
A table of contents for *Anvil* can be found here:

https://biblicalstudies.org.uk/articles_anvil_01.php

I Will: the Debate about Cohabitation

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The language of contract and covenant

'South America?'
'That's abroad, isn't it?'
'It all depends on where you stand.' *(The Goon Show)*

'Abroad' seems a neutral term — either you are or you are not. Suppose, though, that your nation possessed a political claim on South America. It would not be 'abroad', even though you were on a different continent. It would be 'home', as well as where you lived. You might require a little *Lebensraum*. Or suppose your nation believed itself culturally superior to those with differing histories or peoples. The word 'abroad' would convey with it the hint of disdain. It would be, for you, a moral description.

The 'controversial status of moral descriptions' has, strangely, been ignored for too long in Christian ethics, argues a new book, *Reading in Communion*, by Stephen E. Fowl and L. Gregory Jones.[1] Yet they are fundamental to ethical method. Too much attention has been given to the decisions that isolated individuals make alone, as though they were independent of all other social or environmental backgrounds. 'There is no way to talk about moral decisions apart from people's contexts, convictions and commitments.... A preoccupation with decisions made by isolated individuals distorts our conceptions of ethics in general and the relation of Scripture to Christian ethics in particular. An adequate conception of ethics requires attention to issues of character and the formation of character in and through socially-embodied traditions.'[2]

Why is this controversial? What is 'abroad' in one community may not be so in another. Take marriage: Fowl and Jones argue that Christians have an important stake in insisting that marriage is a covenant, not a contract. For 'the description of marriage as such comes from modern liberal societies, and... erodes the sense of commitment and fidelity that has long characterized Christian uses of the term "marriage". It is significant that many of the problems associated with "marriage" in contemporary American society arise from presumptions that the relationship is a contractual agreement entered into by separate individuals. In this context, we have seen the

1 SPCK, London 1991, p 8.
2 Ibid., p 9.

development of that virtual guarantee of a future divorce — the 'pre-nuptial' agreement. By contrast, Christians have a stake in preserving the description of marriage as a covenant and the virtues of character that are the ingredients in such a description (e.g. fidelity, courage, hope, love).'[3]

This debate has an important bearing on recent critiques in this country of the practice of 'cohabitation' — 'any unmarried, heterosexual couple who consistently share a common residence and regularly engage in sexual intercourse'.[4]

Do some of these relationships exhibit enough features of a registered marriage to be treated as such in English and Welsh law? Is this a morally appropriate way of preparing for marriage? What notion of 'covenantal relationship' is the Church upholding in an age when the effects of damaging, or broken, partnerships are experienced ever more keenly? What does this say for the development of human character? Is now the right time to speak again of 'living in sin'? Or does such language fail to communicate a true understanding of what is involved?

It sometimes seems as though this debate is conducted in terms which relate solely to two individuals contemplating 'sex outside marriage' regardless of the context, convictions and commitment of where or who they are. Yet in fact it is taking place upon a much wider canvas:

1. the growth of a vigorous economic and ethical 'individualism' which understands social, moral and market relationships as no more than simple arrangements between individuals, and society as no more than the bare aggregate of these dealings;

2. the sense of 'moral panic' concerning the development of human character in some settings — where it is felt that individuals are alienated from the consequences of their actions — with the associated fear that a community has failed in the moral and psychological development of its young people;

3. the search for a social ethic which affirms the integrity of both the individual and the communities in which all individuals live and move and have their being;

4. an appropriate form of social and economic order which promotes the welfare of all, and protects especially the interests of the weak, and those whose actual freedom is compromised by the apparently free actions of others;

5. the deployment of limited financial resources in deciding who, for example, should benefit most readily from fertility treatment and whether a moral judgement should be made according to the marital status, living arrangements and background of the parents.

A. H. Halsey combines many of these anxieties in his recent defence of the notion of the nuclear family:

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3 Ibid., pp 12f.

4 M. D. Newcomb, 'Heterosexual Cohabitation Relationships', in S. Duck and R. Gilmour, eds, *Personal Relationships 1 : Studying Personal Relationships*, Academic Press, 1981, p 132 (cited in Gary Jenkins, *Cohabitation : A Biblical Perspective*, Grove Books, Nottingham 1992, p 4).

> There is this contraption based not on negotiated, individualistic, hedonistic notions but on the idea that there is something bigger than you or me — a sacred institution. And here we find it invaded comprehensively by all the notions of contract. We'll get married provided it suits you; if it doesn't, you can clear off, ditto for me. We can start a child going; we might or might not go on with it; you can believe that I am a net liability. And it seems to me that it is a hopeless situation, that we're in fact going to ruin the future, not make it; and I have this horrid feeling that it's based on quite false conceptions about what's good in the world.[5]

The Church of England's Board for Social Responsibility has commissioned a working party to engage in a far-reaching debate about the role of the family. At the debate's fulcrum is the 'marriage relationship' — the 'life-creating partnership' — and what values best express the place which partly creates, and is partly created by, the community within which, under God, our individual and collective identities take shape. I shall explore this question by examining the network of ideas suggested by the terms 'contract' and 'covenant' in the recent debate on cohabitation.

