of language and practices which organise the social ordering of the body. But, Foucault argues, history demonstrates that humans flourish when social ideologies are questioned and the power of the dominate discourses dismantled.

i) 'Normality'

Foucault argues that normal/abnormal are not meaningful terms; ethics are to be thought of as practices relative to time and place. For example, in ancient Greece sexuality was not defined in

natural/unnatural terms but as healthy/unhealthy virtuous living. Erotic love was considered in the same terms as eating and sleeping well, but, like virtuous living, it also required self-mastery, a regard for beauty and balance.

There was a marked difference on the one hand between a heterosexual relationship between husband and wife, where sex was to be seen in the context of running an efficient household (having and rearing children) and erotic love on the other. Homosexuality was acceptable as part of what Foucault terms the *ars erotica* – the experience of sexual relationship based on pleasure and independent from the production of children. It was not uncommon for men to take on a younger boy as a lover, although it was considered bad manners, even immoral to continue with this relationship once the boy reached puberty. So, even in Greek society, sexual relationships were not entirely without control, but the point Foucault is making is that Greek society illustrates how Western society since that time has increasingly developed controls over sex by arbitrarily defining what is normal.

ii) Sexuality as historical construct

The distortion has arisen due to first, an obsession with wanting to classify everything into categories or 'species' (as he calls them), and second, the desire to get people to conform to these categories. By inventing a category called 'human sexuality' society has developed an enormously powerful and *repressive* tool to order people into conformity. The *scientia sexualis*, as he terms it, has in Western society been controlled first by the Christian Church, then especially in the eighteenth and nineteenth centuries by psychologists, sociologists, lawyers and educationists.

Sexuality must not be thought of as a kind of natural given ... It is the name that can be given to a historical construct: not a furtive reality that is difficult to grasp, but a great surface network.

(Michel Foucault, *The History of Sexuality: The Will to Knowledge*, page 105)

However, because for so long homosexuality has been considered a deviant practice it has played a significant role in modern society in liberating sexuality from sex. Its 'reverse discourse' which once served as means of giving gay men and women a sense of their own identity, has now become the tool for querying or **queering** all of society's attitudes to sexuality.

Key word

Ars erotica or 'erotic art' is Foucault's term to describe societies who view sexuality in terms of pleasure.

Key words

Scientia sexualis or 'science of sexuality' is Foucault's term to describe the way in which sexual practices have been controlled and formalised by various institutions in Western societies.

Queering means to challenge all beliefs and structures that seek to fix sexuality as if it is something objective.

Key quote

'The problem is not to discover in oneself the truth of one's sex, but, rather to pursue one's sexuality henceforth to arrive at a multiplicity of relationships.'

MICHEL FOUCAULT, *ETHICS*, 135

2 Marriage and divorce

Key question

What are the moral reasons for marriage?

Even though cohabitation has become more prevalent in the last few decades, the majority of the adult population is married, and marriage is associated with a number of factors, such as educational outcome and health.

(Ben Wilson and Steve Smallwood, in *Population Trends 131* (2008), page 28)

Marriage is a human institution which can be found in every society from antiquity to the present day. Its significance, though, is far more than the union of two people because through it society expresses a range of moral, religious and social attitudes.

At its simplest level, marriage is a man and a woman living together in a sexual relationship at the same residence. So, how is this different from cohabitation, which has increasingly become the modern alternative? There are two key non-religious factors:

- **Marriage as a public event.** In other words, because society formally acknowledges a couple's intentions to live together it formally grants them certain rights and the protection of the law. In many cultures the drawing up of a marriage contract sets out various conditions not dissimilar to the **prenuptial agreements** which have become so popular in the USA today (but are generally not acknowledged in English law). Marriage is a practical affair and its very formality is intended to make day-to-day living as effective as possible.
- **Marriage as long-term commitment.** Cohabitation, it could be argued, is by nature more open-ended, short term, casual and informal. Marriage, by contrast, is about long term, committed relationships. This should not be confused with love. Marriage *may* be about love, but love in many traditions is not a condition of marriage but something which develops later.

a) Traditional natural law view of marriage

The dominant notion for marriage in the West rests on the natural law arguments developed from Augustine and Aquinas. Both theologians begin with the observation that humans, the world-over, pair off for the primary purpose of procreation. From this primary end or 'good' other secondary purposes or 'goods' can then be deduced:

- Marriage is for the procreation of children.
- Children need to be nurtured, so marriage is about companionship and love.
- As sex outside marriage would result in children being brought into non-stable relationships, marriage is also for the

Key word

Goods or the purposes of marriage are traditionally stated as: children, containment of sin (that is, derived from the lust for sex) and faithfulness of the couple to each other.

Key word

Prenuptial agreement is a contract drawn up before marriage outlining how assets will be distributed should there be divorce.

'containment' of the sex drive into a monogamous, lifelong committed relationship.

The order and way these goods are expressed from writer to writer may vary but the essential ideas remain the same.

It is important also to note that there is nothing especially religious about this argument. This is interesting as many people today associate marriage with those who are religious, perhaps because for two hundred years or so marriage has been almost exclusively run and regulated by the churches.

b) Marriage as religious sacrament

The notion of sacrament is probably the most important factor which distinguishes the religious from the non-religious understanding of marriage. In Christian theology a sacrament is a holy or religious moment, quite often described as an outward and visible sign of an inward state of grace. However, there are several views as to what this means.

- **Essential change.** For Roman Catholics and some Anglicans a sacrament is composed of two parts: the external symbols and its internal essence. The externals in marriage might include the spoken words by the couple (promises to be faithful, the intention to have children), the exchange of tokens (rings for instance) and the blessing by the priest. All these signify that an internal and ontological change has taken place and the couple have become 'one flesh' (Mark 10:8). This view of marriage is **indissoluble** and excludes divorce.
- **Covenant.** For many Protestants sacrament signifies the establishment of a binding two-way promise or covenant. There is no essential change but a significant change in attitude. This suggests that marriage is intended to be a union of minds and bodies in the creation of a loving and stable environment in which children may flourish. In a covenantal marriage divorce is a possibility but usually only on the grounds of adultery.
- **Holy mystery.** For many Anglicans marriage is a holy mystery. In the 1662 *Prayer Book* marriage is defined as a holy mystery, a powerful and effective symbol of the change established through the promises made by the couple in the presence of God. The Church of England's attitude to divorce has always been ambivalent, accepting that where there has been an 'irretrievable breakdown' in relationships then divorce is a necessary evil.

c) Divorce and annulment

Until recently divorce was difficult to obtain and was socially stigmatised, but it is now a common aspect of the Western world. There are many reasons for this, including the decline of the

Key quote

'The vocation of marriage is written in the very nature of man and woman as they came from the hand of the Creator.'

CATECHISM OF THE CATHOLIC CHURCH, 359

Key question

How might a couple's relationship be affected if they consider marriage as a religious sacrament?

Key quote

'A man shall leave his father and mother and be joined to his wife, and the two shall become one. So they are no longer two but one flesh. What therefore God has joined together, let no man put asunder.'

MARK 10: 7-9

Key word

Indissoluble means marriage cannot be undone or 'dissolved' through divorce.

Key words

Companionate marriage states that the primary purpose of marriage is love or companionship (that is, not necessarily children, property, etc.).

Adultery is when a husband or wife has a sexual relationship with someone other than his or her spouse.

Annulment recognises that for various reasons a marriage was never fully implemented and the couple are released from their marital duties to each other.

influence of traditional religious teaching, greater independence for women and shifting attitudes to sex. But one view is linked to the understanding of marriage itself. This is a significant, if not obvious, point that divorce merely re-expresses marriage but in negative terms. In other words, as marriage has increasingly been seen in **companionate** terms and less as the means of establishing property rights or legitimacy of children, the grounds for divorce have shifted away from legal fault to relationship breakdown. Even so, the two categories are not necessarily that distinct. A husband or wife who commits **adultery** is equally at fault, having broken their promise to commit themselves to one person, and compromised the trust and fidelity promised to their partner.

Although **annulment** and divorce appear superficially dissimilar, both are concerned with the legal and relational dimension of marriage, although the approaches and emphases are different.

i) Annulment

Annulment is not restricted to Catholicism and is also a possibility within secular British law. But it is within the Catholic tradition that annulment has its fullest expression. Coming from natural law, annulment focuses on the intentions of the couple at the time of the marriage ceremony. Inevitably it is retrospective and those who defend it quite often point to the positive pastoral usefulness of going back over a relationship to see how and when a marriage may have failed. The process may reveal that there are in fact no grounds for separation; on the other hand it may find that from the start the marriage was never fully established.

