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Metaphysics for the Marriage Debate

JANET RADCLIFFE RICHARDS*

This paper is not about what marriage should be, or even whether it should exist at all. Its purpose is mainly methodological: an attempt, in the spirit of Locke,¹ to clear away some of the rubbish that lies in the way of proper identification of the problems. In particular, it argues that much confusion arises from unarticulated assumptions about the idea of natural law.

Unclarity about this issue also muddled the nineteenth century debate about marriage, and even though the issues now are very different from the ones being disputed then, the controversies of the time help to put in a clearer light some of the problems that still confuse the debate about what marriage is and ought to be.

I. MARRIAGE AS AN INSTITUTION

Marriage is a social institution, not just a matter of individuals' living or raising children together, or even of their making private contracts about kinds and levels of commitment. Its essence lies not in how married people treat each other, but in how other people treat them—in particular, though not only, through laws and formal institutions.

This means that to understand the meaning of marriage in any society it is not enough to survey the phenomenon of married life, because this cannot differentiate between the effect of the institutions and what would have happened if they had been otherwise or nonexistent. What needs to

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1. JOHN LOCKE, *ESSAY CONCERNING HUMAN UNDERSTANDING* (Peter H. Niddich ed., Clarendon ed. Oxford Univ. Press 1979) (1689).

be understood are the laws, institutions and conventions that press people in the direction of choices that they otherwise might not have made: rules and conventions determining such matters as who can enter into it, pressures on single people to become married, the nature of the contract between the partners, the possibilities for ending it, and so on. It is through an analysis of these institutions that the real meaning of marriage in any society can be understood; and, for the same reasons, it is such institutions that defenders of any particular form of marriage need to justify.

The importance of looking at institutional structures, rather than at the state of individual marriages, was recognized by John Stuart Mill in his writing on the subjection of women.² He was campaigning for legal equality between the sexes, and had to keep insisting that in considering whether current laws could be justified, it was irrelevant to consider the situation of women as they actually lived, let alone to point out the happiest of them as exemplars of the ideal of marriage. If the legal position of women amounted to slavery, as he claimed it did, it was irrelevant to reply that most women were not treated as slaves:

I have no desire to exaggerate, nor does the case stand in any need of exaggeration. I have described the wife's legal position, not her actual treatment. . . . Happily there are both feelings and interests which in many men exclude, and in most, greatly temper, the impulses and propensities which lead to tyranny . . .

. . .

. . . Who doubts that there may be great goodness, and great happiness, and great affection, under the absolute government of a good man? Meanwhile, laws and institutions require to be adapted, not to good men, but to bad.³

The whole purpose of laws and institutions is to change what would otherwise happen, so their justification must be in those terms. They cannot be justified by reference to what might happen independently, or in spite of them.

II. THE TRADITIONAL MEANING OF MARRIAGE

Mill was concerned with two aspects of women's situation. One was the laws and institutions, as well as less formal conventions, that closed most options in life to women just by virtue of their being women, and in so doing forced most of them into dependence on men. The other was

2. JOHN STUART MILL, *THE SUBJECTION OF WOMEN* (Susan Moller Okin ed., Hackett Publ'g Co. 1988) (1869).

3. *Id.* at 35, 36.

the asymmetrical marriage laws that gave men virtually unlimited control over their wives. In the worst cases this left wives at the mercy of appalling tyrants (“[t]he vilest malefactor has some wretched woman tied to him”)⁴ but in all cases dependent for their fate on the character of their masters. Mill’s contention was that all this was quite incompatible with modern political beliefs, according to which slavery was straightforwardly wrong, and no one should be precluded by the accident of birth from the opportunity to realize their full potential.

How, then, could this state of affairs be justified by its apologists? By far the commonest defense was that men and women were different by nature, and as such naturally suited to quite different roles. As one of Mill’s most articulate opponents, James Fitzjames Stephen, said:

The physical differences between the two sexes affect every part of the human body, from the hair of the head to the sole of the feet, from the size and density of the bones to the texture of the brain and the character of the nervous system [A]ll the talk in the world will never shake the proposition that men are stronger than women in every shape. They have greater muscular and nervous force, greater intellectual force, greater vigour of character. This general truth, which has been observed under all sorts of circumstances and in every age and country, has also in every age and country led to a division of labour between men and women, the general outline of which is as familiar and as universal as the general outline of the differences between them.⁵

Because the sexes were so different, he argued, it would be cruel and inappropriate to give them the same rights and duties. As men were stronger (“in every shape”) than women, it was obvious that they should be the heads of households and protectors of their families. Women were naturally suited to their traditional position, and, Stephen claimed, had no objection to it. It was therefore in women’s interests that they should remain in their subordinate place.

