

agreements. A child's right against her parent to be sheltered, fed, clothed, and educated is an example of a *noncontractual* moral right. Another example of a noncontractual right is the right that arises from the fact that the child's parents *are responsible for the child's emotional dependency*. Let us call this a "dependency right." By bearing a child and raising it together, parents soon cause or bring about a state of affairs in which the young child becomes emotionally dependent on them; indeed, over time, the child becomes dependent on their *joint* participation in her care and nurture. It might be argued that this dependency creates a right in the child to the continuation of this state of affairs, at least until the time that we can say that he or she is no longer emotionally dependent on the presence of both parents for her daily care. Accordingly, it is argued that divorce violates this right of the child.

This is only an outline of some possible nonconsequentialist arguments. There are objections to these arguments that must be acknowledged and answered. But they present some alternatives to the usual consequentialist approaches to the discussion of the ethics of divorce.

## Marriage, Adultery and Divorce

Bertrand Russell

Bertrand Russell (1872–1970), logician and philosopher, was one of the outstanding figures of twentieth-century British philosophy. Although his most important contributions were in mathematical logic, he wrote many popular essays and books on problems of social ethics. Russell was the recipient of the Nobel Prize for Literature in 1950.

Divorce as an institution has been permitted in most ages and countries for certain causes. It has never been intended to produce an alternative to the monogamic family, but merely to mitigate hardships where, for special reasons, the continuance of a marriage was felt to be intolerable. The law on the subject has been extraordinarily different in different ages and places. . . . The Mosaic law allows a husband to give a bill of divorce-ment; Chinese law allowed divorce provided the property which the wife had brought into the marriage was restored. The Catholic Church, on the ground that marriage is a sacrament, does not allow divorce for any purpose whatsoever, but in practice this severity is somewhat mitigated—especially where the great ones of the earth are con-

cerned—by the fact that there are many grounds for nullity.<sup>1</sup>

. . . I think [the] distinction between law and custom is important, for while I favour a somewhat lenient law on the subject, there are to my mind, so long as the biparental family persists as the norm, strong reasons why custom should be against divorce, except in somewhat extreme cases. I take this view because I regard marriage not primarily as a sexual partnership, but above all as an undertaking to cooperate in the procreation and rearing of children. It is possible, and even probable . . . that marriage so understood may break down under the operation of various forces of which the economic are the chief; but if this should occur, divorce also would break down, since it is an institution dependent upon the existence of marriage, within which it affords a kind of safety valve. Our present discussion, therefore, will move entirely within the framework of the biparental family considered as the rule.

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Both Protestants and Catholics have, in general, viewed divorce not from the point of view of the biological purpose of the family, but from the point of view of the theological conception of sin. Catholics, since they hold that marriage is indissoluble in the sight of God, necessarily maintain that when two persons have once married, neither of them can, during the lifetime of the other, have sinless intercourse with any other person, no matter what may happen in the marriage. Protestants, in so far as they have favoured divorce, have done so partly out of opposition to Catholic doctrine on the sacraments, partly also because they perceived that the indissolubility of marriage is a cause of adultery, and they believed that easier divorce would make the diminution of adultery less difficult . . .

Neither the Protestant nor the Catholic view in this matter can be upheld on moral grounds. Let us take the Catholic point of view first. Suppose that the husband or wife becomes insane after marriage; it is in this case not desirable that further children should spring from an insane stock, nor yet that any children who may already be born should be brought into contact with insanity. Complete separation of the parents, even supposing that the one who is insane has longer or shorter lucid intervals, is therefore desirable, in the interests of the children. To decree that in this case the sane partner shall never be permitted any legally recognized sex relations is a wanton cruelty which serves no public purpose whatever. The sane partner is left with a very painful choice. He or she may decide in favour of continence, which is what the law and public morals expect; or in favour of surreptitious relations, presumably childless; or in favour of what is called open sin, with or without children. To each of these courses there are grave objections . . .

It follows that in any country which refuses divorce for insanity . . . the man or woman whose wife or husband becomes insane is placed in an intolerable position, in favor of which there is no argument except theological superstition. And what is true of insanity is true also of venereal disease, habitual crime and habitual drunkenness. All these are things which destroy a marriage from every point of view. They make companionship

impossible, procreation undesirable, and association of the guilty parent with the child a thing to be avoided. In such cases, therefore, divorce can only be opposed on the ground that marriage is a trap by which the unwary are tricked into purification through sorrow . . .

Adultery in itself should not, to my mind, be a ground of divorce. Unless people are restrained by inhibitions or strong moral scruples, it is very unlikely that they will go through life without occasionally having any strong impulses to adultery. But such impulses do not by any means necessarily imply that the marriage no longer serves its purpose. There may still be ardent affection between husband and wife, and every desire that the marriage should continue. Suppose, for example, that a man has to be away from home on business for a number of months on end. If he is physically vigorous, he will find it difficult to remain continent throughout this time, however fond he may be of his wife. The same will apply to his wife, if she is not entirely convinced of the correctness of conventional morality. Infidelity in such circumstances ought to form no barrier whatever to subsequent happiness, and in fact it does not, where the husband and wife do not consider it necessary to indulge in melodramatic orgies of jealousy. We may go further, and say that each party should be able to put up with such temporary fancies as are always liable to occur, provided the underlying affection remains intact. The psychology of adultery has been falsified by conventional morals, which assume, in monogamous countries, that attraction to one person cannot coexist with a serious affection for another. Everybody knows that this is untrue, yet everybody is liable, under the influence of jealousy, to fall back upon this untrue theory, and make mountains out of molehills. Adultery, therefore, is no good ground for divorce, except when it involves a deliberate preference for another person, on the whole, to the husband or the wife as the case may be. In saying this I am, of course, assuming that adulterous intercourse will not be such as to lead to children. Where illegitimate children come in, the issue is much more complicated . . .