The context

There is a fairly strong case for saying that cohabitation today is a form of customary betrothal. A report summarised for the Joseph Rowntree Foundation in May 1993 revealed that most cohabitants were aged between 20 and 35. The partnership tended to last no more than five years. The result was either marriage or the end of the relationship.[6]

One in two of all cohabiting couples are 'youthful, never married, childless', states the Kiernan/Estaugh report. Drawing on the British Social Attitudes Survey, it discovered that four out of ten of the British public would advise young people to live together before marrying (two out of three people aged 45 would advise it). The report suggests that, if the trend continues, pre-marital cohabitation may become 'an institutionalized part of the mating process, in the same way that the period of engagement used to be'. Certainly, the trend is dramatic. The Office of Population and Censuses and Statistics states that 53 per cent of women cohabited with their future husband, at least for a short time, in 1987, compared with 36 per cent in 1980.[7]

Of course, the term 'cohabitation' embraces a confusing range of living

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5 *The Guardian*, 23 February 1993.

6 *The Rise of Cohabitation and Childbearing outside Marriage*, a study by Kathleen Kiernan of the London School of Economics and Valerie Estaugh of the Family Policy Studies Centre, Joseph Rowntree Foundation, Social Policy Research Findings No. 37, York May 1993. A full report, *Cohabitation, Extra-Marital Childbearing and Social Policy* by the authors was published by the Family Policy Studies Centre, July 1993. Domestic statistics are from new analyses of the General Household Survey and the British Social Attitudes Survey. The Rowntree summary of the report will be referred to here as the Kiernan/Estaugh report.

7 Cited by Greg Forster, *Church of England Newspaper*, 6 March 1992, reprinted in *Living Together: A Challenge for the Church*, CEN Books, London 1992, p 10.

arrangements. The Kiernan/Estaugh report identified two other groups alongside the 'youthful, never-married, childless': those who have been previously married and are now living with a new partner (one in three), and never-married couples with children (one in six).

Extra-marital births accounted for 30 per cent of all births in 1991, 32.3 per cent in the last quarter of 1992 in England and Wales.[8] This is a dramatic increase from 12 per cent in 1980, and 8 per cent in 1970. 110,000 were registered jointly in the names of both partners in 1990.[9] Together with Norway and France, this is the most significant proportional increase in Europe over the last ten years. However, the Kiernan/Estaugh report says 'cohabitation is a relatively youthful practice and there is no permanent widescale rejection of marriage. Even in countries where the practice is more long-standing, such as Sweden and Denmark, 75 per cent or more women in their 30s living with partners are married.'

Some would argue that cohabitation might also be a form of 'customary marriage'. Others, though, would say that the living arrangement is a deliberate act that, by definition, refuses the name. Certainly, the marriage rate is slowing down significantly in England and Wales. There were 306,800 marriages in 1991, compared with 352,000 in 1981 and 404,700 in 1971.[10] The proportion of first marriages per 1,000 men fell from 51.7 per cent in 1981 to 37.3 per cent in 1991: among women, from 64 per cent to 47.1 per cent.[11]

It is tempting to see this as a new phenomenon. There is, though, a fascinating piece of historical conjecture lurking within the report on the law and the church in marriage: *An Honourable Estate*.[12]

Before Lord Hardwicke's Marriage Act of 1753 enforced a central registration of marriage, there was a 'bewildering variety of ways' of entering the married state.[13] In the sixteenth century, there was a marked distinction between those which involved property, and in the unpropertied classes. 'The espousal of betrothal followed by consummation was as much a marriage in the eyes of the courts as any subsequent church ceremony.... The Church did not resist public pressures to recognize a union by a couple through the recognized and socially accepted betrothal customs, but without the church rite.'[14] So with Hardwicke's Act there was a predictable increase in recorded cohabitation and illegitimacy by the turn of the nineteenth century, 'common-law' relationships surviving longest among the lowest social classes, and in boom towns, where the social framework was less fixed.[15]

By the end of the nineteenth century, married 'respectability' was more of an economic necessity than the result of an ethical conviction, particularly

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8 OPCS, *Population Trends* 72.
9 Forster, op. cit.
10 OPCS, *Population Trends* 72.
11 Ibid.
12 Church House Publishing, London 1988 (GS 801).
13 L. Stone, *Family, Sex and Marriage in England 1500-1800*, Penguin, Harmondsworth 1979, p 29.
14 *An Honourable Estate*, paras 60, 63.
15 Ibid., para. 69.

because of harsher treatment for illegitimate children after the 1834 Poor Law changes, and partly through the growth of wage-earning employment at the expense of independent, family-based units. Bosses were more likely to discriminate against those whose way of life varied from middle class expectations.[16] The Report suggested that, as those expectations, and therefore those pressures, have changed, it would be possible to argue that this has allowed earlier attitudes to re-emerge rather than for any fundamental change to have occurred.[17] It is therefore, intriguing that there were fewer marriages in 1991 than in any year since 1928 and that the number of first-time marriages is the lowest since 1896.[18]