Against arguments of this kind, Mill produced three lines of attack:

First, he argued, the general claim about women’s nature was, at the very least, not universally true. Everyone knew that many women were not satisfied with their position.

Ever since there have been women able to make their sentiments known by their writings (the only mode of publicity which society permits to them), an

4. *Id.* at 37.

5. JAMES FITZJAMES STEPHEN, *LIBERTY, EQUALITY, FRATERNITY* 193–94 (Univ. of Chicago Press 1991) (1873).

increasing number of them have recorded protests against their present social condition⁶

Second, even the women who did not protest could not be presumed to be naturally suited to their position. For one thing, women were brought up in a systematically different way from men, and it was therefore impossible to know how many of the observed differences between the sexes could be attributed to a difference in their fundamental natures.⁷ And, furthermore, even if individual women did manage to think beyond their straitened upbringing, their being under the power of their husbands would make protest straightforwardly dangerous.

And finally, the most significant point of all, if women's traditional position really were natural to them, there would simply be no point in all the laws designed to keep them in their place, because such laws would have nothing to do. As Mill said, it was supposed to be natural for women to be wives and mothers, but to judge from the devices in place to prevent them from doing anything else, you might reasonably suppose that it was the last thing their nature led them to do.⁸

Mill's arguments seem beyond challenge to most present-day readers, and it is interesting to consider why they made so little impact at the time. It was partly, as Mill realized, because people had strong feelings about these matters, and feelings were hard to dislodge by reason. But there seems to be more to it than that. The root of the problem seems to lie in a quite different understanding of what is meant by "natural."

By what is natural to people, Mill means something like what they will do if given wide opportunities and left to their own devices.

One thing we may be certain of—that what is contrary to women's nature to do, they never will be made to do by simply giving their nature free play. The anxiety of mankind to interfere in behalf of nature, for fear lest nature should not succeed in effecting its purpose, is an altogether unnecessary solicitude.⁹

To Mill it seems that the whole point of laws is to make people do what is, in this sense, not natural to them. But Stephen sees the point of laws as "to clothe, protect and sustain society in the position *which it naturally assumes*".¹⁰

Government . . . ought to fit society as a man's clothes fit him. To establish by law rights and duties which assume that people are equal when they are not is like trying to make clumsy feet look handsome by the help of tight boots. No doubt it may be necessary to legislate in such a manner as to correct the vices of

6. MILL, *supra* note 2, at 14.

7. *E.g.*, *id.* at 14, 22.

8. *Id.* at 28.

9. *Id.* at 27–28.

10. STEPHEN, *supra* note 5, at 192 (emphasis added).

society or to protect it against special dangers or diseases to which it is liable. Law in this case is analogous to surgery, and the rights and duties imposed by it might be compared to the irons which are sometimes contrived for the purpose of supporting a weak limb or keeping it in some particular position. As a rule, however, it is otherwise. Rights and duties should be so moulded as to clothe, protect and sustain society in the position which it naturally assumes.¹¹

To Stephen, it seems that the proper purpose of laws is to correct what is aberrant and against nature. The natural is therefore not simply what happens, but what ought to happen.

Another comment suggests what lies behind this idea:

To sum the matter up, it appears to me that all the laws and moral rules by which the relation between the sexes is regulated should proceed upon the principle that their object is to provide for the common good of the two great divisions of mankind . . . who can no more have really conflicting interests than the different members of the same body . . .¹²

Stephen seems to be arguing against the background of an idea of the world as a naturally ordered whole, whose smooth functioning depends on everything's staying in the place it is designed to fit.