The first stage is to declare that the marriage is void. The second stage, 'divorce', effects the actual change of status of the couple, which allows them to separate. The nullity of the marriage can be established on two grounds (see *Canon Law*, pages 1083–1095):

- The first grounds are for various **diriment impediments**, such as the failure to satisfy the sexual 'goods' of marriage (for example, impotency), or a vow to remain sexually celibate, or that the person is still married to another.
- The second ground is linked to the sacramental dimension of marriage, which requires the full consent of both parties to marriage. The grounds here may include lack of reason, lack of sound judgement or an inability to understand and carry out the obligations and duties of marriage.

Objections to annulment often fall into two kinds:

- Those who do not share the essential sacramental view of marriage find its retrospective judgement demeaning and wasteful of a relationship which for years may have functioned creatively and fruitfully. Furthermore, if children are born it appears to

Key word

Diriment impediments. Diriment means to invalidate or nullify; impediment is a legal obstruction. A diriment impediment refers to a legal reason why a marriage is null or invalid.

suggest that they were not conceived into a proper marriage, especially if it has been shown that the original intentions of marriage were defective.

- Others argue that this is the kind of muddle that natural law leads to. The desire to maintain the sacramental status of marriage results in an over legalistic and pastorally weak process. Furthermore, it fails to acknowledge that people can change and intentions may also alter in time.

The second objection may not appear to be as watertight as is commonly thought. It does not necessarily follow that if my intentions appear to change I may not have harboured these desires deep-down long before I became aware of them. Annulment, at least, has the virtue of allowing both parties the psychological freedom to marry afresh (although this is not technically remarriage).

ii) Divorce

In Western societies the attitude to divorce has largely been dictated by Christian teaching. Jesus taught that marriage was lifelong and that divorce had only been allowed in the Old Testament because couples were weak willed. However, two passages suggest that this apparent absolute ruling could be understood as an ideal and that there are exceptions.

The so-called **Matthean exception** appears to allow for divorce on the grounds of adultery, and the Pauline privilege allows divorce (or annulment) in a mixed marriage of a Christian and non-Christian. However, theologians are divided over exactly what these passages mean. Today, though most Protestant traditions do allow divorce, Catholicism permits 'divorce' as legal separation but otherwise maintains Jesus' absolute position.

However, over the past century, for religious and non-religious reasons, the stigma of divorce has become considerably less, as the reasons for marriage have shifted away from contract and sacrament to relationship. The logic is simple: if the marriage relationship has broken down then divorce recognises the situation and is a means of bringing this about legally.

The **Divorce Reform Act 1969** importantly introduced the notion of '**irretrievable breakdown**' as a means of defining the underlying purpose of divorce. The Family Law Act 1996 extended this further by removing the idea of fault altogether. Many ask whether it is by chance that since that time divorce rates in the UK are one of the highest in Europe. An important analysis of divorce in the UK in 2008 states that:

- Forty-five per cent of marriages will end in divorce.
- Providing marriage/death rates remain the same, ten per cent of marriages will celebrate their 60th wedding anniversaries.

Key question

Would a less lenient view of divorce necessarily make people work harder at their marriages?

Cross-reference

See page 63 for a more detailed account of the Matthean exception.

Key word

Irretrievable breakdown defines the underlying causes of marital relationship breakdown.

Key thought

The **Divorce Reform Act 1969** came into effect in 1971 and permitted divorce on grounds of: 1) Adultery; 2) Unreasonable behaviour; 3) Desertion; 4) The parties to the marriage have lived apart for at least two years and both consent to the divorce; and 5) The parties have lived apart for at least five years on the grounds that a relationship had irretrievably broken down. The 1984 legislation allows couples to petition for divorce after one year of marriage.

- For couples who have been married for ten years, fewer than 31 per cent will divorce.
- For couples who have been married for twenty years, fewer than fifteen per cent will divorce.

(*Population Trends*, 131 (Spring 2008), pages 28–36)

iv) Remarriage

Remarriage is particularly problematic for many in the Protestant tradition. There are two reasons for this: theological and pastoral/social.

The theological reasons are those we have already noted when we looked at the Matthean exception. In Matthew's gospel, Jesus says that even if divorce takes place it does not free a Christian to remarry for if a man does remarry he 'commits adultery' (Matthew 19:9)

Those who permit divorce but refuse remarriage have the problematic task of explaining just what they mean by divorce. If they are implying that the person is still in some way married (having made vows of lifelong fidelity), then their view of divorce really goes back to the older idea that divorce is the releasing from the *duties* of marriage but not from the bond itself. This is a possibility in law today when a couple can seek judicial separation, which releases each other from any financial obligations for instance.

The pastoral issues related to remarriage mostly focus on the issue of the good *intentions* of those who wish to be remarried. For many there is a *prima facie* case for allowing the innocent party a remarriage. But even this can be problematic. Is it always the case that marriage fails entirely because of one of the parties? The problem is that it can never fully be ascertained just how two people have lived their lives. The same kind of impossibility arises when the person who is asking for remarriage is *not* the innocent party but expresses remorse for their wrongdoings and fully intends to fulfil the marriage promises.

For many years the Church of England has debated how it should deal with marriages which fail. Some treat a failed marriage as a form of death. As Christian marriage permits remarriage after the death of a spouse so does remarriage after the death of a relationship. The conclusion of the Church and its publication of *Marriage After Divorce* (2003) states that although marriage is lifelong:

there are exceptional circumstances in which a divorced person may be married in church during the lifetime of a former spouse.

(www.cofe.anglican.org/info/papers/mcad/index.html)

Cross-reference

See page 47.

Key word

Separation may take two forms. Divorce, when the marriage is dissolved (*a vincula*); or judicial separation (*a mensa et thoro*) when each are released from their duties as husband and wife.

3 Cohabitation

Key question

Is cohabitation good for society?

Key word

Premarital sex is where two unmarried people have sex before marriage.

Even so, there is no automatic right for a couple to remarry in church and they will be expected to answer a number of important questions. Each minister has the right to refuse a couple or to refer the case to his or her bishop.

Cohabitation or 'living together' has increasingly become the norm in contemporary Western societies. Whereas in the past, marriage offered emotional and financial stability, women in particular today have considerably more autonomy, sexually (through contraception) and financially (through equality in the workplace), and therefore the need for marriage is far less obvious. Cohabitation also reflects the more informal nature of modern living which does not see the need to formalise relationships, and, with the taboo on premarital sex largely removed, living together for a short period of time or for a lifetime has now become a common part of modern living.

At the same time there is an unprecedented rise in the number of people living by themselves through chosen or enforced singleness.

a) Types of cohabitation

i) Casual cohabitation

The least formal cohabitation relationship is characterised by a lack of long-term commitment. It might begin with a casual sexual relationship and develop so that by living together both partners share a common sexual and social life. Often symbolically and for practical reasons one partner may keep his or her home as a sign of independence. Casual cohabitation, unlike marriage, is private, informal and, by its very nature, transitory. Seventy per cent of first partnerships in Britain are casual cohabitation relationships, lasting on average about two years.

ii) Trial marriage cohabitation

Many couples today regard living together before marriage to be important, if not essential. They argue that before taking such a serious step as marriage both partners should be sure that they are compatible to ensure that the marriage will last. This form of cohabitation suggests that it is, at best, conditional, private and short term in preparation for the next stage, marriage. The average age at which men marry is 30.5 and women 28.3. Quite often, if children are born, the additional responsibility may act as a catalyst for marriage so as to give them the benefits of a more stable and long-term environment.

iii) Substitute marriage and ideological cohabitation

Increasingly there are those who *never* marry but who opt for long-term relationships without marriage. There are two broad categories: those who are excluded from marriage and those who chose for ideological reasons not to marry.

Those who are excluded from marriage might include:

- a couple whose families refuse to let them marry outside their religion or class
- a husband or wife who refuses the other a divorce for religious reasons. The separating person is legally unable to remarry and so chooses to cohabit
- one partner who is reluctant to marry.

From the perspective of each of these couples – their intentions are considered to be equivalent to marriage promises. This does not make their relationship licit (lawful) from the point of view of society or a religion – indeed depending on the definition of marriage, a homosexual couple could never fulfil the duties of marriage (that is, through lack of procreation), or a person who cohabits whilst technically married to another commits adultery and may place him or herself outside the communion of their church tradition. But what all these cases have in common is the lack of *public* recognition, which prohibits them from becoming formally married.

Ideological cohabitation refers to those who consciously reject marriage on ideological grounds. For example, some argue that marriage:

- as an institution has failed, as can be seen in the very high divorce rates (almost 50 per cent in the USA and UK)
- is more to do with pleasing others and not oneself
- sets unrealistic expectations about human relationships
- is often perceived to be unnecessarily expensive and bureaucratic
- is a religious commitment which is irrelevant for the non-believer.