The latest statistics suggest that this is worth further investigation. At first glance, there are few noticeable socio-economic differences between childless cohabiting couples and those who are married. The picture, though, is very different for those with children, as the Kiernan/Estaugh report demonstrates. Cohabiting parents are almost four times as likely as married parents to have had weekly incomes in 1989 of less than £100 a week. The father is almost five times as likely to be unemployed. 20 per cent of married parents are in local authority housing compared with 50 per cent of cohabiting parents. 10 per cent of married parents are in receipt of housing benefit, compared with 26 per cent of cohabiting parents. 25 per cent of married parents have no qualifications, compared with 43 per cent of cohabiting parents. 18 per cent of married fathers are in semi-skilled or unskilled occupations, compared with 46 per cent of cohabiting fathers.

Are certain cohabitation arrangements today tantamount to a 'customary marriage' within contemporary society? In Scotland, there is the well known legal facility for recognizing legally as a marriage a couple living together 'by habit and repute for a considerable time', usually three years.[19] This question then opens the debate about how the Church relates to 'customary marriage' where comparisons are drawn between different cultures and historical situations. In Africa, for example, Adrian Hastings has expressed the fear of an increased social instability caused by the Church's failure to recognize customary marriage there.[20]

Greg Forster spells out the moral implications: 'If such cohabitation functions as one of the marriage customs of our culture, and if non-ecclesiastical marriage celebrations are accepted by Christians as valid, then sexual activity within it is not fornication.'[21]

This debate is conducted against a rapid increase in the divorce rate. 158,000 divorces were made absolute in the year ending September 1991 (51.5 per cent of the total of marriages conducted at that time).[22] Some argue that couples living together before they marry are more likely to divorce; others that couples need to get to know each other better by living together

16 Ibid., para. 70.
17 Ibid.
18 OPCS, *Population Trends* 72.
19 *An Honourable Estate*, para. 75.
20 Adrian Hastings, *Christian Marriage in Africa*, SPCK, London 1973, p 70.
21 *Marriage before Marriage?*, Grove Books, Nottingham 1988, p 15.

before they marry. Both arguments are equally concerned for the welfare of children within such living arrangements.

The debate is also conducted against the growth of childbirth outside marriage. Kiernan/Estaugh report that the General Household Survey shows that eight out of ten extra-marital births were to single women during the 1980s (the rest were to separated, divorced and widows). Of women who had their first child outside marriage during the 1980s, one in three were married by the time they had their second child compared with two out of three in the 1970s. In the late 1980s, only three out of ten never-married mothers were cohabiting. Some worry for the emotional, psychological and personal development of children in these circumstances; others point out the dangers of forcing inappropriate living arrangements upon mother and child where they may have very good reason not to be living with the father. There are some who emphasise the positive aspects of single parenting.

A brief survey of the recent debate on cohabitation

Greg Forster asked an extended question in 1988: 'In some circumstances, when a couple stand at the chancel steps, are they in fact merely ratifying legally and hallowing spiritually a marriage which has morally already existed since they set up home together and witnessed the same before their friends and families (and would exist even if they did not walk down the aisle)?'[23] Is the service in church more of a 'confirmation' than a 'christening', as Gary Jenkins has gone on to ask?[24]

In asking his question, Greg Forster aims to affirm the ideal of marriage in a compromising world, to encourage healthy lifelong monogamous relationships, and to recognize the anomalous legal position of children of such cohabiting unions (if, for example, either or both of their parents should die without making a will) and the legal difficulties partners encounter should they decide to split up having combined their resources in, say, a house. His booklet engages in a vigorous critique of cohabitation, yet argues that some relationships demonstrate some of the 'Christian goods of marriage', and fulfil some of its social functions.

Edward Pratt sees this approach as an unacceptable compromise of biblical teaching.[25] Cohabitation, by definition, always fails to represent 'the ideal of the lifelong, faithful marriage of two chaste persons' as intended in Scripture, citing especially Gen. 2:24 and Matt. 19:5f., for it lacks the essential, explicit and public commitment to permanence that marriage requires. In linking a biblical view of marriage with the current practice of registration in England and Wales, he argues that the inauguration of marriage takes place 'by whatever means currently recognized in a particular nation'.[26] The legal anomalies highlighted by Greg Forster's dilemma are no concern of the Church. 'I do not believe we should legislate to remove the unpleasant consequences of deliberate sin', he writes. 'To do so encourages more sin.'[27]

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22 OPCS, *Population Trends* 72.
23 Op. cit., p4.
24 *Cohabitation: A Biblical Perspective*, Grove Books, Nottingham 1992, p 3.
25 *Living in Sin?*, St Simon's Church, Southsea 1991.

