

# Liberals and Libertines: The Marriage Question in the Liberal Political Imagination

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Two novellas neatly frame the discussion of “the marriage question” in liberal political thought: Leo Tolstoy’s study of marital jealousy and femmicide, *The Kreutzer Sonata*,<sup>1</sup> published in 1889, and Philip Roth’s confession of a latter-day libertine, *The Dying Animal*<sup>2</sup>—another work obsessed with male jealousy and death, which appeared in 2001. In fact, both of these novellas assume the form of a confession of a lapsed libertine. *The Kreutzer Sonata* is presented in the classic style of the tale told to a stranger on a train, and *The Dying Animal* also is styled as a dialogue with an unknown interlocutor. In both novellas, the lapsed libertine who addresses his remarks to “you” is actually a self-absorbed monologist, given to sweeping diagnoses of society’s ills, in practice if not by actual trade a kind of political theoretician, obsessed with analyzing the social and psychological causes of his own downfall, and compulsively unburdening himself to a nameless, faceless confessor. The heart of the libertine’s lament in each case is a diatribe against the institution of marriage.

Equally consumed with escaping the “snare” of sex and pursuing an impossibly pure and elusive ideal of personal freedom, Tolstoy’s and Roth’s lapsed libertines skewer marriage and along with that, what

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1. Leo Tolstoy, *The Kreutzer Sonata*, in *THE DEATH OF IVAN ILYCH AND OTHER STORIES* (Signet Classic 2003) (1886).

2. PHILIP ROTH, *THE DYING ANIMAL* (2001).

passes for liberal thinking in their day: equality for women, marrying for love, an end to sexual repression (little seems to have changed since the late nineteenth century). In doing so, they submit both liberalism and marriage to a joint interrogation that reveals a deep connection between the two, as well as deep strains of ambivalence that exist within liberal thought with regard to freedom in the domain of love, sex, and personal attachments.

Most of this essay is devoted to identifying the strains of ambivalence in liberalism revealed in the libertine's diatribe against marriage. Liberalism has always been at pains to differentiate itself from libertinism—"liberty, not license," and "liberalism, not libertinism" have been common refrains. However, one of the claims of this essay is that libertinism and liberalism are more like kissing cousins, or, even better, twins separated at birth (libertinism being the designated "evil one"). Recognizing this secret kinship can help us understand how "the marriage question" has been framed and why it has persisted in the modern liberal political tradition.

The liberal political cause of advancing individual freedom has always had a vexed relationship to the realm of the irrational and the appetites. Freedom of the will is one thing; freedom of desire, or free love, quite another. The difficulties of adapting traditional "virtue-based" liberalism to a world which gives the appetites and desire free reign have been evident not only in the debates about marriage and intimate relationships, but also in the context of the economy and market relationships where the sovereignty of the consumer and her subjective preferences pose many of the same challenges to traditional liberalism as do the sexual desires of the libertine.

Love and desire (the relationship between the two is itself a subject of controversy) both put strains on the conceptual apparatus of traditional liberal thought, which developed at a time when a normative psychology subordinating the appetites to reason and virtue was deeply entrenched and widely taken for granted. As a result, it has always been tempting to deal with assertions of personal freedom in the realm of desire by simply expelling them from the ambit of normative liberalism and attributing them to renegade philosophies instead. Social philosophies that affirm the principle of freedom in the domain of love and desire have been relegated to any number of precincts outside the parameters of liberal thought. To the left of liberalism is where we supposedly find "libertinism," "radical individualism," "romanticism," and the free-love "anarchism" cultivated by the late nineteenth-century and early twentieth-century "sex radicals," and taken up again in the sixties sexual revolution, and the post-Stonewall seventies. To the right of liberalism we supposedly encounter Christian anarchism and the theology of Christian love that Tolstoy embraced, along with other varieties of "conservative" thought

exalting the bonds of love and loyalty constitutive of family, community, nation, and elevating faith over reason.

Interestingly (though unsurprisingly if the economic determinists have things even halfway right), in the realm of market relations, the impulse to cast the valorization of subjective desires as a nonliberal, radical, or conservative ideal—that is, to cast it *out* of liberal theory—has for the most part been successfully resisted. (Liberals may debate the merits of laissez-faire economics, but no one denies the fundamental link between free-market libertarianism and the political philosophy of classical liberalism.) By contrast, in the context of romantic relationships, the philosophical kinship between the regulators and the antiregulators is frequently denied.