Social reconstruction feminists argue that marriage is essentially a patriarchal institution that is more interested in ownership and control of women by men, and an insistence on the role of man as bread winner, than a liberated and genuine human relationship. A woman might feel that she no longer needs to marry for economic survival nor does she have to be a homemaker or even a mother. The traditional purposes of marriage are therefore unnecessary and possibly detrimental for a relationship of equals.

Significantly, many couples feel that a relationship is essentially a private affair. It does not need God or the Church or the witness of other people, or society as a whole, to acknowledge formally the

Cross-reference

Read pages 25–29 on reconstruction feminism.

Cross-reference

See pages 59–60 below on the Civil Partnerships Act.

Key words

Civil partnerships give legal rights and protections to same-sex couples in similar ways as marriage does for heterosexual couples.

Key question

Does genuine commitment in a sexual relationship necessarily mean having the intention to be with that person for life?

Key words

Deontological moral systems are those based on duties and rules.

A cohabitation contract (or agreement) might, for example, set out who is responsible for childcare, who owns what and how assets will be divided if a couple separate.

Key words

A reconstituted family (or step family) is where children from a previous relationship are brought up by at least one non-biological parent.

Cohabitation effect is used to describe the negative psychological effects that cohabitation has on partners and the fact that cohabitation does not lead to long term, stable marriages.

status of a couple. With the changes in the law the rights of both parties are increasingly recognised. For homosexual couples many countries have evolved systems of **civil partnerships** which offer them similar rights and protection of the law as marriage.

b) Critique of cohabitation

i) Commitment and fidelity

The primary **deontological** criticism of all forms of cohabitation and especially casual cohabitation is lack of commitment. From a Kantian perspective the danger is that couples are using each other as a means to an end, and in the natural law tradition, if the primary end of sexual relationships is children, then a stable committed environment is a necessary condition for children's welfare. Most Christian deontological traditions share these criticisms, especially where marriage is considered in strong sacramental terms.

However, there is a stronger case to be made for 'substitute marriage' cohabitation. If the intention in this kind of relationship is to be faithful and committed then it is difficult to see what additional moral benefits marriage offers. However, as this kind of cohabitation lacks the same kind of legal protection as marriage, many couples draw up **cohabitation contracts** setting out the terms and obligations of their relationship to each other. The question then is how, in the end, is this so different from marriage?

ii) Long- and short-term consequences

From a consequential point of view the only relevant consideration is whether cohabitation produces happier people. As in any relationship a break-up causes pain but it is seen as an inevitable part of the process of change. This is not especially problematic for casual cohabitation relationships, except where children are concerned. Some argue that children are robust and can cope with having multiple sets of non-biological parents as in **reconstituted families**, but others argue that stability and care are the necessary components for happy and balanced children.

Another significant statistical piece of evidence for the utilitarian is the so-called **cohabitation effect**. This evidence applies particularly to trial marriage cohabitation and is thought to demonstrate that those who cohabit before marriage are far more likely to divorce once they do marry than those who do not live together before marriage.

It is not clear what the reasons for this are. Perhaps for psychological reasons cohabitation gives a couple a sense of freedom which may not translate well into a conventional marriage, whilst other research indicates that the frequency of marriage breakdown is about the same between those who cohabited and then married and those who did not.

Key words

Common law marriage or marriage by repute where a couple have lived together as husband and wife but without going through a marriage ceremony or obtaining a marriage contract.

4 Contraception and the purpose of sex

The use of contraception, whether artificial or natural, means that a couple can have sexual intercourse without the woman becoming pregnant. The contraceptive pill has not only revolutionised the way in which women have been able to govern their own fertility, but has also given them the sexual freedom to conduct their relationships and their working habits on a par with men.

a) Natural law and contraception

God has wisely disposed natural laws and rhythms of fecundity which, of themselves, cause a separation in the succession of births. Nonetheless the Church, calling men back to the observance of the norms of the natural law, as interpreted by their constant doctrine, teaches that each and every marriage act must remain open to the transmission of life.

(*Humanae Vitae*, paragraph 11)

The natural law argument against the use of artificial contraception is most clearly stated in the Pope's encyclical *Humanae Vitae* (1968). It argues that the use of all forms of artificial contraception is morally illicit because every **unitive** sexual act must also *intend* to be 'be open to the transmission of life', that is to be procreative and result in children. More significantly, to allow the separation of the unitive and the procreative undermines the sacramental dimension of marriage and degrades a husband's and wife's relationship.

The only exception to this in Roman Catholic teaching is the **rhythm method**. As this is the use of a natural moment in a woman's reproductive cycle, it is not technically contraception as there is still a possibility that the sex act is 'open to the transmission of life'. *Humanae Vitae* argues:

The Church is coherent with herself when she considers recourse to the infecund periods to be licit, while at the same time condemning, as being always illicit, the use of means directly contrary to fecundation, even if such use is inspired by reasons which may appear honest and serious. In reality, there are essential differences between the two cases; in the former, the married couple make legitimate use of a natural disposition; in the latter, they impede the development of natural processes.

(*Humanae Vitae*, paragraph 16)

Key words

Unitive sex means for loving purposes.

The **rhythm method** is the use of the moment just before a woman ovulates where nature provides a moment (or 'rhythm' in nature) when a couple can have sexual intercourse without the probability of having a child.

Key question

Does the use of artificial contraception make sexual intercourse more or less loving?

Key word

Casistry in the general sense is the application of moral rules but it is often used negatively to mean over-subtle argument and legal hair splitting.

Key people

Jack Dominion (b. 1929) qualified as a doctor in 1955 and as a psychiatrist in 1961, specialising in sex and relationships. He founded the Marriage Research Centre now called One Plus One.

Many accuse the natural law argument of unnecessary **casuistry**. They argue that if the rhythm method is permitted as an exception, where nature provides its own 'safe' moment when a couple may have sex for unitive rather than procreative purposes, then artificial contraception is not intrinsically wrong and Church teaching should be revised.

For example, the liberal Catholic psychologist **Jack Dominion** argues that sex has many purposes – all of which serve to enhance the husband–wife relationship. He names four – love, procreation, pleasure and relief of tension – of which 'the single most important is the presence of love, which represents the highest unity of body and person' (*God, Sex and Love*, page 30). By broadening the notion of procreative sex to mean life-giving in its psychological sense, Dominion reinterprets *Humanae Vitae* to include what he considers to be an equally valid non-procreative sexual relationship, where both husband and wife are still *creative* as they grow and sustain each other.

The full potential of sexual intercourse is to be seen as a source of life for two people who are relating over time. It is powerless to operate when it is experienced in transient, unreliable and unpredictable circumstances.

(Jack Dominion and Hugh Montefiore, *God, Sex and Love*, page 32)

b) Arguments for the use of contraception

Until fairly recently Protestant churches held a view not dissimilar to the Roman Catholic Church. The primary concern was that contraception would encourage irresponsible behaviour and separate sex from its proper place in marriage. However, most Protestant churches today hold that there is a distinction between sex for unitive purposes and sex for procreation, and these are reflected in the way in which marriage is considered first to be for companionship and second for the creation and raising of children.

There are, in addition, good pragmatic and utilitarian reasons for the use of contraception:

- Couples need to be able to provide for families financially and humans are called to be good stewards of the world's resources.
- A responsible control of family size contributes to the well-being of society.
- Condoms reduce the spread of sexually transmitted infections (STIs) including the Aids virus.

Contraception, therefore, is not necessarily contrary to marriage, but used responsibly is an aid to a loving, intimate relationship between husband and wife.

c) Moral objections to contraception

Besides the natural law objections to artificial contraception other objections include:

- **Respect for people.** Many feminists have argued that contraception has reinforced male control over women. Most forms of contraception have relied on women regulating their fertility, a practice reinforced by men. How many men would choose sterilisation (vasectomy) or would take an equivalent of 'the pill'? Contraception reduces the companionship element in a relationship by making sex an end in itself without consequences. It can diminish male respect for women by thinking that sexual intercourse is all that a relationship is about.
- **Means of power.** Some see the opportunities that contraception gives to institutions to interfere with a basic right of every human being to reproduce. For example, in 1983 the Chinese government issued a directive which stated that women with one child must have IUDs inserted and one spouse in a couple with two or more children must be sterilised. In that year 21 million sterilisations, 18 million IUD insertions and 14 million abortions took place. In the West there have been a number of cases where the local health services have enforced contraception or sterilisation on very young or mentally ill women when they have considered it to be in her 'best interests'.
- **Exploitation.** Many have criticised natural law objections to artificial contraception for causing poorer countries hardship through over population. A response to this is often that the size of family is part of more complex structures. In some cases a small family is simply unable to have the working power to survive. Smaller families destroy the networking that large and extended families enjoy. Poverty is to do with other resources apart from the size of family.
- **Promiscuity.** Contraception can encourage promiscuity and adultery. The lack of serious consequences (that is, through the birth of a child) has legitimised sexual permissiveness and harmed the institution of marriage and the family.