Clearly, there are important conflicts in ethical and theological method here. Gary Jenkins broadens the discussion: rather than see sexual relationships as either 'marriage' or 'non-marriage', can they not be treated as all part of one universal set? All are responses to the biblical norm of marriage, and can be measured in the light of those norms: God's covenantal love expressed in permanent commitment, vows, sexual fidelity, care of children, relationship within the community, and the exercise of freedom.[28] All relationships, married or unmarried, are moving towards or away from these goals. Cohabiting partners do not necessarily 'solve' their relationship, morally speaking, by marrying unless there are some means of understanding what is happening already within the relationship. Nor would he aim to criticize cohabitation in, for example, a wedding service, but seek instead to say how much better would marriage be than 'living together', 'God-inspired' rather than 'man-made'.

Greg Forster responds by affirming Gary Jenkins' use of the Bible. It provides a safer means of appreciating what is happening within a relationship than his own approach.[29] Edward Pratt believes that it delivers a powerful critique of cohabitation, but fails to give full weight to the consequences of calling it 'sin'. The Bible does not treat sexual relationships as 'a universal set'. It should be heard in a wedding sermon that cohabitation is wrong.[30]

A concern shared by all three contributors to the debate is the ethical language used to describe a 'life-creating partnership'. This underlying concern shares an anxiety about the language of contract with a desire to affirm the language of covenant. This is as much because of the networks of ideas these words suggest as because of the meaning of the words themselves.

'Contract'

Of course, individuals are always in a certain sense making mutually significant arrangements with one another. We live and move and have our being in 'contracts' whether discarded, renegotiated or kept. However, the term can also imply a determinative means of understanding society and our relationships within it. That is where a critique would begin of the notion of 'contracts' as the sole means of understanding relationships.

'In many pre-modern traditional societies', argues Alasdair MacIntyre, 'it is through his/her membership in a variety of social groups that the individual identifies himself or herself and is identified by others. I am brother, cousin and grandson, member of this household, that village, this tribe. These are not characteristics that belong to human beings accidentally to be stripped away, in order to discover the "real me". They are part of my substance, defining partially at least and sometimes wholly my obligation

26 Ibid., p 5.
27 Ibid., p 14.
28 Op. cit., p 7f.
29 'An issue that will not easily go away', *Church of England Newspaper*, 6 March 1992, reprinted in *Living Together: A Challenge for the Church*, p 14.
30 Op. cit. (3rd edn), p 28.

and my duties.'[31] 'To know oneself as such a social person... is to find oneself placed at a certain point on a journey with set goals; to move through life is to make progress — or to fail to make progress — towards a given end.'[32] This sense of identity, place and direction was supplanted by a notion of 'the peculiarly modern self', who 'in acquiring sovereignty over its own realm lost its traditional boundaries provided by a social identity and a view of human life ordered to a given end'.[33]

This 'peculiarly modern self' bears a striking resemblance to the idea of the individual in modern liberal-democratic theory — an idea that seems to have been shaped in large measure by the seventeenth century individualism of Thomas Hobbes and John Locke. The problem, according to C. B. MacPherson's seminal study, is in 'its conception of the individual as essentially the proprietor of his own person or capacities, owing nothing to society for them. The individual was seen neither as a moral whole, nor as part of a larger social whole, but as an owner of himself. The relation of ownership... was read back into the nature of the individual. The individual, it was thought, is free inasmuch as he is proprietor of his person and capacities. The human essence is freedom from dependence on the wills of others, and freedom is a function of possession.... Society consists of relations of exchange between proprietors.'[34]

There is an anxiety that this economic and political understanding of an individual-in-society may also be a fundamentally moral one, that life-creating human relationships may be seen as no more than 'relations of exchange between proprietors', and as temporary.

Here is a reason for Fowl and Jones to argue against marriage as a contract rather than a covenant. The 'bias against permanence' is brought out by Gary Jenkins.[35] He applies this critique particularly to cohabiting couples. A written contract to govern a cohabiting relationship, for example, whilst offering some potential legal protection to the parties, would write impermanence into the relationship's very heart, since most of it would be concerned with procedures for the relationship's end — length of notice to quit, distribution of children, goods, money.[36] Impermanence may become an implicit assumption held by both partners; perhaps this, in itself, is an attraction, offering 'some of the advantages of marriage without the permanent commitment'.[37]

It may even be a reaction *against* impermanence, a 'trial marriage', to lay the foundations of a permanent commitment. Against this, it is argued that to take a marriage vow is to say, 'we are in this together for life'. A trial marriage would then not be a good trial *for* marriage since it lacked the essential ingredients of stability and permanence.[38] The freedom to leave

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31 *After Virtue* (2nd edn), Duckworth, London 1985, p 33.
32 Ibid., p 34,
33 Ibid.
34 *The Political Theory of Possessive Individualism*, Clarendon, Oxford 1962, p 3.
35 Op. cit., p 12.
36 Ibid., p 13, citing Barton, *Cohabitation Contracts*, Gower, 1985, pp 59-68.
37 J. Dominian, *Marriage, Faith and Love*, Darton, Longman and Todd, London 1981, pp 87f (cited by Jenkins, op. cit., p 12).