However, the critique of marriage is not so easily divorced from antilibertine liberal ideals, a difficulty exhibited in the Tolstoy and Roth novellas. One of the things that this pair of novellas serves to remind us of is the fact that historically critiques of marriage were voiced both by libertines—those who repudiate the institution of sexual monogamy and the regulation of sex and sexual morality—and by those most strenuously opposed to libertinism.<sup>3</sup> Roth's Kepesh is a pro-sex,

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3. On the definition of libertinism, see *THE LIBERTINE READER: EROTICISM AND ENLIGHTENMENT IN EIGHTEENTH-CENTURY FRANCE* (Michel Feher ed., 1997). As Feher explains in his introduction:

Libertinism, as developed in this reader, refers first and foremost to the licentious ways of the declining French aristocracy. However, before the eighteenth century, the word "libertine" did not refer exclusively to sexual *morés*. The term appeared as early as the middle of the sixteenth century within a theological context: Calvin used it to denounce a sect of dissident Anabaptists whom he accused of abusing their freedom by "transforming Scripture into allegory." Others used it more generally as synonym for an "atheist." By the beginning of the seventeenth century, the words "libertine" and "libertinism" became associated with an actual school of thought. The "scholarly libertines" (*les libertins érudits*), an assortment of scholars, poets, and dilettantes, formed a small group of freethinkers who shared an aversion to dogma; seeking to demystify superstition and to dismantle baseless belief and preconceived ideas, they contested both political and religious authority. Every watchword imposed by the powers that be, or accepted without question by the public, inevitably raised the libertines' hackles. Conversely, any thinker persecuted for his opinions was counted, by definition, as a member of their circle.

The first "libertines" were not concerned with substituting any new truths for old certainties. Following Montaigne, whom they held up as a guide, they mistrusted anything that appeared to be immutable. They believed in a generalized *inconstancy*, inherent both in the nature of things and in the heart of man. The freedom of the libertine, then, consists in espousing this universal

down-with-love “professor of desire,” who harkens back to the eighteenth-century libertines in his refusal of love and marriage for the sake of enlivening and prolonging sex. Like the French “philosophical” libertines, such as Laclos and de Sade, he despises marriage not only because he thinks it deadens sexual desire but also because it subjects the individual to constraints. Conversely, he champions sexual promiscuity in the name of a radical individual freedom. By contrast, Tolstoy’s Pozdnyshev draws an entirely different set of equations. For him, marriage is to be reviled not because it dampens or deadens sex, but for just the opposite reason—marriage to him is nothing but licensed sex. For Pozdnyshev, the condemnation of marriage and the condemnation of sex go hand in hand. He criticizes marriage as a system of licensed prostitution, as a “trap” that enslaves men to women, and women to men. What he champions is not free love as the libertine imagines it, but rather, a much more exalted and fundamentally religious (Christian) ideal of love between men and women, and of personal freedom—an ideal of true love, true liberty, and truly free love which transcends the baser animal appetites and rests, at bottom, on the agapeic love of God.

Yet for all the apparent differences between these two lines of argument, what is interesting to note for our purposes is that both the libertine’s and the antilibertine’s antimarriage polemics reveal a hidden connection between philosophical libertinism and the political philosophy of liberalism. Vis-à-vis conventional liberalism, the libertine and the antilibertine, ventriloquized by Roth and Tolstoy respectively, appear rather like a pair of disappointed rivals, two jilted lovers each disclosing an abiding attachment to the liberalism they purport to scorn—and to each other. Understanding these points of contact between liberal, libertine, and antilibertine ideas can help us to better understand marriage as it stands in relationship to liberal ideals of equality and individual freedom, and liberalism itself.

What follows then is not one, but two different readings of this pair of novellas. The first reading emphasizes the philosophical boundary lines that are conventionally taken to separate liberal from libertine, and libertine from antilibertine, thought. In the second reading, these boundary lines collapse, and the points of overlap and ambivalence among these

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inconstancy: he presents himself as *emancipated* and, as such, scornfully rejects the prejudices that aim to pin him down, whether in regard to an idea, a god, or a lover.

*Id.* at 11–12. For more on the *libertins érudits*, see RICHARD H. POPKIN, *THE HISTORY OF SKEPTICISM: FROM SAVONAROLA TO BAYLE*, 80–99 (rev. and expanded ed. 2003). For more on the links between libertinism and atheism, see ALAN CHARLES KORS, *ATHEISM IN FRANCE, 1650–1729*, 21–30 (1990).

philosophical stances toward liberty and love, sex and marriage are revealed. In effect, what I am proposing is that we read the antimarriage polemics of Roth and Tolstoy's lapsed libertines as part of the intellectual tradition of liberal thought, albeit a part that is commonly disowned. Reading the novellas in this way is like reading a message scrawled in invisible ink on the margins of canonical liberal texts; the message is there but usually hidden from sight.