This is a much older and more firmly established idea of nature than Mill's. One of its roots is the Greek, and in particular Aristotelian, idea of a natural order in which there is a cosmic harmony as long as everything keeps in its proper place and acts according to its true nature. In this view of the world, to understand the nature of anything is to understand the unchangeable essence of things of that kind, and to understand their essence is to understand their true place in the scheme of things. Disorder and discord occurs when things are not in the positions they should be occupying. The other root is the Judaic idea of a God who brought order out of chaos, and in doing so designed the various elements of the universe in a way that would result in harmony as long as divine law was obeyed. These two traditions were fused, more or less, in Christianity, with its ideas of natural law.

In this composite tradition, therefore, to understand the nature of something is to understand its proper place in the scheme of things, where all goes well until beings with free will rebel against it. This is obviously the idea Stephen has in mind: Women and men are designed—by God or nature—to live together and rear families. They cannot have radically different interests, because only by keeping to

11. *Id.* at 192.

12. *Id.* at 197–98.

their proper places can they bring about the smooth functioning of family and society that is best for both. Of course, aberrant individuals will try to distort the natural scheme of things, but that shows “a base, unworthy, mutinous disposition,”¹³ and the proper function of laws and institutions is to prevent that from happening. Laws are needed to bring about what is in this sense natural, because the natural is not just what happens. The natural is the way things ought to be.

Doubts about the idea of a universe in which the natural was good had of course been around for a long time. Many people had claimed that the natural world was not in the least harmonious, and that the purpose of laws must be to impose some order on the nasty and brutish state of nature. In this tradition there had always been problems about how to account for the kinds of order that the world obviously did contain, and the plausible idea that order implied an intelligent orderer went well with the idea that there was a moral order integrated with the physical. But we can now see, looking back, that at the time of Mill and Stephen, Charles Darwin had just made the breakthrough that showed in principle there could be order of the kind observed in nature without there being any design or underlying moral order.

To understand the nature of something in this scheme of things is simply to understand *what it is like* and how it works: what it can influence and what it can be influenced by, and how. It implies nothing at all about where it ought to be, or what is good for it. And in an inversion of Stephen’s claims about the common interests of the “the two great divisions of mankind”¹⁴ it is striking that evolutionary theory—now far advanced, of course, since Stephen’s time—not only regards the sexes as competitors with very different genetic and psychological interests, but even views different parts of single organisms as in competition with each other.

This radical difference in their understandings of nature is not explicit in the debate between Mill and his opponents, even though it was recognized at the time that conservative and liberal politicians did have different ideas about how societies ought to develop. Indeed, there are several indications in the text that Mill still had some elements of the natural law theory mixed in with his own approach.¹⁵ But the difference is there in the background, and accounts for the remarkable way in which Stephen’s arguments, specifically intended as a rebuttal of Mill’s, seem to pass Mill’s by. Of course Stephen can recognize that there are

13. *Id.* at 197.

14. *Id.* at 198.

15. Mill’s arguments are developed in his essay *Nature*, in *THREE ESSAYS ON RELIGION* 4–65 (Prometheus Books 1998) (1874) (published posthumously).

women who are not satisfied with their position; but they are the ones who should be regarded as aberrant—in need of correction by surgery and leg irons. To use them as a justification for sending other women into men's sphere would be like distorting feet with ill-fitting shoes. Of course Stephen recognizes that men and women have been subjected to systematically different educations, since that is what he recommends; but the nature of people is not discovered by controlled scientific experiment. It is given in the nature of things. As a result, Mill and Stephen have radically different approaches to problems about the organization of society in general, and marriage in particular. Stephen is working in the natural law tradition, whereas Mill sees law as the means by which to improve a universe which has no natural moral order. Mill's use of the term "natural" is (most of the time) simply descriptive, while Stephen's is prescriptive. With such a fundamental, unarticulated difference between them, it is not surprising that the details of their arguments engage hardly at all.

In practice, most views turn out to be an uneasy compromise between these two approaches. But there is no reconciling them, which suggests that the most fundamental question for any individual or society engaging in any discussion of social and political organization is which kind of starting point to accept. Obviously there will be no agreement about this. But although there is no space to argue the matter here, I think it can be shown that natural law approaches to ethics are essentially connected with views that are more or less religious. The prevailing democratic view about political institutions is that they should be founded on secular principles, while leaving people free to follow religious principles in their own lives.