would mean that many cohabiting couples would be more careful with each other, because the relationship would be more likely to end if one behaved badly. Without an explicit, permanent commitment, the relationship's growth is impeded.[39] Jack Dominian writes: 'Whilst couples are on trial, they have a very good reason to remain at their best and impress one another. It is not possible for them to be fully frank, for the fear of rupture remains a haunting thought.'[40] In the eyes of some, such an arrangement, paradoxically, 'permits mutual exploitation within the context of potential flight'.[41] There is, maybe, the assumption that 'people can try it out for as long as they think necessary one by one until they find the "right" one'.[42] 'Knowing that something is temporary affects the degree of commitment to it.'[43]

These anxieties are compounded by a theology of sex shared by all the debate's contributors: 'a union of the entire man with the entire woman',[44] wrong outside what marriage represents because 'a life-uniting act without a life-uniting intent'.[45] Jenkins cites Emil Brunner: 'So long as love does not become fidelity, sex union simply means that the one makes use of the other, even though this may be mutual and willed by both sides... the enjoyment of the other, not the identification with the other.'[46]

Cohabitation, as a private contract, lacks the moral support given by the institution of marriage itself, argues Forster: 'the feeling that you are part of something which is bigger than you which can support you through difficult times in your relationship when the temptation to give up on it would be strong if it were just a private arrangement'.[47] The public nature of a wedding ceremony allows the couple to affirm their network of support. They are not isolated individuals.[48] A marriage represents a relationship between two families within a wider community — even more explicit, for example, within an Indian ceremony.[49]

There are, though, some dangers in employing this critique of cohabitation. It is, as Gary Jenkins' overall approach seeks to demonstrate, more a critique of all relationships. It may be, for example, that some attempts at cohabitation are quests *for* permanence: the partners may have witnessed the disastrous results elsewhere of marriages amongst their friends, relatives or parents; they may not be able to afford to get married, financially;

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38 Jenkins, op. cit., p 13 (citing J. H. Olthuis, *I Pledge You My Troth*, Harper and Row, New York 1975, p 41).
39 Jenkins, op. cit., p 18.
40 Op. cit., p 116.
41 Pratt, op. cit., p 9 (citing D. J. Miller, *The Evangelical Dictionary of Theology*, Marshall Pickering, London 1984, p 255).
42 Ibid., p 10.
43 Ibid., p 12 (citing J. Stott, *Issues Facing Christians Today*, Marshall, Morgan and Scott, Basingstoke 1984, p 55, itself citing a study by Nancy Clatworthy).
44 Jenkins, op. cit., p 15 (citing Bailey in D. Atkinson, *To Have and to Hold*, Collins, London 1979, p 29).
45 Ibid., (citing Lewis Smedes, *Sex in the Real World*, Lion, London 1976, p 122).
46 Ibid., p 16 (citing E. Brunner, *The Divine Imperative*, Lutterworth, London 1937, p 348).
47 Op. cit., p 18.
48 Ibid., p 22.
49 Jenkins, op. cit., p 16.

there may be legal obstacles; there may be a reaction against the effect of 'possessive individualism' *within* a marriage (for example, in the sexual exploitation of one partner by another).

The danger of this critique, pursued in isolation, is to treat a symptom as a cause and to apply remedies that are themselves part of the problem. For if this notion of 'contract' underpins contemporary liberal Western society, critics themselves are part of it, even when reacting against its effects. Therefore, simply to criticize individuals choosing to live together, divorcing their decision from their social, environmental and familial circumstances, is to assume that they are merely the proprietors of their persons and capacities, independent of all other considerations, as though they were autonomous atoms choosing to collide with one another at will in a universe which they control.

There has to be a means of appreciating the horizons of their, and our, decision-making, character-formation and personhood in order to understand *how* they are exercising their responsibility. Curiously enough, that means may actually be provided by the notion of 'covenant' between the Creator and his creation which marriage has come to represent in the scriptural canon.

'Covenant'

These fundamental questions — the purpose of the individual within society, the nature of creation, the possibility of relationship — are sometimes forgotten in the way the Bible is used in this debate. The self-declared *form* of God's relationship with his creation is at least as significant as the words used to express it at any one moment in history. The theme which best describes this relationship is that of 'covenant'. By this, something more is meant than the mere notion of a mutually agreed pact between individuals or groups. It is to say that the desire for relationship is written into the very heart of God, a desire that is freely willed and faithfully expressed, in terms which otherwise only apply to marriage. Edward Schillebeeckx calls this phenomenon 'reciprocal illumination': 'revealing his covenant through the medium of human marriage, God simultaneously revealed to men a meaning of marriage which they had not hitherto expected.'[50]

Gen. 2:24 is often cited, from the New Testament on, as a proof-text for the indissolubility of marriage, and the ideal of monogamous relationship. The terms used imply even more. Gary Jenkins argues that the concept of a vow is implicit in the idea of 'cleaving', 'to stick together', citing C. Westermann: 'to enter into a lasting community...', a definite act of will, often made at the inauguration and renewal of a covenant (Exod. 24:7, Joshua 24:30).[51]

Gen. 2:24 implies that human beings are created social, not as atomized individuals, nor as proprietors of themselves; equally, that human beings, alone and in community, most fundamentally the community of marriage,

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50 E. Schillebeeckx, *Marriage : Secular Reality and Saving Mystery*, Sheed and Ward, London 1965, vol. 1, p 63 (cited in Jenkins, op.cit., p 11).