Cross-reference

Read pages 29–31 on feminism and motherhood.

Key word

IUD or intrauterine device is a small piece of plastic or copper inserted into the womb that acts as a contraceptive.

Key word

Promiscuity means casual and indiscriminate sexual intercourse with many partners.

5 Homosexual and non-heterosexual relationships

Key word

Difference in its general sense means accepting a wide range of sexualities. In its philosophical usage *différence* is the endless play of existence that seeks to disrupt any dominant ideology (such as heterosexuality).

a) Difference

For lesbians and gays **difference** describes the fundamental psychological or even spiritual dimension of a wide spectrum of sexualities. For some, these sexualities are analogous to visiting a different country with a very different culture from one's own, which viewed from the outside might seem to be exotic,

Key word

LGBT is the acronym for lesbian (women attracted to women), gay (men attracted to men), bisexual (attracted to men and women or being both heterosexual and homosexual) and transgendered (where a person's biological sex does not match their perceived gender identity).

Key quote

'Pseudo-radicals have no interest in non-monogamous, flamboyant, lesbian, gay and bisexual people.'
ELIZABETH STUART, 'SEX IN HEAVEN' IN *SEX THESE DAYS*, 187

Key question

Are there legitimate grounds for limiting homosexual behaviour?

Key people

Jeremy Bentham (1748–1832) was a philosopher, social and legal reformer. He was a founder of utilitarianism, and as an atheist believed that the law should be revised according to a simple objective human standard: does the law produce the greatest happiness for the greatest number?

frightening and even bizarre, but once encountered become acceptable on their own terms. The preferred collective term today for non-heterosexual difference is **LGBT** – lesbian, gay, bisexual and transgendered people.

As for some feminists, homosexual difference often entails rejecting many heterosexual values, traditions and social structures. For instance, in some countries where homosexual marriage or 'registered partnership' are possible, radical queer theorists, influenced by Foucault's analysis, consider this 'normalising' of homosexual relationships to be entirely false as it is based on heterosexual values that are alien to LGBT identity. For some lesbian feminists, inclusion into patriarchal institutions, such as marriage, is a double enslavement to male patriarchy as well as heterosexuality.

For radical queerists difference means developing lifestyles which are authentic in themselves and avoiding, as Foucault argued, the normalising influence of the dominant social institutions. Elizabeth Stuart, for instance, criticises liberal 'pseudo-radical' Christians who argue for the inclusion of lesbians and gays but on their heterosexual terms and values.

If Stuart and others are correct, homosexual difference and especially lesbianism, when driven by radical feminism, does indeed 'queer' or pose fundamental challenges to ethicists, legislators and theologians alike.

b) Homosexual consent and harm

Fundamental to all liberal societies is whether a human activity should be prohibited because it is harmful and lacks consent. One of the founders of modern liberal thinking, **Jeremy Bentham** gave some considerable thought to the issue of same-sex relationships. His aim was to consider whether anal sex or 'unnatural' acts between men and men, including children, should be considered criminal acts. Bentham argues in *Offences Against One's Self: Paederasty* (c. 1785) that if there is mutual consent for pleasure, then sex between an older man and younger male cannot be wrong:

As to any primary mischief, it is evident that it produces no pain in anyone. On the contrary it produces pleasure, and that a pleasure which, by their perverted taste, is by this supposition preferred to that pleasure which is in general reputed the greatest. The partners are both willing. If either of them be unwilling, the act is not that which we have here in view; it is an offence totally different in its nature of effects; it is personal injury; it is a kind of rape.

(Jeremy Bentham, *Offences Against One's Self: Paederasty* quoted in Blasius and Phelan *We are Everywhere*, page 16)

But Bentham's argument begs the question: is a younger person sufficiently rational to know whether he really is giving his full

consent and even allowing that there may be no physical harm, how is one to judge what kind of mental harms are caused and to whom?

i) Consent as contract

Bentham argues that those who oppose 'unnatural' sexual acts do so on irrational prejudice or superstition (or religion) and not on rational utilitarian principles. Bentham's principle probably strikes many people as being self-evident; providing both parties are in agreement, then that is sufficient reason to justify *any* sexual relationship (including under age sex, prostitution, adultery and LGBT). However, there are difficulties determining whether this notion of consent as contract is entirely coherent. For example, consent:

- May fail to take into account long-term harmful psychological side effects.
- Is contingent on determining whether a person is *capable* of making a reasoned decision.
- May be 'apparent consent'. I may consent to lend you my car because you have asked me as a favour. Nevertheless, it is not something I do willingly because I know you are a bad driver.
- Is only possible when all things really are equal. Marxism claims that until economic and class distinctions are overcome, there will always be one party who stands to gain more than the other.

ii) Moral harm

John Stewart Mill's liberty principle, which was adopted by the **Wolfenden report** in its proposal for the decriminalising of homosexuality, is whether lifestyle choices or 'experiments in living' should be limited because they cause harm. It is easy to see from a utilitarian point of view that if harm is caused to society then overall happiness will be reduced and the law has a legitimate purpose in intervening. But happiness, just as much as harm, is an ambiguous notion and hard to define and judge.

Mill argues that harming oneself is no reason for the state to intervene, but harm to others is sufficient reason to interfere with someone's autonomy:

The only purpose for which power can be rightfully exercised over any member of a civilised community, against his own will, is to prevent harm to others.

(J.S. Mill, *On Liberty*, page 68)

The question is whether self-harm *alone* is a sufficient reason for the law to intervene. Mill states that self-harm might be a necessary condition for intervention; the sufficient condition is when there is lack of rationality (that is, a child or someone who is mentally ill). So, for example, if a person engages consentingly in a strange form of sadomasochistic sexual activity, however harmful this might be, this is

Key question

Why is consensual sex not sufficiently good reason to permit any kind of sexual activity?

Key question

What reasons does the state have to give to prohibit someone's sexual activities?

Key thought

The **Wolfenden report** was produced by Lord Wolfenden in 1960 and was the basis for the 1967 Sexual Offences Act which decriminalised homosexuality.

not a good reason for anyone to interfere. On the other hand, if I could show that self-harm of this kind is irrational, then and only then would I have reason to intervene *even if it did no harm to others*.

iii) Public and social harm

Harm might also occur because it offends other people's moral values and sense of decency. This is far more elusive, and judging when this actually threatens public stability is notoriously hard to define.

- Mill argued that causing moral *offence* to others is not a sufficient reason for outlawing it. However, this begs the question: if many people are offended then might not this be a necessary condition of harm? If it could be shown that homosexuality causes widespread offence, then there is good reason for the law to make it illegal.
- Can one really claim that private consenting acts have no effects on public morality? Some argue that *all* our actions and attitudes affect society. So, for instance, if I enjoy watching hardcore pornographic videos at home, many argue that this will inevitably alter the way I think and treat others. This view challenges Mill's notion of private morality.

There has been a long-standing view that some same-sex relationships cause harm to public decency. In ancient Greece, same-sex relationships between older men were considered to be corrupt. St Paul cites homosexuality as a reason why Roman society had degenerated morally and in the eighteenth century the 'Societies for the Reformation of Manners' was instrumental in the raids and closure of many 'molly houses' or gay clubs because it considered such places as undermining public decency.

iv) Physical harm

The discussion above has so far considered the cultural and moral challenges to a heterosexual society. But there are many who argue that leaving out any specifically moral evaluations, homosexuality (and male homosexuality in particular) is dangerous, as empirical evidence suggests, its sexual practices and lifestyle pose great health risks to its participants and to society. Thomas Schmidt is representative of many conservative Christian thinkers who take this line. In his book, *Straight and Narrow?* (1995), Schmidt concludes:

But no honest look at current scientific research allows us to view homosexual practice as peaceable and harmless. For the vast majority of homosexual men, and for a significant number of homosexual women – even apart from the deadly plague of AIDS – sexual behavior is obsessive, psychopathological and destructive to the body. If there were no specific biblical principles to guide sexual behavior, these considerations alone would constitute a compelling argument against homosexual practice.

(Thomas Schmidt, *Straight and Narrow?*, page 130)

Key question

Are homosexual practices necessarily physically harmful?