For anyone who starts on the basis of that assumption, questions about the justifiability of different arrangements for marriage must be approached without reference to ideas of natural law. In other words, we need to take a consequentialist approach to fundamental questions of social organization. We must try to understand the morally neutral workings of the world as well as we can, and try to devise social arrangements to make the best of it.

The question now is how, in these terms, we should set about thinking about whether marriage should exist at all, and, if so, what form it should take.

III. THE ESSENCE OF TRADITIONAL MARRIAGE

As already suggested, the essence of marriage lies in the institutions that define it, not in any set of phenomena. It was a consideration of the institution, rather than of actual marriages, that led Mill to say that marriage was the only remaining form of slavery.

However, although marriage in Mill's time did indeed amount to a form of slavery, and although women had few options but to enter into it, to characterize the institution simply as slavery would be to give far too impressionistic an account of things. Marriage is essentially a contract between the sexes. The laws and conventions that defined the nature of marriage are traditionally concerned primarily with sex, and, in particular with the regulation of female sexual behavior. Roughly speaking, women in nineteenth-century England were required to abstain from sexual relations, and to avoid any suspicion of them, outside marriage, on pain of fierce social penalties for them and any resulting children.

So this, even more fundamentally than the elements Mill described, was the essence of the institution of marriage at the time. It offered women support, which most of them otherwise found it difficult to get, in return for their chastity, as well as for more general servitude, and handing ownership of their possessions and children to men. If the institution of marriage was to be justified in its traditional form, these were among the elements that had to be taken into account.

This aspect of matters did not arise in the nineteenth-century debate, probably because most of it was taken completely for granted by most people. But when it is considered, it becomes obvious that the usual contemporary justifications of the arrangements for marriage, in terms of claims about the sexes' natural suitability for different kinds of work, were entirely irrelevant. What is needed is something much more on the lines of Hume's justification of "the *modesty* and *chastity* which belong to the fair sex,"¹⁶ when he claimed that men should not have to support children that were not known to be theirs. The asymmetry defended by Hume was based on a genuine, systematic difference between the sexes. Women, in the nature of things, know who their children are; men do not, as long as women are on the loose.

If, then, Hume's premise about the injustice of having to support children that are not one's own is accepted as a starting point, to what extent would this justify the traditional institution of marriage? Presumably it would justify devices for watching the activities of

16. DAVID HUME, A TREATISE OF HUMAN NATURE 570 (L.A. Selby-Bigge ed., Oxford Univ. Press 1888) (1739).

married women, to make sure they did not risk landing their husbands with spurious children, and social acceptance of men's not being expected to support the children of women who could not demonstrate their fidelity.

However, that does not come anywhere near justifying the traditional arrangements as a whole. Once again, there is no point in having rules to bring about what would happen anyway. Thinking along Humean lines would explain a natural female caution: Ordinary prudence might make women not want to risk pregnancy before they had a man committed to their support, or rejection if they gave any grounds doubt of paternity within marriage. But it could not justify, for instance, the severe social punishment (as opposed to natural disadvantage) of erring unmarried women who found themselves pregnant, or the stigmatizing of their children as illegitimate. Nor would it justify such things as the extent of a husband's power over a wife, let alone the ownership of her property and legitimate children, and the difficulties placed in the way of women who wanted any function in life other than that of bearers of legitimate children for men. Arrangements such as these were not needed as guarantors of paternity; what they did was much stronger than that. They amounted to devices for making it positively difficult—more difficult than it is by nature—for women to have children on their own. Whatever anyone's intentions, or whatever the historical explanation of marriage at the time, its objective function was to put women, and their capacity to bear children, into the control of men.¹⁷

So Hume's account, although going in the right direction for dealing with some parts of the question, leaves too much of the institution without justification. It cannot justify even the extent of the purely sexual controls on women, let alone the all-purpose inequality of the sexes both within and before marriage.

There is also another problem of Hume's line of argument. Although the principle that men should not be saddled with the support of children not their own may be plausible in itself, there is no mention of what might reasonably be regarded as the reciprocal principle required by justice: that anyone who does engender a child should be required to support it.

17. This is presented as an analysis of the objective function of the institution, not as an explanation of how it came about. Nevertheless, it provides a highly plausible explanatory hypothesis.