51 C. Westermann, *Genesis 1-11*, SPCK, London 1984, p 237 (cited in Jenkins, op. cit., p 13).

are created to be in a relationship with God and each other in a manner that reflects the moral character of the Creator.

There is here a notion that unites the creation of human beings with the creation of communities. In creating a covenant relationship between human beings that becomes an illustration of his relationship with creation, God is seen also to be the author of humankind's social and political nature. By means of a covenant, he constitutes a people: with the patriarchs, at Sinai, through David, and in the new covenant of Christ, expressed in the covenant-meal of the Last Supper.

Relationships are to be marked with the moral character of their creator: the term most commonly used, *hesedh*, denoting love, goodness, tenderness, mercy (Isa. 63:7; Joel 2:13; Mic. 7:18; Ps. 5:7, 36:5, 48:9; Jer. 3:12), deployed to represent tenderness between God and people that would compare with marriage ('I plighted my troth and entered into a covenant with you', says the Lord God, 'and you became mine', Ezek. 16:8, also Mal. 2:14; Prov. 2:17; Hos. 2:18ff), declaring a love that remained constant though it had no response ('...yet when he heard them wail and cry aloud, he looked with pity on their distress; he called to mind his covenant with them and in his boundless love relented', Ps. 106:44f, also Exod. 34:6f; Isa. 63:7; Jer. 32:18; Ps. 145:8). Schillebeeckx argues that the word began among the Deuteronomist writers, indicating the power binding two beings to one another, the bond of unity and affection itself, the basis of a legally established community.[52]

'The act of making a covenant created the situation of mutual obligation the covenant described', writes Dale Patrick. 'The covenant between Yahweh and Israel formally established a relationship in which Yahweh was Israel's God and Israel were Yahweh's people... mutually exclusive....'[53]

Only through their experience of God's saving activity would God's people in the Old Testament come to know themselves as creatures under God. Schillebeeckx adds: 'The covenant of love is the theme of all God's saving activity and the deepest meaning of the creation.'[54] In claiming, as do most modern Christian defences of marriage, that marriage is a part of the divinely inspired natural order, the rich metaphor of covenant is not fully developed. 'The community of marriage, as a gift of creation, from the God of the covenant, was the first draft of the finished picture of grace, God's covenant with men.'[55]

The richness of these associations has been developed most fully by Jack Dominian. 'At the centre of contemporary Western marriage lies a covenant relationship between husband and wife in which feelings, emotions and instincts provide a central framework of basic reference and expectations. The child-parent relationship with any significant contribution from relatives forms the first intimate relationship which equips the person to relate in every subsequent intimate relationship.'[56] Disrupt or disturb these relationships and you begin to create the conditions which some would see as

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52 Op. cit., p 64.
53 *Old Testament Law*, SCM, London 1986, pp 224f.
54 Op. cit., p 70.
55 Ibid.

contributing to 'moral panic', where individuals become estranged or alienated from the consequences of their actions.

Covenant is a consistent theme of Dominian's. Elsewhere, he writes, 'In covenant, God and man, we experience God's presence by the sense of feeling recognized, wanted and appreciated as unique persons.... The mystery of God's covenant is partially expressed in marital love: couples experience a glimpse of unconditional recognition, acceptance and appreciation, of mutual love. The hell of vacuum, emptiness, non-being is felt by the spouse who feels ignored, rejected, taken for granted.'[57]

Gary Jenkins draws special attention to Dominian's thinking. The love that God has for his people is one that 'will not fail to answer when called.... The covenant relationship reminds us that God never ceases to make sense of us by persistent love. We, too, need continuity to make sense of our partner.'[58]

This is the 'covenant fidelity' that lies at the heart of creation in Karl Barth's *Dogmatics*.[59] D. Atkinson summarizes his argument pithily when he says that Barth sees this fidelity 'as the inner meaning and purpose of our creation as human beings in the divine image, and the whole of the created order as the external framework for and condition of the possibility of keeping covenant.'[60]

This, then, draws special attention to New Testament passages like Eph. 5:29ff, New Testament passages which speak of marriage primarily in the language of covenant. Indeed, Barth argues that monogamy can only be affirmed safely by reading Gen. 2:24 in the light of the Ephesians passage, for it follows 'only from the fact that the one Christ and His one community are one flesh in the one fulfilled covenant',[61] though quite how this is different from the thorough going monotheism of the Shema, for example, he leaves unexplained.