The grounds which may make divorce desirable are of two kinds. There are those due to the

defects of one partner, such as insanity, dipsomania and crime; and there are those based upon the relations of the husband and wife. It may happen that, without blame to either party, it is impossible for a married couple to live together amicably, or without some very grave sacrifice. It may happen that each has important work to do, and that the work requires that they should live in different places. It may happen that one of them, without disliking the other, becomes deeply attached to some other person, so deeply as to feel the marriage an intolerable tie. In that case, if there is no legal redress, hatred is sure to spring up. Indeed, such cases, as every one knows, are quite capable of leading to murder. Where a marriage breaks down owing to incompatibility or to an overwhelming passion on the part of one partner for some other person there should not be a determination to attach blame. For this reason much the best ground of divorce in all cases is mutual consent. Grounds other than mutual consent ought only to be required only where the marriage has failed through some defect in one partner. . . . I should add that nullity, which is now decreed where sexual intercourse is impossible, should instead be granted on application whenever the marriage is childless. That is to say, if a husband and wife who have no children wish to part, they should be able to do so on production of a medical certificate to the effect that the wife is not pregnant. Children are the purpose of marriage, and to hold people to a childless marriage is a cruel cheat.

So much for the *law* of divorce; the *custom* is another matter. As we have already seen, it is possible for the law to make divorce easy while, nevertheless, custom makes it rare. The frequency of divorce in America comes, partly from the fact that what people seek in marriage is not what should be sought, and this in turn is due partly to the fact that adultery is not tolerated. Marriage should be a partnership intended by both parties to last at least as long as the youth of their children, and not regarded by either as at the mercy of temporary amours. If such temporary amours are not tolerated by public opinion or by the consciences of those concerned, each in its turn has to blossom into a marriage. This may easily go so far

as completely to destroy the family, for if a woman has a fresh husband every two years, and a fresh child by each, the children in effect are deprived of their fathers, and marriage therefore loses its *raison d'être* . . .

When marriage is conceived in relation to children, a quite different ethic comes into play. The husband and wife, if they have any love for their children, will so regulate their conduct as to give their children the best chance of a happy and healthy development. This may involve, at times, very considerable self-repression. And it certainly requires that both should realize the superiority of the claims of children to the claims of their own romantic emotions. But all this will happen of itself, and quite naturally, where parental affection is genuine and a false ethic does not inflame jealousy. There are some who say that if a husband and wife no longer love each other passionately, and do not prevent each other from sexual experiences outside marriage, it is impossible for them to cooperate adequately in the education of their children. . . . [But] to cooperate in rearing children, even after passionate love has decayed, is by no means a superhuman task for sensible people who are capable of the natural affections. To this I can testify from a large number of cases personally known to me. To say that parents will be "merely dutiful" is to ignore the emotion of parental affection—an emotion which, where it is genuine and strong, preserves an unbreakable tie between husband and wife long after physical passion has decayed. . . . Family feeling is extremely weak in America, and the frequency of divorce is a consequence of this fact. Where family feeling is strong divorce will be comparatively rare, even if it is legally easy. Easy divorce, as it exists in America, must be regarded as a transitional stage on the way from the biparental to the purely maternal family. It is, however, a stage involving considerable hardship for children, since in the world as it is, children expect to have two parents, and may become attached to their father before divorce takes place. So long as the biparental family continues to be the recognized rule, parents who divorce each other, except for grave cause, appear to me to be failing in their parental duty. I do not think that a legal compulsion to go on being married is likely

to mend matters. What seems to me to be wanted is, first, a degree of mutual liberty which will make marriage more endurable, and, secondly, a realization of the importance of children which has been overlaid by the emphasis on sex which we owe to St. Paul and the romantic movement.

The conclusion seems to be that, while divorce is too difficult in many countries . . . easy divorce does not afford a genuine solution of the marriage problem. If marriage is to continue, stability in marriage is important in the interests of the children, but this stability will be best sought by distinguishing between marriage and merely

sexual relations, and by emphasizing the biological as opposed to the romantic aspect of married love. I do not pretend that marriage can be freed from onerous duties. In the system that I commend, men are freed, it is true, from the duty of sexual conjugal fidelity, but they have in exchange the duty of controlling jealousy. The good life cannot be lived without self-control, but it is better to control a restrictive and hostile emotion such as jealousy, rather than a generous and expansive emotion such as love. Conventional morality has erred, not in demanding self-control, but in demanding it in the wrong place.

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**Is Adultery Immoral?**