One last remark: It may seem strange to uphold these two novellas as exemplars of liberal political theory. Not only is there an issue of genre—these are literary works, not works of political theory in any customary sense—but there is also an issue of content and philosophical perspective. In each novella, the protagonist explicitly advocates a particular philosophy of social and sexual relations that is centered on an ideal of personal freedom (this helps to answer the genre question). But in neither case is it obvious that the ideal of freedom and political philosophy espoused is a *liberal* one. In fact, as suggested above, many readers will think it more correct to classify the positions espoused in each book as *antiliberal* philosophies—in Tolstoy's case, as a conservative philosophy rooted in the religious doctrines of Russian Orthodoxy and firmly opposed to the liberal and libertine doctrines of the day, and in Roth's case, as an avowedly libertine philosophy taking aim at the pieties of "political correctness" which, in the view of Roth's narrator, have hijacked liberalism and the sexual revolution of the sixties.

Despite these issues of substance and style, I want to suggest that it may nonetheless be illuminating to read these two novellas as exemplary *liberal* texts about marriage. Indeed, I will go so far as to venture that they should be read as canonical works side by side with Milton's *Areopagitica*<sup>4</sup> and Mill's *On Liberty*<sup>5</sup> in the canon of the liberal political tradition. It is perhaps no accident that our preeminent theorists of free speech also formulated some of the earliest and greatest paeans to what a later age would style as free love. Milton's *Doctrine and Discipline of Divorce*,<sup>6</sup> which remains one of the most powerful and moving testimonies to the right to divorce, argued well ahead of its time for a

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4. John Milton, *Areopagitica*, in JOHN MILTON, COMPLETE POEMS AND MAJOR PROSE 698 (Merritt Y. Hughes ed., 1957).

5. JOHN STUART MILL, *On Liberty*, in THE PHILOSOPHY OF JOHN STUART MILL: ETHICAL, POLITICAL AND RELIGIOUS (Marshall Cohen ed., 1961) (1863).

6. John Milton, *The Doctrine and Discipline of Divorce*, in JOHN MILTON, COMPLETE POEMS AND MAJOR PROSE (Merritt Y. Hughes ed., 1957).

right to be released from the vows of marriage on no grounds other than what Milton understood to be the distressingly common plight of a marriage that fails to deliver the solaces of physical love and emotional affection. And Mill's feminist classic, *The Subjection of Women*,<sup>7</sup> a broad analysis of "the woman question," likewise featured a radical critique of the traditional structure of marriage. And if, as I am suggesting, there is a hidden connection between the ideas about free speech and the ideas about free love in the work of these two great theorists, perhaps there is also a link between their political theoretical works and their literary artistry that has yet to be identified and explained.

Milton is the most obvious example we have of a great literary writer who is at the same time a serious theorist of political and social relations. Mill—who submerged his romantic ideas in the hyperrationalist framework of utilitarian thought, and, with the important exception of his *Autobiography*,<sup>8</sup> stuck to the genre of political theory—is a less obvious case. But both as a literary stylist and as the nineteenth-century thinker who played the leading role in integrating romanticism into Anglo-American philosophy, Mill too deserves to be placed in the canon of great literary as well as great philosophical writers (as my colleague in the English department will tell you).<sup>9</sup> From this point of view, Tolstoy and Roth can be seen as representing just the opposite case: Great fiction writers who deserve to be regarded as political theorists as well. What, then, is the political theory expressed in their respective novellas? An answer is provided in our double-read.

#### I. FIRST READ: LIBERTINISM VS. LIBERALISM VS MARRIAGE

The first reading of *The Dying Animal* and *The Kreutzer Sonata* that I want to offer emphasizes their differences. In this reading, antithetical relationships abound. Libertines oppose marriage. Antilibertines oppose marriage and libertinism. Libertinism and antilibertinism naturally oppose each other. And both the libertine and the antilibertine oppose liberalism, or what passes as the forward liberal thinking of the day.

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7. JOHN STUART MILL, *THE SUBJECTION OF WOMEN* (Susan Moller Okin ed., Hackett Publishing Co. 1988) (1869).