Whilst it might be the case that a greater use of higher risk practices such as anal and oral sex have posed a much higher threat to society from Aids and STIs it does not follow necessarily, as Schmidt implies, that society has reason to restrict homosexual practice. To respond consistently with Schmidt's criticisms, society would be compelled to outlaw *all* 'dangerous' practices whether heterosexual or homosexual, however, not only might that be considered impractical but also a gross intrusion into personal sexual liberty.

c) Sexual liberty and law

It is recognised that, for whatever reasons, four to five per cent of the population consider themselves to be gay men or lesbian women. Since 1967, the Sexual Offences Act has permitted homosexual relationships in private for consenting adults over 21; in 1994 the law was amended to reduce this to 18, and reduced again to 16 in 2000. The basis for the 1967 law was the liberal principle that the state should not interfere in an individual's freedom in a private relationship. Many people today argue that although they may personally dislike homosexuality, there is no reason why, as a matter of basic human rights, LGBT people should not be able to express their sexuality. But there is still dispute about whether LGBT relationships should have exactly the same rights and privileges as heterosexual ones, such as the right to marry, have children and so on. Besides general changes in the law, the most decisive change has been the introduction of **civil partnerships** in 2004.

The question of homosexuality poses an important challenge to the liberal principle of law. Should the law permit all types of sexual practice on the grounds that what consenting adults do in private should be left to their own moral discretion even if many are morally offended? Bentham argued on utilitarian grounds that prohibition could only increase suspicion and fear, but there is also the question of equality and rights to consider.

i) Liberty

Mill states the liberal principle in this way:

The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it. Each is proper guardian of his own health, whether bodily or mental and spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves than by compelling each to live as seems good to the rest.

(J.S. Mill, *On Liberty*, page 72)

Liberty may be defined in two ways: **negative liberty** is the least interference of the state or anyone else to restrict individual behaviour, and **positive liberty** is the freedom to fulfil one's potential

Key question

Should homosexuals have exactly the same rights as heterosexuals?

Key words

Civil partnerships give legal rights and protections to same-sex couples in similar ways as marriage does for heterosexual couples.

Key word

Positive and negative liberty. Negative liberty is freedom from interference from others. Positive liberty is the active involvement of citizens in the control of state.

by being actively involved in government. Mill's position, expressed in the quotation on the previous page, is largely a defence based on negative liberty. Mill supports negative liberty especially when it comes to 'experiments in living' because, in utilitarian terms:

- variety of lifestyles enhances the richness and enjoyment of society
- liberty allows individuals to 'flourish and breathe' according to their own wishes and rational choices
- no one can have a monopoly on morality; people should be allowed to make their own moral choices (even wrong ones)
- tolerance makes for a happier society.

There are many responses to Mill's notion of liberty and in particular to 'experiments in living', which would today include LGBT practices:

- Variety does not necessarily make for a happier society. A community working within common values and aims and sense of purpose might feel freer.
- A profusion of sexual LGBT lifestyles may simply lead to confusion, distrust, anxiety and unhappiness.
- It does not follow that freedom of all forms of sexual expression makes society a richer and more imaginative place.
- Mill's negative liberty presumes that people are their own best judges. But even he acknowledges that this is not always the case and we need 'competent judges' who have better and more expert knowledge to decide what is best for society as a whole. Some forms of queer behaviour are deliberately subversive and should not be recognised by law.

ii) Civil Partnerships Act

The major change in the UK has been the introduction of the Civil Partnerships Act (2004) which became law in 2005. A civil partnership means giving legal recognition to a same-sex relationship. A couple may register their partnership at a registry office or other approved place.

- Anyone between the ages 16–17 must give written consent.
- The documentation enables the couple legally to adopt a common surname.

A civil partnership may be ended by:

- a 'dissolution order' which dissolves a civil partnership on the ground that it has broken down irretrievably
- a 'nullity order' which annuls a civil partnership that is void
- a 'presumption of death order' which dissolves a civil partnership on the ground that one of the civil partners is presumed to be dead

- a 'separation order' which provides for the separation of the civil partners.

(*Civil Partnership Act* (2004), Chapters 1, 2, 37)

Civil partners have equal treatment to married couples in a wide range of legal matters, including:

- tax, including inheritance tax
- employment benefits
- most state and occupational pension benefits.

(www.direct.gov.uk/en/RightsAndResponsibilities)

A civil partnership is different from marriage because in a marriage registration takes place when the couple exchange spoken words, whereas a civil partnership is registered when the second civil partner signs the relevant document.

6 Normative ethical responses to sexual ethics

a) Natural law

i) Heterosexuality

In traditional natural law, marriage, as Augustine argued, is a sacrament ordained as 'containment' for sin and to control the sexual urge. He also took seriously God's command in Genesis that humans are to 'be fruitful, multiply, and fill the earth' (Genesis 1:28). Humans are therefore 'naturally disposed to pairing'; marriage allows the proper ordering of sex, and is the right environment in which to raise children. Aquinas believed the primary purpose of sex was reproduction, and so by extension (as a secondary precept) the purpose of marriage is to provide a stable environment for raising children. It is also the basis for a relationship based on trust, mutual obligation and stability. More controversially, he believed marriage completes woman as, 'the male is both more perfect in reasoning and stronger in his powers'.

Roman Catholicism today continues the natural law teaching. The *Catechism* states that 'the vocation to marriage is written in the very nature of Man and Woman as they come from the hand of the creator'. Marriage is the basis of a healthy life and family, and the building block of human relationships and strong society. It provides the moral basis for the development of children by providing fellowship, love and grace. Roman Catholics highlight the fact that sex within marriage fulfils both a unitive and procreative function. For this reason the use of artificial contraception is intrinsically wrong. In addition to natural law, Roman Catholic doctrine also holds that marriage is a sacrament. The couple administer the

Cross-reference

Read pages 52–54 on the strengths and weaknesses of natural law teaching on contraception and in particular Jack Dominian's views.

sacrament of marriage to each other when they consent to live together in faithful union for the rest of their lives. A new and indissoluble bond is formed.

Cross-reference

Read pages 45–48 on divorce and annulment.

The Catholic Church does not recognise the possibility of divorce – except as a form of separation where marital reconciliation appears impossible, or the relationship appears to have broken down irredeemably. If a marriage has taken place then no one is capable of dissolving it by decree. The implication of this is that remarriage after separation constitutes adultery.

However, the most common response in a range of situations is to say that the marriage never actually took place ontologically, and there are a number of diriment impediments in which an annulment is granted by the Church. These include non-consummation, underage unions, forced marriage, consanguinity (blood relationship) or affinity (related to each other through law). It can also be granted on the basis that one of the partners failed to consent to the marriage vows through a lack of reason, judgement or psychological ability.

Cross-reference

Read Michael Wilcockson's *Sex and Relationships* pages 83–84 for more detail on annulment.

ii) Homosexual and non-heterosexual relationships

The Roman Catholic Church regards homosexuality as contrary to both Scripture and natural law. Homosexual sex is regarded as an improper and misdirected use of the sexual organs given the impossibility of conception. Homosexuals are called to **chastity**, disinterested friendship and self-mastery. The Church has declared homosexuality 'intrinsically disordered':

Key words

Chastity means to refrain from sex.

The number of men and women who have deep-seated homosexual tendencies is not negligible. They do not choose their homosexual condition; for most of them it is a trial. They must be accepted with respect, compassion and sensitivity ...

(*The Catechism of the Catholic Church*, page 505)

The Church's more developed theology of the single life (in the priesthood for instance) enables it to distinguish a fulfilled (though homosexual) life from a physical sexual relationship. The latter is confined through marriage exclusively to heterosexual couples.

Therefore, homosexuality is never a possibility in traditional natural law teaching because the purpose of sex, as Aquinas established using the principle of the 'emission of semen' (or the purpose of sperm), must always intend to be procreative:

Key quote

'Homosexual persons are called to chastity. By virtues of self-mastery that teach them inner freedom, at times by the support of disinterested friendship, by prayer and sacramental grace, they can and should gradually and resolutely approach Christian perfection.'

THE CATECHISM OF THE CATHOLIC CHURCH, 505

It is evident from this that every emission of semen, in such a way that generation cannot follow, is contrary to the good of man. And if this be done deliberately, it must be a sin. Now, I am speaking of a way from which, in itself, generation could not result; such would be any emission of semen apart from the natural union of male and female ... Moreover, these views which have just been given have a solid basis in divine authority. That the emission of semen under conditions in which

offspring cannot follow is illicit is quite clear. There is the text of Leviticus (18:22–23) 'thou shalt not lie with mankind as with womankind ...'

(Aquinas, *Summa Contra Gentiles*, 3.2. 122, quoted in Robin Gill, *A Textbook of Christian Ethics*, pages 484, 466)

Many find the natural law teaching on homosexuality to be unsatisfactory. For instance:

- The notion of a *telos* is ambiguous. Sex may equally be regarded purposeful for recreational and loving ends. If the lack of intent to reproduce does not condemn a heterosexual relationship, it could equally be applied to a homosexual one.
- Aquinas' argument is a judgement on *all* sexual genital acts that are conducted without the intention to reproduce. This is not a judgement on homosexual orientation as such but all (including heterosexual) anal/oral sex and use of artificial contraception.
- Aquinas' argument does not explicitly condemn lesbian sex.
- Modern scientific consensus does not regard homosexuality to be a deviant pathology. Being in a minority is not in itself contrary to any natural law, any more than being left-handed.