Here, then, is a context for affirming the biblical teaching on sexual fidelity, a clear corollary of covenant fidelity, what Barth calls 'the totality of life-fellowship, the establishment of personal unity between man and woman'.[62] Commenting on 1 Cor. 6:12-20, Richard Foster writes: 'a "one-flesh" reality... unites and bonds in a deep and wonderful way, wonderful, that is, when it is linked to a covenant of permanence and fidelity.'[63]

The language of covenant, equally, is that of mutual consent, sacrifice and identification. Greg Forster makes this clear in asking: what does marriage 'do'? Augustine's three 'goods of marriage', (a remedy against sin, the upbringing of children, mutual society and comfort) all focus in the couple's will and decision.[64] Vatican II states that marriage and the family are

56 Op. cit., p 34.
57 Ibid., p 56.
58 Ibid., p 85f (cited in Jenkins, op.cit., p 12).
59 *Church Dogmatics*, vol. 3, part 1, T & T Clarke, Edinburgh 1958, pp 94ff.
60 D. Atkinson, *To Have and to Hold* (cited in J. Dominian, op. cit., p 22).
61 Op. cit., p 328.
62 Ibid.
63 *Money, Sex and Power*, Hodder and Stoughton, London, pp 117f. (cited in Pratt, op.cit., p 8).

celebrated within a community of love, 'rooted in the conjugal covenant of irrevocable personal consent'.[65]

Of course, it has to be recognized that the term 'covenant' has been transposed into contemporary discussion without a full examination of ancient wedding practice. Nowhere is this clearer than in the question of mutual consent. Forster remarks that, in biblical cultures, the bride's father negotiated with the groom's family for the hand of the bride, which certainly provides a sharp contrast to the notion of mutual consent between wife and husband.[66] However, the language of covenant conveys with it the notion of a developing relationship of mutual discovery within the parameters of steadfast love, *hesedh*. Whilst different ages may interpret certain elements of that relationship with differing degrees of emphasis, the form of the relationship, and the nature of moral character-formation, *would* possibly bear comparison from one age to another. The differences discovered would not invalidate the overall approach.

What the language of covenant does, which the language of contract fails to do, is to communicate a network of ideas which relate to a wider social and public order, a necessary link between private behaviour and the moral character of a community. For it asks the fundamental question: how do human beings learn love?

This rebounds on the cohabitation debate with some force. For the language of covenant also implies a social and political order in which special care is given to the weak, the poor and the vulnerable (Deut. 15), the alien in the land (Deut. 10:18f), the outcast. This would include the people whose vulnerability Greg Forster has demonstrated — the children of cohabiting couples whose rights in law are so unclear on the death of one or both of their parents. To respond that Christian ethics has nothing to say in such a situation is to deny the moral character of the God who has revealed himself in the covenants of Scripture to which marriage itself bears witness. Incidentally, in arguing that it is wrong to legislate to 'remove the unpleasant consequences of deliberate sin', it then becomes possible to delete the casuistry of the Torah with one stroke of the pen.[67]

The language of covenant also provides a context for what is happening within a relationship rather than a bare means of registering its status. Jenkins quotes Emil Brunner: 'Just as there are only sinful human beings, there are also only sinful marriages.'[68] The moral qualities of a covenantal relationship (the love that never fails to answer, mutual consent, sacrifice

64 Forster, op. cit., pp 16f.

65 *Pastoral Constitution on the Church in the Modern World*, part 2, chapter 1, G. Chapman, London 1967, p 250; *Gaudium et Spes* (cited in J. Dominian, op. cit., p 2).

66 Forster, op. cit., p 13.

67 Some might employ that casuistry to argue that Deut. 23:2 would imply a different attitude of a covenantal community toward 'a descendant of an irregular union' but, firstly, this is limited to a specific assembly of Yahweh at a particular time, and secondly, the term for such a descendant, *mamzer*, is unclear, taken by later Jewish exegetes to refer to children of an incestuous marriage between Jews, while some connected the *mamzer* with the results of mixed marriages between the people of Israel and the Philistines, Ammonites or Moabites (see J. A. Thompson, *Deuteronomy*, IVP, Leicester 1974, p 239, citing Mishna Yebamoth iv. 3: H. Danby, *The Mishnah*, OUP,

and identification, permanence of inward commitment expressed publicly) may be seen to a greater or lesser extent in some partnerships that are registered as marriages, and some that are not. What moral sense is to be made of those that are not?

One approach is to view the relationship as a journey that might result in registered marriage. Forster argues: 'We should look to affirm and deepen that in a relationship which corresponds to the Christian ideal, rather than condemning it for what it appears to lack.'[69] Another approach is to view the aspects of the relationship as *ipso facto* sins to be repented of — undisciplined sexual indulgence, a function of promiscuity, fornication or adultery, all roundly condemned in the scriptural canon. However, Jenkins and Forster point out that, whilst there are many anticipated situations in Deut. 22, for example, where the consequences of sex outside marriage are legislated for, no specific guidance is found for the couple that anticipate their marriage by sleeping together. Indeed, the contemporary phenomenon of cohabitation is not directly addressed at all. So, if the canon is to be examined for forensic 'proofs' for or against cohabitation, they are more likely to be general deductions from governing principles, depending on which the protagonist believes to be the most relevant.