What would be required by such a principle? It would, of course, give the kind of support actually guaranteed by marriage to properly-behaved women and their children. But it would require far more than that. In particular, it would require restraints on men to prevent their impregnating women to whose support they were not committed—perhaps chaperoning of men when they were in the company of women, and strong requirements of support for any women with whom they did father children, and punishing them with social ostracism if they were found to have eluded this vigilance and *fallen*. It would also involve making sure that if they tried to abandon impregnated or otherwise damaged women, they were forced to remain responsible for their support. In other words, it would suggest imposing on men something remarkably like the traditional constraints on women.

It is striking, therefore, that if you add the reciprocal woman-protecting principle to Hume's man-protecting principle you get something very like the situation of equality that Mill was recommending. If he had been trying to justify marriage arrangements as a whole, including making marriage quite distinct from non-marriage, he could have done it on the basis of those two principles. Hume's principle—that anyone expected to support a child should be able to recognize it as their own—would justify a demand for chastity in married women. And if you added to that the reciprocal principle that all people should support any children they did produce, this would call for putting men under pressure not to risk having children with women other than their wives. (Note that this is not the same as a demand for chastity in unmarried women.) This two-way principle of responsibility for children would justify limiting sex to married partners, and provide a plausible justification for an equal version of traditional marriage.

IV. THE CURRENT DEBATE

We have now gone quite a long way towards removing the elements not justified by a combination of these two principles. We have effectively removed the stigma of illegitimacy and single parenthood, and the positive obstacles to women's trying to support themselves on their own. Indeed, we have even, to some extent, started to counteract the elements of natural disadvantage, by giving state support for single parents and their children. We have also come much closer to achieving equality within marriage.

But the problem is that although the legal and institutional inequalities of marriage have now gone, what remains unclear is whether that leaves any justification at all for marriage in a society that does not make natural law assumptions. Since Mill's time, science has brought about

radical changes which, in principle, could remove the whole of the secular justification for traditional marriage. We can now separate sex and childbearing. More recently, we can reliably identify paternity. We can, if we want to, make sure that women cannot pass off other men's children as their partner's, and we can make sure that men are forced to support any children that are theirs. Technology can now, in principle, do all the paternity checking that marriage of this traditional form is supposed to do.

Perhaps this is part of the reason why in the West, at least, the significance of marriage has enormously declined. The legal and social differentiation of treatment between the married and unmarried has changed beyond the recognition of a couple of generations ago. Sex before marriage is normal, childbearing by single women and unmarried couples is no longer much condemned, men can be held responsible for the support of their children irrespective of whether they are married, and married couples can deal with their tax and incomes separately. At the same time, expectations of behavior within marriage have lessened too. Divorce is easy, desertion of wives and children by men is subjected to little social penalty (abandoned wives find that their husbands and their new partners are more socially acceptable than single older women), and adultery is a subject for newspaper titillation but no longer an outright scandal. People do still choose to get married, but the social pressures to get them married, keep them married, or demand particular kinds of behavior within marriage, are negligible.

And increasingly, presumably as another aspect of this decline, rules are having to be made for the organization of de facto relationships—for the organization of possessions and children. Some of this has taken the form of imposing on informal relationships rules very much like those of marriage. But whichever way it goes—whether marriage is made more like informal relationships, or the other way round, or both—the result is the lessening of marriage as an institution. There are far fewer incentives for people to enter into an arrangement where there are more commitments than there otherwise would be.

The question now is whether this is the right direction for society to take. Should we regard marriage as an institution that has been superseded by technology and social change? Or can we justify a special kind of contract that binds people more closely together than they are naturally inclined to be bound, and putting pressure on them to enter into it? Against the background of a liberal society, which places a high value on

individual freedom, such an institution would need positive justification. But if the kind of justification so far considered is no longer available—the kind Mill might have given if he had started with Hume’s arguments—what kind of justification might there be?

The most plausible kind would probably be about the desirability of maintaining stability of various sorts—of the social value of maintaining families and fixed social networks, and in particular of providing stability for children. It is at least not absurd to suggest that we might put people under considerable pressure to avoid having children without entering into a strong commitment to stay together until the children had grown up.

However, although it might be possible to make out a plausible case for marriage by arguments along these lines, it is striking that such a justification would have no necessary connection with sex. Originally, sex was the essence of marriage, and in the natural law view of things it is clear why it still should be. But if it is accepted that a justification of marriage must be given in purely functional terms, and if the original purpose of identifying paternity is gradually becoming irrelevant, why should sex come into the matter at all?