At the heart of the homosexuality debate is the central issue of what constitutes normal sexual behaviour. At the start of this chapter we considered Foucault's analysis that 'normal' is usually an idea established by those who have a vested interest in controlling society by supporting a *scientia sexualis*. According to Foucault there is no homosexual nature, just sexuality. For these reasons Foucault is suspicious of the very limited procreative purpose of sex suggested by Aquinas.

However, for some theologians natural law can still provide an important moral basis for gay relationships once the purpose of being human is expanded to be more than merely procreation. The process theologian **Norman Pittenger**, for example, argues that:

We do not know the 'origins' of homosexuality: neither do we know those of heterosexuality. Both are present in every culture; both are found, by those who are involved, to be fulfilling and satisfying; lack of opportunity to accept one's primary inclination, and the rejection of the possibility of acting thereupon, can only be recognized as inhuman and inhumane. To deny opportunity and to condemn acting upon it would be tantamount to asking someone to reject something basic to his or her nature and hence to live an inhuman life ... I suggest that the 'controls' for homosexual expression of human sexuality are the same as those for its heterosexual expression. They are based upon the centrality and primacy of love – love which is mutuality, sharing, giving and receiving, life together in the most radical sense of the phrase.

(Norman Pittenger in *Towards a Theology of Gay Liberation*, pages 87–88)

Key quote

'It is evident from this that every emission of semen, in such a way that generation cannot follow, is contrary to the good of man.'

AQUINAS, *SUMMA CONTRA GENTILES*,
3.2:122

Cross-reference

Read pages 42–43 on Foucault and sexuality.

Key people

Norman Pittenger (1905–1997) was an Anglican priest, professor at the General Theological Seminary in New York and later a member of the Divinity Faculty, Cambridge University. He was also Vice-President of the Campaign for Homosexual Equality.

b) Revealed ethics

i) Heterosexuality

The Bible teaches very little explicitly on marriage. It says more about divorce and from this we have to infer what this implies about marriage. The Bible often equates marriage to be parallel to the God–human covenant relationship. There are many ways to understand this: trust, obedience and fidelity, but love is paramount. Hosea described Israel's failure to carry out the covenant to be like his failed marriage, where he likened his wife to a prostitute.

New Testament teaching on divorce, however, is complex. Jesus' teaching appears to reinforce the notion that marriage is for life and that there can be no grounds for divorce. But in Matthew's Gospel Jesus allows for an exception. He says, 'And I say to you: whoever divorces his wife, except for unchastity, and marries another, commits adultery' (Matthew 19:9).

The problem here is the interpretation of 'unchastity' or the Greek word '*porneia*' which even in Jesus' day was much debated by rabbis. A strong version is represented by Rabbi Shammai who interpreted it to mean adultery. But Rabbi Hillel's weak version rendered *porneia* to refer to any situation where a wife had failed in her contractual duties to her husband. Jesus appears to have sided with Shammai, although he extended divorce to be the prerogative of both parties not just of the man. But it wasn't until the Reformation that **Martin Bucer** famously championed the weak version. Bucer had argued for a companionate view of marriage well before the church and society had adopted it. He therefore suggested that any relationship which had become unpleasant, hurtful or just 'broken' constituted *porneia*. Luther defined it in terms of desertion, that is the clear failure to keep to the duties of husband and wife to each other.

Protestants today share with Catholics many of the ideas about the nature and purpose of marriage. They do not, as a whole, hold an essentialist view of sacrament, and downplay both natural law teaching and Church tradition in deference to the word of God in scripture. Protestants emphasise the importance of mutual faith and companionship in a relationship, and the duties of husbands, wives and children set out in the various 'household lists' in the New Testament. All duties are based on love as expressed in Christ's relationship to the church. These texts often pose problems today, even for conservative theologians, because the wife appears to be submissive to her husband. Even so, some theologians argue that by first-century standards they offer a radical breakthrough by demanding that husbands should love their wives.

Cross-reference

Read Michael Wilcockson's *Sex and Relationships* pages 98–102 for a more detailed analysis of biblical teaching on marriage and divorce.

Key quote

'Go take to yourself a wife of harlotry, for the land commits great harlotry by forsaking the Lord.'

HOSEA 1:2

Key word

Porneia is from the Greek translation of the Hebrew *erwat dabar* from the book of Deuteronomy 24:1. In English it is often translated as 'indecent' or 'improper'.

Key people

Martin Bucer (1491–1551) played a leading role in the reformation. His liberal views on toleration eventually meant he had to flee Strasbourg and he settled in England where he later died.

Key quote

'As the church is subject to Christ, so let wives also be subject in everything to their husbands. Husbands, love your wives, as Christ loved the church.'

EPHESIANS 5:24–25

ii) Homosexual and non-heterosexual relationships

Homosexuality presents all the Churches with a considerable moral and spiritual challenge because, as the following extract from the Church of England report *Issues in Human Sexuality* (1991) illustrates, the biblical view is that heterosexual marriage is the normative place for sex:

There is, therefore, in Scripture an evolving convergence on the ideal life-long, monogamous, heterosexual union as the setting intended by God for the proper development of men and women as sexual beings. Sexual activity of any kind outside marriage comes to be seen as sinful, and homosexual practice as especially dishonourable.

(*Issues in Human Sexuality*, page 18)

However, the report goes on to say that God does not condemn homosexuals because 'God loves us all alike':

This leads directly to our second fundamental principle, laid upon us by the truths at the very heart of the faith; homosexual people are in every way as valuable to and as valued by God as heterosexual people. God loves us all alike, and has for each of us a range of possibilities within his design for the universe.

(*Issues in Human Sexuality*, page 41)

Conservative Christians argue that the Bible condemns all forms of homosexual practice because it breaks the covenant relationship between God and his people.

- The towns of Sodom and Gomorrah were destroyed by God because of their practice of homosexual rape (Genesis 19:1–8). This story in particular has become synonymous in Christian tradition for the evil of homosexual sex.
- Leviticus 18:22 states that 'If a man lies with a male as with a woman, both of them have committed an abomination; they shall be put to death'.
- In 1 Corinthians 6:9–11 St Paul considers that 'sexual perverts' – that is, homosexuals – cannot enter the Kingdom of God. The two Greek words used here to translate sexual perverts ('malakoi' and 'arsenkoitai') represent the passive (soft) and active partners in the homosexual relationship.
- Paul condemns homosexual and lesbian practices, which he uses to illustrate Gentile depravity in Rome and the reason for God's judgement. He argues that these practices not only go against the natural order but conscience (Romans 1:18–32).

Liberal Christians argue that the God of love includes many forms of sexuality. They argue that when the Bible is interpreted in its historical

Key quote

'Where are the men who came to you tonight? Bring them out to us, that we might know them.'

GENESIS 19:5

Key quote

'And you shall not lie with a male as with a woman; it is an abomination.'

LEVITICUS 18:22

Key quote

'Men committing shameless acts with men and receiving in their own persons the due penalty for their error.'

ST PAUL, LETTER TO THE ROMANS 1:27

and sociological context, it is clear that whilst certain homosexual practices are condemned, homosexual *relationships* are not.

- Jesus preached to all kinds of people and did not distinguish between them because of their sexual orientation.
- Sodom and Gomorrah are condemned because of all kinds of social wickedness, including violence against strangers and rape (homosexual and heterosexual). Ezekiel 16:49–50 cites Sodom as a place whose abominations included failure to help the poor and needy, and in the New Testament Jesus chooses Sodom's notorious lack of hospitality as an example of the events which will be particularly judged on the Day of Judgement (Matthew 10:14–15).
- Leviticus 18 condemns all things which upset the natural order of things – a field must contain one kind of seed and a garment one kind of fibre. Homosexuality is included in the same list and probably refers to the homosexual *prostitution* of the Canaanites, not *gay relationships*. Furthermore if homosexuality is condemned so also are children who curse their parents and those who wear clothes of mixed fibres. The purpose of Leviticus 18 is to maintain religious purity and this is not exactly the same as moral purity.
- St Paul is referring to two practices in 1 Corinthians 6 which the translation of the two Greek words ('malakoi' and 'arsenkoitai') as 'sexual perverts' fails to do justice. It in fact refers to masturbation (malakoi) and male prostitution (arsenkoitai) – not the same as having a gay lifestyle. At the end of Romans 1, Paul also includes a list of other sins against the natural social order: covetousness, malice, envy, gossiping, etc.
- In his letter to the Romans, Paul persuades Jews to convert to Christianity by arguing that the 'unclean' Gentile practice of homosexuality is still condemned. However, he then proceeds to show that as cleanliness laws have been superseded by Jesus' death, so homosexuality is no more a sin than failing to keep to the food laws.

c) Kantian ethics

i) Heterosexuality

Kant gave many lectures on sexual ethics and whilst his arguments largely support traditional Christian teaching his particular idea of the rational and universal 'moral law' developed it in several subtle ways.