8. JOHN STUART MILL, *AUTOBIOGRAPHY* (Penguin Books 1989)(1873).

9. I would be remiss if I did not express my indebtedness to my colleague in the USC English Department, Hilary Schor, whose ongoing collaboration on the ideas explored in this paper is impossible to separate from this particular essay, as well as to Martha Umphrey, who first called my attention to the parallel story lines in *The Kreutzer Sonata* and *The Dying Animal*, and to Chris Lim, whose intellectual input went well beyond the ordinary provision of research assistance. The usual disclaimers apply.

Ironically, while liberalism presents itself as bold, forward-looking, sophisticated, progressive, avant-garde—even as slightly outré—it is lampooned in both Roth’s and Tolstoy’s novellas as an already stale orthodoxy, a silly and shallow set of platitudes about freedom and equality, especially between women and men, updating and ornamenting a still essentially conservative conventional wisdom.

Tolstoy sends up liberal sentiments in a comic set piece that precedes and frames his lapsed libertine’s confession. Five passengers are sharing a carriage on a train with our narrator, including the antihero Pozdnyshchev, a clerk, a lady, an old man, and a lawyer. “The lawyer was saying that public opinion in Europe was occupied with the question of divorce. . . .”<sup>10</sup> The predictable exchange ensues, the lady opining that people should marry for love (“It’s only animals, you know, that can be paired off as their master likes; but human beings have their own inclinations and attachments”), the old man retorting that “animals are cattle, but human beings have a law given to them,” and the lady responding with “an argument which probably seemed very new to her”: “Yes, but how is one to live with a man when there is not love?”<sup>11</sup> Solidifying his role as the representative of “barbarous views of women and marriage,”<sup>12</sup> the old man asserts that “the first thing that should be required of a woman is fear,”<sup>13</sup> and attributes the changes afoot to the sorry fact that people, including women, “have got so very educated.”<sup>14</sup> Rising to the bait, the lady and the lawyer rush to defend “first women’s rights, then civil marriage, and then divorce.”<sup>15</sup> Their joint effort culminates in the lady’s passionate defense of the “European” view of marriage: “marriage without love is not marriage . . . love alone sanctifies marriage, and . . . real marriage is only such as is sanctified by love.”<sup>16</sup>

Tolstoy plainly has fun taking this apart. His Pozdnyshchev begins with a deceptively simple and hesitant question: “What kind of love . . . love . . . is it that sanctifies marriage?”<sup>17</sup> Within minutes he has torn to shreds every one of the highminded sentiments expressed by the lady and the lawyer. To the lady’s response that the answer to his question is

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10. Tolstoy, *supra* note 1, at 155.

11. *Id.* at 157.

12. *Id.* at 159.

13. *Id.* at 157.

14. *Id.* at 156.

15. *Id.* at 159.

16. *Id.* at 159.

17. *Id.* at 160.

“true love,” Pozdnyshev immediately interposes the question, “. . . for how long?”<sup>18</sup> To the answer “for a lifetime,” Pozdnyshev scoffs that “you are talking about what is supposed to be, but I am speaking of what is.”<sup>19</sup> “What is,” in his estimate, is nothing but animal attraction, which is destined to burn out quickly: “To love one person for a whole lifetime is like saying that one candle will burn a whole life.”<sup>20</sup> As for the lady’s insistence on “love based on identity of ideals, on spiritual affinity” rather than “physical love,” Pozdnyshev can only literally snort, “Spiritual affinity! Identity of ideals!” and, in a line of ribald sarcasm straight out of Roth, “in that case, why go to bed together? (Excuse my coarseness.) Or do people go to bed together because of the identity of their ideals?”<sup>21</sup>

As a matter of fact, Pozdnyshev maintains, “people marry regarding marriage as nothing but copulation.”<sup>22</sup> But because this fact is papered over with the fiction of “true love,” “the result is either deception or coercion”:

When it is deception it is easier to bear. The husband and wife merely deceive people by pretending to be monogamists, while living polygamously. That is bad, but still bearable. But when, as most frequently happens, the husband and wife have undertaken the external duty of living together all their lives, and begin to hate each other after a month, and wish to part but still continue to live together, it leads to that terrible hell which makes people take to drink, shoot themselves, and kill or poison themselves or one another. . . .<sup>23</sup>

Pozdnyshev, it soon emerges, is one of the latter kind: a man who has murdered his wife in a fit of jealousy, and then gotten off on the time-honored defense of a crime of passion, only to suffer from remorse ever after.