This is where the gay marriage issue arises. If marriage can be justified at all, there seems no reason to exclude gay marriage, or, for that matter, marriage-like structures that go beyond couples. Once ideas of natural law are abandoned, the question is wide open. We just do not know, in advance of experiments, what will produce whatever kind of outcome we decide want.

But before sex is dismissed altogether there is another matter to consider, also to do with the advance of science. While science has been busy undermining all the traditional justifications for marriage, it has also been making great strides in the understanding of human nature—and, in particular, of the old question of how different the sexes are by nature. Perhaps sex might be brought back into marriage by this route.

V. THE NATURE OF THE SEXES

It is significant that Mill’s arguments for equality in marriage in no way depended on claims that the sexes were alike, or that legal equality of the kind he wanted would lead to an equality of outcome between the sexes. He took it for granted that the sexes’ functions would be different in marriage, because of women’s necessary involvement with children, and, like Stephen, he took it for granted that in choosing marriage and children, a women in effect “renounced all careers but one.” But he left completely open the question of how different the sexes were by nature in less tangible ways, such as emotions and abilities, because this was a

matter impossible to judge in the present state of society, where the sexes had always been in systematically different environments. But this was irrelevant to his case for legal equality. The laws should treat everyone equally, and against the background of those laws individuals would find their own level.

In our own times, however, Mill's agnosticism has been replaced by the growing insistence of social scientists and feminists, and the Left in general, that observed differences between the sexes are cultural constructs. The meaning of "gender" was commandeered to refer to such supposedly nonbiological differences, and it is a sign of how taken for granted the social construction view has become to feminism that the substitution of "gender" for "sex" seems to have become compulsory among the politically enlightened.

Still, the cultural construction view of psychological difference has always been implausible. If human beings are regarded as belonging entirely to the natural world, as most social construction theorists believe, and their emotions and intelligence as (however mysteriously) functions of matter rather than properties of separately infused souls, differences in mind must ultimately be connected with differences of bodily construction and chemistry. It would be astonishing if the main systematic division within the species managed to avoid any correlation with differences of mind and temperament. And science, which has progressed a good deal since the time of Mill, is increasingly proving that it has not. We now have direct physiological evidence of strong tendencies to mental and emotional differences between the sexes, and even more is coming from the new direction of evolutionary studies.

Darwin himself recognized that as soon as evolution produced creatures with emotions and intelligence, these qualities would be as relevant to the evolutionary fate of their possessors as would anything else about them. Evolutionary theorists approach the problem identified by Mill—that of disentangling any natural differences between the sexes from the ones produced by different environments—by using our understanding of evolutionary processes to generate hypotheses. This approach does not make the human sciences easy, but it does provide a direction of approach that makes them less absolutely intractable.

And when the sexes are considered from that point of view, it becomes overwhelmingly likely that men and women must be psychologically different on average, just because of their reproductive differences. A human female, reproducing flat out, can produce only

about one child a year. A human male's reproductive potential is limited only, though of course entirely, by his ability to impregnate females. A female need make no effort at all to have children—males, unless actively kept at bay, will see to that—and no amount of sex can increase her reproductive potential. She will do best, reproductively, if her emotions lead her to maximize the quality of her offspring, by selecting mates who are of high genetic quality, and who also (preferably) have important resources they can be relied on to give those offspring. A male, on the other hand, is playing for higher stakes. If he does well, he may have far more than his fair share of children; if he does badly, he may have none at all. If he is to succeed in the evolutionary competition, he will need quite different emotional characteristics from those of females.

Reasoning along these lines has produced dozens of hypotheses about differences between men and women, and the problem for feminism is that many of these differing characteristics are instantly recognizable in women as they now are and traditionally have been. Differences insistently attributed to culture are turning out to be ones that natural selection might be expected to have planted deep in the nature of the sexes. There is nothing like a clean sweep: for instance, nothing in evolutionary psychology even begins to suggest that women are in any way less intelligent than men. However, some things are disturbingly familiar. Women, by this reasoning, should be naturally attracted to impressive, high-status males from whom they seek undivided support and commitment, strongly devoted to the care of their children, and more concerned about emotional than sexual fidelity. Men should be highly competitive towards other males, adventurous and anxious to outstrip other men in their access to women and control of their reproduction. While they should generally prefer youth and beauty, as indicators of fecundity, in the women whose offspring they intend to support, they should also be eager to grasp whatever sexual opportunities they can. For men, unlike women, each individual investment is small, and may have considerable reproductive payoff.