Marriage is based on promise keeping and duties, the two fundamentals of Kantian ethics. What is important is the nature of the duties of husband and wife to each other. Kant argues that sex either out of a sense of duty or from lust fails to treat either husband or wife with the respect that moral law requires. So, sexual

Key quote

'Condemnation of violence, even where it appears likely that it would have included homosexual rape, can hardly be equated with a universal condemnation of homosexuality or even homosexual acts ...'

WILLIAM COUNTRYMAN, *DIRT, GREED AND SEX*, 31

Key quote

'I know and am persuaded in the Lord Jesus that nothing is unclean in itself; but it is unclean for anyone who thinks it unclean.'

ST PAUL, LETTER TO THE ROMANS, 14:14

Key question

On what grounds does a Kantian justify marriage and divorce?

relations must be freely given, absolutely equal and mutually consenting and if any of these are infringed then the couple become no better than animals. Most importantly, as both would be treating each other as a means to an end, neither would truly respect each other as persons. Finally, marriage must be companionate not merely for sex. If it were merely for sex then as soon as people became too old for sex they would cease to have a reason to be married. This is to misunderstand the nature of the promise on which marriage is predicated, which is permanent, unconditional and lifelong.

Kant gives two reasons for divorce: adultery and impotence. Adultery breaks the promise on which marriage is based and indicates that 'one party thereby seeks to withdraw from the primal duty' (Kant, *Lectures*, page 379), and impotence makes it impossible to have a reciprocal sexual relationship. (This doesn't refer to impotency later in marriage but undisclosed impotency before marriage). Prostitution, one-night stands and promiscuity are therefore unsupportable because the relationship is not between equals and based on mutual respect. A relationship based on lust treats the other person as a means to an end; it demeans both people.

It follows from this that nobody can make themselves into an object of the other's enjoyment if it is injurious to their personality, and that strictly incumbent obligation to consummate a promise of carnal intercourse cannot be admitted.

(Immanuel Kant, *Lectures on Ethics*, page 378)

Kant does not discuss cohabitation, but we have already considered why a Kantian might argue for substitute marriage cohabitation, whilst rejecting other forms of cohabitation because they are not founded on an unconditional mutual promise.

ii) Homosexual and non-heterosexual relationships

It is because Kant has established that the only place for sexual intercourse is mutually within marriage that he argues that homosexual sex cannot be other than lust and 'demeans man below the beasts' (Kant, *Lectures*, page 381).

But does Kant's own judgement on homosexuality necessarily follow? If we consider that homosexuals are rational, autonomous beings, and gay sex can be expressed in a loving, exclusive, mutually committed manner, then there is no contradiction in accepting the validity of homosexual relationships within the moral law. However, this view doesn't take into account gay and lesbian ideas of difference and might be accused of trying to normalise homosexuality by fitting it into an essentially heterosexual model.

Key quote

'In general, a promiscuous desire with unfettered inclination to choose any object for satisfaction of its lust, cannot be allowed to either party.'

IMMANUEL KANT, *LECTURES ON ETHICS*,
380

Cross-reference

Read page 51 on a Kantian analysis of cohabitation.

d) Virtue ethics

i) Heterosexuality

The value of virtue ethics is that in the discussion of sex, what is emphasised is the internal aspect that determines what kind of people we want to be and what qualities contribute best to human flourishing. The great weakness, it is argued, of utilitarian and natural law approaches to sex is that they concentrate on what effect actions have and whether they achieve their appropriate end, whilst entirely forgetting that actions or sexual practices are the outcome of the kind of people we are and in turn shape what kind of society we wish to live in.

For example, the utilitarian might argue that there is no harm in prostitution, providing sex is consensual and safe. On the other hand, the natural law ethicist might well argue that as prostitution is non-procreative and outside marriage, it disorders society and is therefore intrinsically wrong. But neither argument considers what kind of person practises prostitution and what this says about his or her relationship with people in the wider community. If virtue is about developing good habits and the skills (*phronesis*) of living well, sex has to be understood within the context of all human interactions.

The virtue that is often overlooked but which virtue ethicists often consider to be fundamental to making ethical decisions is friendship. But how is friendship to be defined and how does it operate? Below are two original ideas of Aristotle (who represents classical thinking) and Jeremy Taylor (who represents Christian thinking).

- **Aristotle and *philia*.** For Aristotle, friendship (*philia*) is the basis for all the virtues (such as courage, altruism, non-possessiveness): those in authority have a particular responsibility to set an example through the practice of friendship. Friendship requires self-control (*phronesis*) over irrational passions (such as lust) and just treatment, even for those whose status is different from one's own. Friendship begins with self-love. As the virtues govern the kind of character we should become, no one who loves themselves wishes to hurt themselves and so by extension the good person does not aim to harm his neighbour. Complete friendship (*teleia philia*) depends on mutually willing each other's good. There are other forms of friendship (for example, business partners) that depend on what goods are gained or exchanged – for lovers that might include erotic love or pleasure – but whilst these are not bad they lack the unconditional, controlled desire for good of *teleia philia*.

Key question

How is friendship as a virtue to be defined and applied?

Cross-reference

Read pages 96–97 for a more detailed account of Aristotle on friendship and race.

Key quote

'Humility and charity are the two greatest graces in the world; and these are the greatest ingredients which constitute friendship and express it.'

JEREMY TAYLOR, A DISCOURSE OF THE NATURE AND OFFICES OF FRIENDSHIP (QUOTED IN CARMICHAEL FRIENDSHIP, 142)

Key people

Jeremy Taylor (1613–1667)
Anglican theologian best remembered for his influential *Holy Living and Holy Dying* (1650–1). His essay *A Discourse of the Nature and Offices of Friendship* (published in 1657) combined Christian and classical thinking about friendship in a new way.

Key quote

'Jonathan made David swear again by his love for him; for he loved him as he loved his own soul.'

1 SAMUEL 20:17

Key thought

Queer Nation as a movement emerged in 1990 in New York. Its activists call for the de-heterosexualisation of society through actions such as queer nights out in straight clubs.

- **Jeremy Taylor and love.** For Taylor, although *philia* in its classical sense of friendship is missing from the New Testament, in fact it exists in a new form of 'charity' or love; as Taylor says, 'Christian charity is friendship'. True friendship is not exclusive to Christians because Christ's life and example was to renew friendship as it was originally intended to be – universal, generous, sacrificial and equal. Friendship is achieved through humility, prayer, doing no harm, desiring and doing good. Unusually for his time Taylor presents marriage as the paradigm or 'queen of friendships', because it is the expression of the whole human – physically, emotionally, spiritually and morally. Married partners should share their friends and enjoy their company including friendship between men and women as equals. All friendships are in a sense 'marriages', however imperfect they might be, because only heaven is the perfect place of the 'religion of friendship'.

ii) Homosexual and non-heterosexual relationships

If virtue ethics considers that human relationships have to be viewed holistically, that is physically, mentally and spiritually and in relation to others, what does this imply for same-sex relationships?

First, virtue ethics questions the narrow way in which same-sex relationships have been defined. For centuries, men and women have enjoyed same-sex relationships without thinking of them in specific sexually orientated terms. As an ancient way of thinking, virtue ethicists can show that, historically, intense same-sex friendships have often displayed more fully the virtues of love and mutual respect than, for example, heterosexual friendships. Many examples from before the eighteenth century (the time when same-sex relationships begun to be regarded as perversions) were intensely physical and emotional without being regarded as odd or dangerous. A paradigm that was often referred to was Jonathan and David's intense friendship in the Old Testament.

Virtue ethics, therefore, ensure that in the spectrum of relationships, intense same-sex friendships have an important place in human relationships without the necessity of categorising them as being gay, lesbian or bisexual.

Second, and much more problematic for virtue ethicists, is to what extent the notion of gay and lesbian difference or *différence* make it possible to develop the idea of *koinonia*/community. Some radical queer theorists such as **Queer Nation** deliberately subvert or queer the dominance of heterosexuality by arguing that sexual freedom is not a private experience but should be public through

de-heterosexualisation of society. Other queer theorists are separatists and have founded their own queer only communities based on specific virtues such as exuberance and permissiveness. One can see how these virtues might offer a radical reinterpretation of Aristotle's *philia*, beginning with self-love (of one's own sexuality) and recasting mutuality as in a celebration of sexual difference. But for others these are not virtues but vices that subvert values of decency and, above all, threaten the very nature of a civil society.

e) Utilitarianism

i) Heterosexuality

There can be no particular utilitarian notion of marriage. By the analysis of the marriage act, the utilitarian is more likely to judge marriage in terms of the quality of relationship that marriage as an institution might offer. Increasingly people today do not sharply distinguish between cohabitation and marriage and the trend is for couples to live longer together before marriage. As utilitarians do not share the Christian view that marriage is a sacrament or covenant with God, then the onus is on the couple to decide on the scope and commitment of their relationship.