As Pozdnyshev sees it, it was love, marriage, and libertinism—the three are virtually indistinguishable for him—that brought things to such a disastrous pass. How “love led to what happened to me”<sup>24</sup> and “how and why I married”<sup>25</sup> are the self-same story, a story of “horror,” the “root of [which] lies” in regarding “woman as something to be desired.”<sup>26</sup> Such a debased and debasing attitude expresses itself in debauchery and “dissolute” living. But “dissoluteness does not lie in

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18. *Id.* at 160.

19. *Id.* at 161.

20. *Id.* at 161.

21. *Id.* at 161.

22. *Id.* at 162.

23. *Id.* at 162. The comparison between Tolstoy and Roth suggested here may be enhanced by considering another short novel of Roth’s entitled *Deception*, the story of an adulterous affair. PHILIP ROTH, *DECEPTION* (1997).

24. Tolstoy, *supra* note 1, at 163.

25. *Id.* at 164.

26. *Id.* at 165.



anything physical—no kind of physical misconduct is debauchery,” Pozdnyshev explains to his captive audience. Rather, “real debauchery lies precisely in freeing oneself from moral relations with a woman with whom you have physical intimacy.”<sup>27</sup> Before his marriage, he lived “as everybody does, that is everybody in our class . . . that is, dissolutely,” which is to say, “I was not a seducer, had no unnatural tastes, did not make that the chief purpose of my life as many of my associates did, but I practiced debauchery in a steady, decent way for health’s sake.”<sup>28</sup> Such behavior, while conventionally frowned upon was also tacitly approved: “What was really a fall was regarded by some as a most legitimate function, good for one’s health, and by others as a very natural and not only excusable but even innocent amusement for a young man.”<sup>29</sup>

And thus a “libertine” was born—a condition that Pozdnyshev regards in much the same way that we might today regard alcoholism, that is, as a pathology creating a state of dependency, at once physical, social, and moral, from which one never fully recovers:

I had become what is called a libertine. To be a libertine is a physical condition like that of a morphinist, a drunkard, or a smoker. As a morphinist, a drunkard, or a smoker is no longer normal, so too a man who has known several women for his pleasure is not normal but is a man perverted forever, a libertine. . . . A libertine may restrain himself, may struggle, but he will never have those pure, simple, clear, brotherly relations with a woman. By the way he looks at a woman and examines her, a libertine can always be recognized. And I had become and I remained a libertine, and it was this that brought me to ruin.<sup>30</sup>

Our man Pozdnyshev, then, is not so much an antilibertine as he is a recovering libertine, convinced that sexual feelings have led to his downfall, and to the downfall of society at large.

The twist in Pozdnyshev’s analysis is that he perceives moral dissolution and sexual debauchery to exist everywhere, not just in the carousing that is winkingly condemned by society, but also in what are conventionally taken to be “respectable” relations. What passes for society among the upper classes “is simply a brothel”<sup>31</sup> and marriage nothing but “licensed debauchery.”<sup>32</sup> Although everyone pretends otherwise,

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27. *Id.* at 164.

28. *Id.* at 164.

29. *Id.* at 167.

30. *Id.* at 167.

31. *Id.* at 171.

32. *Id.* at 180.

“what women know very well” is that “the most exalted poetic love, as we call it, depends not on moral qualities but on physical nearness and on the coiffure, and the colour and cut of the dress. . . . [T]hat is why,” to Pozdnyshév’s never-ending torment, “there are those detestable jerseys, bustles, and naked shoulders, arms, almost breasts.”<sup>33</sup>

In some of the most brilliantly (perhaps unintentionally) funny passages in the book, Tolstoy describes the mating rituals of aristocratic society in which “marriages are arranged . . . like traps” and “amorous young people are forced like cucumbers in a hot-bed” amid a “superabundance of food, together with complete physical idleness”—an atmosphere which “is nothing but a systematic excitement of desire,” papered over by the romantic liberal fiction of true love.<sup>34</sup>

In reality that love of mine was the result, on the one hand of her mamma’s and the dressmakers’ activity, and on the other of the super-abundance of food consumed while living an idle life. If on the one hand, there had been no boating, no dressmaker and so forth, and had my wife been sitting at home in a shapeless dressing gown, and I had on the other hand been in circumstances normal to man—consuming just enough food to suffice for the work I did, and had the safety-valve been open—it happened to be closed at the time—I should not have fallen in love and nothing of all this would have happened.<sup>35</sup>

One recognizes here intimations of the same domestic idyll—the natural rhythms of hard work, a simple life, and the “natural love” between a man and a woman uncorrupted by society—that characterize the relations between Pierre and Natasha at the end of *War and Peace*<sup>36</sup> and, in fits and starts, between Kitty and Levin in *Anna Karenina*.<sup>37</sup> However, such pure love, Pozdnyshév observes mournfully, is given to only a few. “Among at least ninety nine percent of the human race,” things are done the old-fashioned way commended by the old man, that is, through arranged marriage: “Only among one per cent or less, among us libertines, has it been discovered that that is not right, and something new has been invented.”<sup>38</sup>

The lady and the lawyer foolishly imagine that this “something new” represents a form of progress, a liberal solution to the marriage question: the replacement of the practice of arranged marriages with consensual, companionate marriage, based on true love, coupled with the right to

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33. *Id.* at 170–71.