Of course there will be, in this huge and developing area of inquiry, many detailed claims and research projects that are open to legitimate scientific criticism. What is interesting, however, is that so many people on the political left use claims of bad science to dismiss not just particular parts of these enquiries, but the whole project of evolutionary psychology. The whole idea that we can say anything about human nature in general, and about the sexes in particular, is regarded not only as scientifically bad, but also, more fundamentally, politically dangerous. This is explicit in many antisociobiology writings, and in the concerted opposition to this new area of enquiry.

It is the element of objection on principle that is relevant in this context, because here again appears the importance of clarifying the metaphysical underpinnings and showing the root of the difference between Mill and Stephen. The principled opposition to evolutionary psychology shows a radical misunderstanding of what is going on. The claims about the natures of the sexes may look rather like the traditional ones, but they are not. Even to the extent that recent claims from evolutionary psychology about male and female nature sound like traditional ones, they are significantly different because there has been a change in what is meant by *any* claim about human nature.

As already explained, to Stephen, like other natural law theorists, to understand the nature of something was to understand the essence of things of that kind, which involved understanding their proper function and recognizing aberrations. But in the kind of world accepted by Mill—the kind developed in a radical Darwinian understanding of the world—to understand the nature of something implies nothing of the kind.

In a Darwinian world, for instance, claims about the way evolution has shaped male and female emotions carry no implications whatever of homogeneity within the sexes, or of firm boundaries between them. There is no such thing as an essence of maleness and femaleness: no such thing as a true woman or a true man. Since variation is the raw material of evolution by natural selection, you expect variation within the sexes, and, since they are both human, enormous overlap. Ideas of fixed essences and clear distinctions between natural kinds belong only to the idea of an ordered universe where things are designed for particular places and functions.

In a Darwinian world, similarly, to understand the nature of something is, among other things, to understand how its nature will and will not change in response to different environments. The nature of something is not fixed. How much change is possible is an open, empirical question, so claims about sex differences carry no implication of genetic determinism. It is only in a pre-Darwinian, ordered universe that the natures of things cannot be changed. There is also not the slightest implication that characteristically male or female attributes will determine the actions of any man or woman, since how an individual acts will depend on innumerable other characteristics in combination with any sex-specific emotions. Ideas of fixity, of boundaries, and of predetermination all

belong to the pre-Darwinian world, and so are irrelevant to the claims of evolutionary psychology.

The mistake of confusing old and new understandings of nature shows, above all, in any idea that discoveries about the natures of the sexes have direct implications for how they should live and relate to each other. There is no such implication. What is alarming about the undesigned Darwinian world, within which evolutionary psychology makes its claims, is this lack of underlying moral order. Evolution by natural selection produces harmony of any kind only to the extent that harmony promotes reproduction. Evolutionarily speaking, the sexes are rivals, and the result of that seems to be that there is a highly limited extent to which they can be expected to be psychologically well suited. Whatever may be achieved by well-matched or well-motivated individuals, there is no natural prescription for domestic harmony or social justice.

Since conservatives always said that the sexes were different, and used it as their excuse for the traditional relegation of women to their subordinate sphere, it is not surprising that feminists reacted by denying it. But it is only in the natural law tradition that the social prescription follows from claims about male and female nature. The response appropriate to contemporary political, social and moral thinking is to reject not the detailed claims that are made, but all the presuppositions about what it is to understand the nature of things.

If the world is understood in this way, it is potentially catastrophic to reject hypotheses about human nature just because they have a superficial resemblance to the bases on which traditionalists made their normative claims. Whatever we hope to do, we cannot do it without understanding what we are up against. If science is showing us that men and women are different, as it certainly seems to be, that is something we need to know. The last thing we can afford is resistance that comes from encumbering Darwinian claims about human nature with incompatible residues of a pre-Darwinian world.