Some cases are advanced on the basis of sexual ethics. Others are advanced on the covenantal form of God's relationship with creation. The danger of both approaches, of course, is to read certain contemporary social expectations back into Scripture, where arguments merely shore up *prior* understandings of what is right and wrong: and that from comparisons with different social contexts from our own. Indeed, given the range of contemporary social approaches to this question, you would *expect* a range of scriptural interpretations. Yet, at best, the arguments are circular.

One possible approach is to employ a covenantal hermeneutic. The language of covenant implies that God continues to be pledged to his creation today. A covenant is more than a set of rules to be applied. It is a living relationship located in history. A covenant, equally, sets goals of the sort that Alasdair MacIntyre's argument claims are lacking for 'the peculiarly modern self'. Those goals, above all, relate to social and individual moral character-formation, and must therefore recognize the context of those striving to fulfil them. They recognize that human beings are created social. They are known within the context of a 'redeeming' community. Rather than instruments of condemnation, they are inspirations for the future fulfilment of God's self-declared loving purposes. What matters most is the continuing statement of the Creator's covenantal character: e.g. 'The Lord is gracious and compassionate, long-suffering and ever faithful.' (Ps. 145:8) Therefore, the encouragement of life-creating human relationships to

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Oxford 1933, p 225). There is no clear parallel, of any description, between this and the children of cohabiting parents in latter-day twentieth century England and Wales. The moral question would remain, of reconciling this with the enduring characteristics of the God who has revealed himself in the scriptural canon not in one covenant but in several, supremely in Christ.

68 *The Divine Imperative*, p 350 (cited by Jenkins, op. cit., p 20).

69 Op. cit., p 5.

reflect that character has to remain the chief priority. The love that never fails to answer, mutual consent, sacrifice and identification, the mutual commitment to permanence, may be interpreted afresh in differing social, cultural and economic circumstances. Yet they are indelible characteristics of the Creator that govern the form of the scriptural canon, and provide a framework for a moral understanding of cohabitation, where practised, without compromising the ideal of faithful monogamous marriage.

Translating the present

What might this mean in England and Wales today? Cohabitation represents many different relationships that have arisen for many different reasons. The question has to take its place within a broader one: how to encourage the development of covenantal values, covenant-fidelity, in these relationships, in marriage and in the wider social order.

1. If cohabitation is becoming a form of 'customary betrothal', there is a rich Christian heritage which can be drawn upon to register *this* publicly. Kenneth Stevenson argues for a liturgy to embrace this in *Liturgy for a New Century*:[70] 'Betrothal is a public rite, whose original purpose was to earmark the couple's intention to marry in the future.' He cites current work by Roman Catholics as a way of celebrating marriage in a world in which marriage itself needs as much strengthening as the Church can give it. As a way of preparing for a public act of permanent commitment, it offers a means of strengthening the covenantal value of marriage.

2. The marriage service itself could reflect symbolically the nature of covenant. This, again, is a theme, which Stevenson mentions. 'To state in the opening exhortation that "the bond and covenant of marriage was established by God in creation" also means that we see creation and redemption in one, and not divided by some special chasm. It sets the scene for the vows soon to be made, as part of that ongoing covenant.'[71]

3. The reasoning behind a decision to cohabit rather than to marry may say more about certain aspects of covenant-fidelity than certain other decisions to marry. The quality and direction of the relationship has to be seen as more significant than its status: though its status may contribute, to some extent, to its quality and direction.

4. To affirm covenant-fidelity is to affirm a view of society where all are equally pledged to God, for God is pledged to them. Not all will be within a uniform nuclear family. It is to affirm a view of the social order which embraces justice for the poor, the vulnerable, the outcast and the alien. Without a view of what *sort* of society is meant by covenant-fidelity, Christian teaching on marriage will sound inevitably like the ramblings of a remote God who, apart from a concern for a privatized (perhaps largely sexual) morality, has no other purchase on the reality of a couple's environment (e.g. housing conditions, benefit entitlements, employment opportunities).

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70 SPCK / Alcuin Club, London 1991, p 58.
71 Ibid., p 57.

5. To affirm covenant-fidelity is to affirm, in theological terms, a means of grace, not condemnation. The nature of a covenant is to save. There is the prospect of starting again after a failure, and the pledge of the creator to renew and heal where relationships have foundered.

Conclusion

There is an underlying theme here of theological ethical method. Fowl and Jones have complained that too much attention has been given to the decisions that isolated individuals make alone, as though they were independent of all other social or environmental factors: as though, in short, they lived in a universe where everything was determined by contracts drawn up between so many Robinson Crusoes.

There is, in the scriptural canon, a creator in covenant with his creation, a covenant expressed in the creation of community — in marriage as the life-creating partnership, in a people to whom he pledged himself, in a humanity and a world for whom he gives his life. He is pledged to involvement in the heartbreak of communal life — the growth of character within compromised and hurtful relationships. So it is a theological demand upon ethical method to comprehend the full range of a person's and a people's contexts, convictions and commitments.

The covenant-fidelity of marriage demonstrates that human beings are created individuals *within* socially embodied traditions. Christian ethical disciplines are called to reflect this. For whenever you say, 'I will', a world lies behind you, a universe lies ahead.

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