34. *Id.* at 171–72.

35. *Id.* at 172.

36. LEO TOLSTOY, *WAR AND PEACE* (Rosemary Edmunds trans., 3rd ed. Penguin Books 1982).

37. LEO TOLSTOY, *ANNA KARENINA* (Leonard J. Kent & Nina Berberova eds., Constance Garnett trans., 4th ed. Modern Library 2000).

38. Tolstoy, *supra* note 1, at 173.

divorce if and when love runs out. In fact, what this modern liberal system amounts to is nothing more than libertinism of old:

“[T]he maidens sit round and the men walk about, as at a bazaar, choosing. And the maidens wait and think, but dare not say: ‘Me, please!’ ‘No, me!’ ‘Not her, but me!’ ‘Look what shoulders and other things I have!’” And we men stroll around and look, and are very pleased. ‘Yes, I know! I won’t be caught!’ They stroll about and look, and are very pleased that everything is arranged like that for them. And then in an unguarded moment—snap! He is caught!”<sup>39</sup>

Tolstoy is at his most penetrating when analyzing the “equality question,” that is, the question of equality between women and men that was understood to lie at the heart of the marriage question. What Pozdnyshv perceives, that the liberal lady and lawyer do not, is that if “prearranged matches are degrading, why this is a thousand times worse! Then the rights and chances were equal, but here the woman is a slave in a bazaar or the bait in a trap.”<sup>40</sup>

What we have here is the standard left critique of liberal markets, applied to the marriage market: competition produces inequalities more savage than those produced in premarket economy where differences are leveled by regulation. Echoing Rousseau’s theory of sexuality as the root of social division and inequality, Tolstoy’s Pozdnyshv holds that it is sexual competition which gives rise to “the domination of women”<sup>41</sup> and the manifold “crimes against women”<sup>42</sup> which characterize society. On the surface, it may look otherwise. It is men, after all, who are emotionally in thrall to the women—that is what the proverbial story of the man consumed by his jealousy is all about. But, as Pozdnyshv explains in a tour de force that would do Hegel proud, the sexual power that women wield over men is nothing but the power that every slave holds over its master: “Just like the Jews: as they pay us back for their oppression by a financial domination, so it is with women.”

“Ah, you want us to be traders only—all right, as traders we will dominate you!” say the Jews. “Ah, you want us to be merely objects of sensuality—all right, as objects of sensuality we will enslave you,” say the women. Woman’s lack of rights arises not from the fact that she must not vote or be a judge—to be

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39. *Id.* at 173.

40. *Id.* at 173. Tolstoy’s analysis here is reminiscent of Catherine MacKinnon’s critique of the right to choice established in *Roe v. Wade*. See CATHERINE A. MACKINNON, *Privacy v. Equality: Beyond Roe v. Wade*, in *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 93–102 (Harvard Univ. Press 1987).

41. Tolstoy, *supra* note 1, at 174.

42. *Id.* at 168.

occupied with affairs is no privilege—but from the fact that she is not man’s equal in sexual intercourse and has not the right to use a man or abstain from him as she likes—is not allowed to choose a man at her pleasure instead of being chosen by him. You say that is monstrous. Very well! Then a man must not have those rights either. As it is at present, a woman is deprived of that right while a man has it. And to make up for that right she acts on man’s sensuality, and through his sensuality subdues him so that he only chooses formally, while in reality it is she who chooses. And once she has obtained these means she abuses them and acquires a terrible power over people.<sup>43</sup>

Turning weakness to advantage by trading sex for power. It is the oldest trick in the book.