VI. SEX AND MARRIAGE, NEW VERSION

There are many other ways in which natural law presuppositions appear, heavily disguised, in current liberal and radical political thinking. The main argument here is that they need to be identified and recognized for what they are. That is just a methodological point.

Still, it may be asked: Even though it may be a mistake to resist recent ideas about sex differences as a result of confusing them with similar-sounding traditional ideas, are they of any relevance to the current debate about marriage? If Mill thought that we could decide on

a just framework for marriage without knowing about the natures of the sexes, should we not just take the same approach now? Perhaps we should think in perfectly general terms about the value of certain kinds of commitment, and then wait to see which people choose to enter it.

But if we are thinking in a large way about social organization, it is not enough to think in abstract about what should be allowed or not allowed. Social planning involves adjusting a complex set of incentives and disincentives, with a view to achieving better cumulative effects from individual choices. To do this well we need to know about human nature in general and if, as we presume, sex is a large part of human nature, we may need to take that into account.

It is politically difficult to raise issues like this, because in practice it tends to be presumed that even to raise a question is to argue for a political conclusion. But it is perhaps worth throwing in a speculation or two about considerations that might, some day, lead people to think that there was something to be said for pressures to get men and women together in stable relationships, and to keep them there beyond what might be their natural inclinations.

The first of these is obvious and familiar: the matter of stable backgrounds for children. We cannot presume that what is best for children is all a matter of social construction, and that if we could drop our prejudices in favor of traditional families, no one would be left out and everyone could flourish. Something like that might, possibly, be true; but it is reasonable to be suspicious of convenient claims that children do just as well without continuous attachment to their mother, or that biological parentage is irrelevant, or that children are perfectly all right without fathers, or that it does not matter at all whether children have parents of both sexes, or that it is better for children if parents separate rather than stay together and quarrel. Even if our current liberal arrangements really do tend in themselves to be bad for children they might still be justified, but if we are to assess the cost we need to be careful about the evidence.

A different consideration in the same area is another matter of sexual justice. Bearing and rearing children has for so long been regarded as a burden for women that it is easy to overlook the fact that when the use of the female reproductive system becomes optional, the ability to bear children is a huge natural advantage. That, after all, is why women were taken over by men in the first place. Women have an ability that men have not, and men can have no reliable relationship with their own

children except through their connection with women (as many men are now acutely aware). Is it fair to men that they should contribute to social funds, to support children, if women will not let them identify them as their own?

And finally, there are wider questions about demographics and social order. For instance, there is some evidence that women's desire for high-status, impressive men was not just, as feminists tended to presume, the result of their needing to be supported when uncontrolled childbearing and legal constraints prevented their supporting themselves. Now that women are increasingly independent, the result seems to be that they want men of higher caliber still, and there are—in the nature of things—nothing like enough of them to go round. If this is true, as it seems to be, it may have at least two adverse effects.

One, of which most academics and other professionals are already well aware, is that married women with high-grade husbands are unsafe. Other women will be after their men, and those men, if given their own way, may well prefer younger women. Women may find their lives thrown into chaos late in life, when they are (as Stephen said, I think rightly)¹⁸ doubly disadvantaged by their having invested in children at the expense of other possibilities, and men's preference for younger women.

Another, of which there is also some evidence, is that if women do not have to settle for unimpressive men just for the sake of support, or if men see that their support is unnecessary because women have other kinds available to them, there will be lots of unattached men. Polygamy—which is effectively what we have with serial monogamy and mistresses on the side—leaves many men without sex and families at all; and unattached men are, in significant numbers, well-known sources of trouble. Marriage is still, statistically, the best preventer of crime by men—even better than employment.

Even if any or all of these considerations are well founded, they have no direct implications for politics. They would not in themselves imply that we should resume making outcasts of single parents or married people who risk rocking the boat with exciting sexual encounters before the children have grown up, let alone that women should be under the kind of pressure to get married that lets them see taking on low-grade men as the best option open to them. But on the other hand, if it is true that the breakdown of traditional marriage has had unwelcome side effects of the kinds described—and there is a lot of evidence that it has—this is something that we need to know. Only when we face up to the moral mess that results from evolution can we set about using our ingenuity to make things better.

18. STEPHEN, *supra* note 4, at 195–96.