From a preference utilitarian point of view, what matters is the mutual sharing of interests. For some, marriage may be preferable to cohabitation because it offers better protection of rights and duties by the state and its formality offers long-term security. But for others, who have no long-term view of a relationship, their interests are best served by the informality, flexibility and open-endedness of cohabitation.

Finally, there is much controversial sociological evidence as to whether cohabitation or marriage produces happier people. Some argue that in cohabitation relationships there is a higher rate of alcoholism, increased death rate due to cancer, higher abortion rate and greater frequency of sexually transmitted diseases. We have also considered that some believe that cohabiting couples are more likely to divorce if they marry, causing pain for the couple and any children.

In the face of lack of firm evidence, the utilitarian, therefore, does not give priority to cohabitation or to marriage. But how does the utilitarian regard adultery or an affair outside the relationship? The utilitarian does not consider adultery to be intrinsically wrong and it can perhaps only be judged on what the couple establish themselves. Some might have an **open marriage** which is non-exclusive and where the couple agree that the other can have extramarital sexual relationships. Whereas this may work

Cross-reference

Read pages 51–52 on the cohabitation effect.

Key question

Does a utilitarian necessarily consider adultery to be wrong?

Key word

Open marriage is where both partners agree to allow extramarital relationships without being considered unfaithful.

Key word

Monogamy means being married to one person at a time or having a sexual relationship with only one person.

Cross-reference

Read pages 55–56 on Bentham and gay sex.

Cross-reference

Read pages 55–58 on harm and consent.

for some, many find this unsatisfactory as it can cause mistrust and jealousy. For the rule utilitarian, as **monogamy** or exclusive sexual relationships bring about greater satisfaction, then there is sufficient reason that there should be a rule that prohibits adultery or sexual affairs.

ii) Homosexual and non-heterosexual relationships

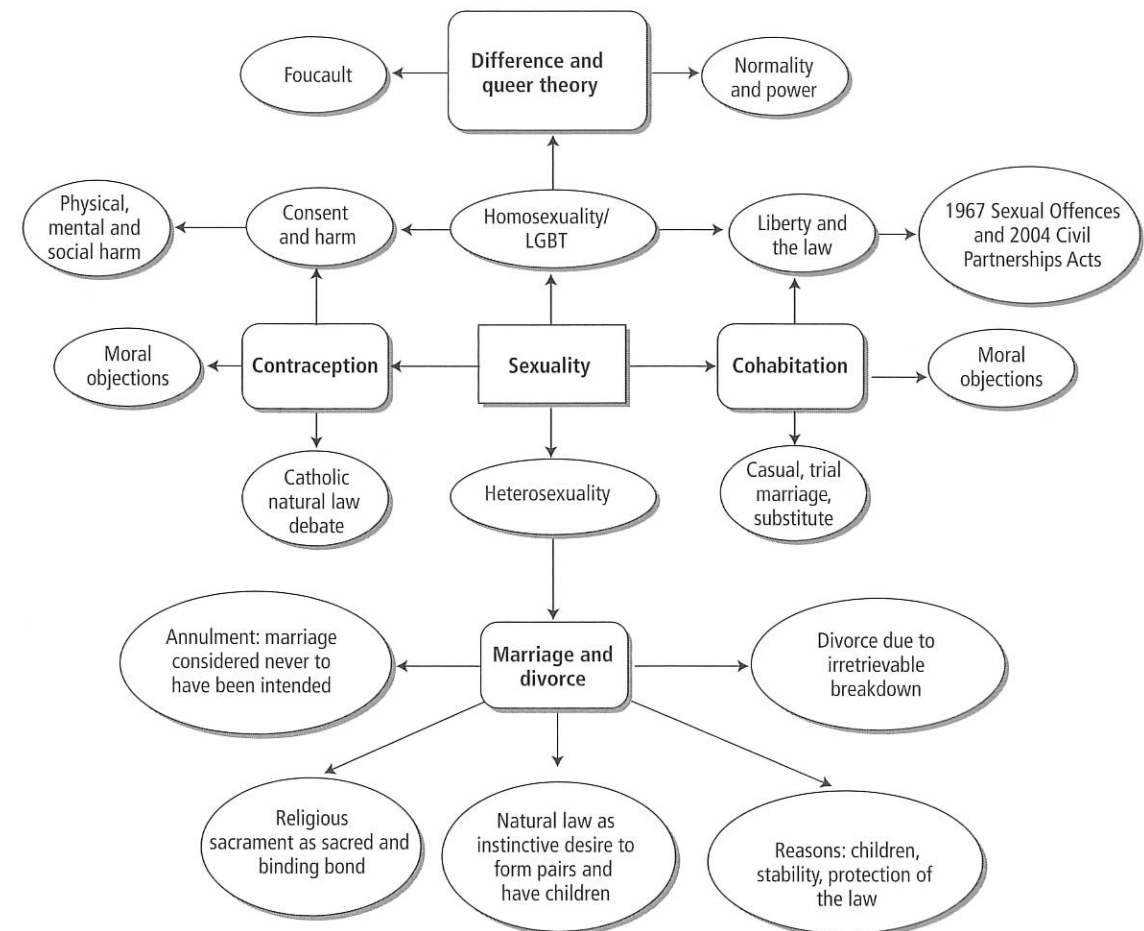
We have already considered Jeremy Bentham’s bold arguments for same-sex relationships. The key requirement for all utilitarians is that both partners consent to the relationship and avoid harm. Utilitarians argue that rejection of homosexuality is frequently based on irrational homophobic prejudice, superstition and religious tradition, none of which take seriously the happiness or interests of same-sex couples.

Moreover, as Foucault argued, satisfying preferences for different types of sexual expression does not cause society to collapse, if anything the reverse might be true. In a liberal society, as John Stuart Mill argued, people have the right to rule their own bodies. A society that encourages a wide range of ‘experiments in living’ is good because diversity gives individuals greater scope to express themselves according to their sexuality.

However, as in all utilitarian calculations, an assessment has to be made of pain or harm caused. Some argue that if a sufficient number of people are morally outraged by the idea of homosexuality, then based on the greatest number principle, it should be made illegal.

Some, as we have seen, consider that some homosexual sexual behaviour is physically harmful and others argue that children brought up by a gay or lesbian couple are likely to suffer from the prejudices of some heterosexual people or be emotionally confused. But those who reject these criticisms argue that if homosexuality is wrong because of certain sexual practices (such as anal and oral sex) then many heterosexual relationships should also be criticised for using the same acts. Finally, there is no conclusive evidence that children suffer by being brought up by same-sex parents; what matters is the quality of relationship.

Summary diagram



Study guide

By the end of this chapter you should have considered whether 'normal' is an appropriate term to judge different types of sexual behaviour. You should also be able to discuss in what ways marriage might be considered different from cohabitation and which might be considered more desirable. You should also be able to discuss the reasons for and against contraception. Finally, you should be able to explain and evaluate various types of non-heterosexual practices.

Essay questions

1 To what extent are issues of sexuality best evaluated by virtue ethics?

The essay might begin by explaining that many ethical theories fail to acknowledge the complex relationship between human actions and character. The argument might commend virtue ethics because it is about the skill of developing good habits. This might be illustrated with Aristotle's idea of friendship as the basis for love and Taylor's argument that marriage is a form of friendship. The qualities of friendship should be discussed. Friendship might also be discussed as a way of developing same-sex ethics.

However, it might be felt that virtue ethics does not offer a substantial critical means for evaluating sexual behaviour; queer 'virtues', for example, might be felt to undermine the values established through natural law or Kantian ethics.

Further essay questions

- 2 'From a utilitarian point of view cohabitation is just as good as marriage.' Discuss.
- 3 a Explain the moral issues in the use of artificial contraception.
3 b 'It is only natural law which objects to contraception.' Discuss
- 4 a Explain why Michel Foucault argued that there is no such thing as 'normal' sexuality.
4 b 'There are some sexual practices which are simply wrong.' Discuss.

Revision checklist



Can you give definitions of:

- discourse
- monogamy
- irretrievable breakdown
- adultery
- LGBT
- chastity.

Can you explain:

- what Foucault means by the *ars erotica*
- what Christians mean when they describe marriage as a sacrament
- the difference between divorce and annulment
- the problems over defining consent and harm in sexual relationships.

Can you give arguments for and against:

- cohabitation
- natural law teaching on contraception
- liberal Christian teaching on homosexuality.