Whether we, like Tolstoy’s lawyer and lady, are deluded in thinking that recent reforms in sexual behavior and gender relations represent real progress, is an interesting question. Roth’s novella, which takes place more than a century later, provides an ambiguous answer. Certainly, the morés of sexual behavior have changed—particularly for women. And, at least on the surface, this would appear to be a move in the direction of sexual equality. Roth says as much:

That was the transformation Janie wrote about in her thesis. That was the story she told. The Suburbs. The Pill. The Pill that gave parity to woman. The Music. . . . The Car. . . . The Prosperity. The Commute. The Divorce. A lot of adult distraction. The Grass. Dope. Dr. Spock.<sup>44</sup>

“Janie” is one of the “the Gutter Girls,”<sup>45</sup> Roth’s inspired creation, a group of campus firebrands in the 1960s championing “the cause of sexual license.”<sup>46</sup> The “Gutter Girls” and “their adherents may well have been, historically, the first wave of American girls fully implicated in their own desire.”<sup>47</sup> As Kepesh, Roth’s pontificating professor, explains, “there were two strains to the turbulence” in the sixties:

There was the libertarianism extending orgiastic permission to the individual and opposed to the traditional interests of the community, but with it, often wedded to it, there was communal righteousness about civil rights and against the war, the disobedience whose moral prestige devolves through Thoreau.<sup>48</sup>

The sexual revolution ushered in by the likes of the “Gutter Girls” represented the first strain. They “had no objection to the social or the political argument, but that was the other side of the decade”—theirs “was a pleasure cell, not a political cell.”<sup>49</sup> It nonetheless reverberated with political values: this was a movement for sexual *liberation*, and it

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43. *Id.* at 174.

44. ROTH, *supra* note 2, at 54–55.

45. *Id.* at 50.

46. *Id.* at 52.

47. *Id.* at 50–51.

48. *Id.* at 55.

49. *Id.* at 55.

was also, in Kepesh's account, a movement for sexual *equality*, albeit one based on quite different notions of equality from the models articulated in contemporary feminist theory. The Rothian notion of gender equality, voiced by Kepesh, is one in which women assume the sexual prerogatives and sexual license formerly granted exclusively to men. Thus, in his description, the "Gutter Girls"

of the American sixties knew how to operate around engorged men. They were themselves engorged, so they knew how to transact business with them. The venturesome male drive, the male initiative, wasn't a lawless action requiring denunciation and adjudication but a sexual sign that one responds to or not. To control the male impulse and report it? They were not educated in that ideological system. They were far too playful to be indoctrinated with animus and resentment and grievance from above. They were educated in the instinctual system. They weren't interested in replacing the old inhibitions and prohibitions and moral instruction with new forms of surveillance and new systems of control and a new set of orthodox beliefs. They knew where the pleasure was to be had, and they knew how to give over to desire without fear.<sup>50</sup>

One sees here the digs at contemporary feminism—"that ideological system"—that one has come to expect from Roth. (*The Dying Animal*, the story of an affair between an aging professor and one of his many young student-lovers, reads as part apologia, part instruction manual for sexual harassers). But one also sees here, strangely enough, a sort of feminist credo. More specifically, it is a sexual credo in which women are imagined as the equals of men (or of Roth's fantasy of men) in terms of "drive," "initiative," "pleasure" and "desire." It is, in a word, a libertine's credo, much like the one imagined by Tolstoy's Pozdnyshev.

As Kepesh puts it, the "Gutter Girls" "democratized the entitlement to pleasure."<sup>51</sup> Libertinism for women and libertinism for men—with libertinism and justice for all. The echoes of the "key documents" of American liberalism are deliberate here. The Pledge of Allegiance is the only such document that Kepesh *does not* cite in his unceasing effort to construct a philosophical defense for philandering. (The Pledge, one imagines, has become too religious a symbol for Kepesh's taste since its adulteration.) But time and again, Roth explicitly associates the libertine creed that Kepesh embraces with the principles enshrined in the Constitution and the Declaration of Independence.

Like many a Roth character, Kepesh is one who takes a current social or political philosophy to absurd logical extremes. "Me and the sixties?"

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50. *Id.* at 57.

51. *Id.* at 58.

Well, I took seriously the disorder of those relatively few years, and I took the word of the moment, liberation, in its fullest meaning. That's when I left my wife."<sup>52</sup> He also left his son. It is Kepesh's relationship to his unforgiving son that forms the real heart of the book, and where his invocation of the classic texts of American liberalism becomes most explicit. Kepesh's son sends him denunciatory letters that read like miniature classics in the emerging genre of revenge-of-the-children-of-the-sixties novels.<sup>53</sup> In return, Kepesh lectures his son on the value, as he sees it, of freeing oneself from all attachments. His advice to his son who finds himself following in his father's adulterous footsteps, is classic Kepesh, a peculiar mixture of the pedantic and the perverse:

I reminded [my son] that nobody could make him do what he didn't want to do. I said what I wished some forceful man had said to me when I was on the brink of making *my* mistake. I said, "Living in a country like ours, whose key documents are all about emancipation, all directed at guaranteeing individual liberty, living in a free system that is basically indifferent to how you behave as long as the behavior is lawful, the misery that comes your way is most likely to be self-generated." . . . "Here the only tyrant lying in wait will be convention." "If you want to live intelligently beyond the blackmail of the slogans and the unexamined rules, you have only to find your own . . ." Et cetera, et cetera. The Declaration of Independence. The Bill of Rights. The Gettysburg Address. The Emancipation Proclamation. The Fourteenth Amendment. All three of the Civil War amendments. I went over everything with him. I found the Tocqueville for him . . . . Conceived in liberty—that's just good American common sense.<sup>54</sup>

What makes Kepesh so perverse has little to do with his sexual practices (they seem fairly ordinary) but lies rather in his insistence that his commonplace philandering represents the fulfillment of the liberal ideal. Championing adultery and sexual freedom, he sounds like he is channeling Mill. (Mill himself, of course, held himself scrupulously aloof from adultery—and sex—throughout his chaste relationship with Harriet Taylor, until her husband died.) Defending divorce, which he is urging on his son, Kepesh invokes no less a figure than John Milton—"the last person to take these matters seriously."<sup>55</sup> In the philosophical system that Kepesh has constructed for himself, divorce is "a human rights issue. Give me liberty or give me death."<sup>56</sup> Putting himself forward as Milton's spiritual heir, Kepesh offers his own behavior (fleeing marriage, fatherhood and emotional commitments of any kind to pursue

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52. *Id.* at 62.

53. "But what about the children?" is the question that haunts and defines this genre, well represented by the likes of Michel Houellebecq's *The Elementary Particles* and Rick Moody's *The Ice Storm*.

54. ROTH, *supra* note 2, at 81–82.

55. *Id.* at 68.

56. *Id.* at 111.

sexual dalliances) as a philosophical model, as an answer to the timeless question, “how does one turn freedom into a system?”<sup>57</sup>

At least on the surface, Roth’s Kepesh looks to be the polar opposite of Tolstoy’s Pozdnyshev. Whereas Pozdnyshev deplores libertinism as a sinister state of dependency which enslaves and debases men and women alike, Kepesh offers a philosophical defense of it that rivals that of the French philosophical libertines of the eighteenth century in its rationalization of unbridled lust. Like them, Kepesh believes that “lust is the sole natural motive of erotic attraction,” and that “sexual pleasure is the only goal worthy of being pursued.”<sup>58</sup> Like them, he “mistrust[s] anything that appear[s] to be immutable” and “believe[s] in a generalized *inconstancy*, inherent both in the nature of things and in the heart of man.”<sup>59</sup> Like them, he embraces the “freedom of the libertine [which] consists in espousing this universal inconstancy,”<sup>60</sup> and in scorning both love and marriage as “artificial and dangerous aberrations of sensual desire.”<sup>61</sup> Like them, he aims to “master the discipline of freedom . . . and to turn freedom into a system,”<sup>62</sup> and to do so by mastering the discipline of the “dangerous liaison,” no strings attached.<sup>63</sup>

Both Kepesh and Pozdnyshev fulminate against marriage but, seemingly, for opposite reasons. Pozdnyshev, as we have seen, views marriage as a system of “licensed debauchery,” or licensed libertinism. Libertinism itself—that is, sexual freedom and desire unbridled by commitment—he regards as a basic evil, which undermines true liberty, true love, and true religious faith. Kepesh, by contrast, puts marriage, love, and religion all on one side in the great battle between Puritanism and freedom. That, in Kepesh’s view, is “[t]he conflict that’s been ongoing from the beginning.”<sup>64</sup>

Retelling American history through the lens of this conflict, Kepesh offers up a revisionist view of a short story by Nathaniel Hawthorne, that other great critic of American Puritanism, which features Thomas Morton as “the founding father of personal freedom,” “the great theologian

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57. ROTH, *supra* note 2, at 64.

58. THE LIBERTINE READER, *supra* note 3, at 10.

59. ROTH, *supra* note 2, at 12.

60. *Id.* at 12.

61. *Id.* at 10.

62. *Id.* at 64.

63. See Choderlos de LaClos, *Dangerous Liaisons*, in THE LIBERTINE READER, *supra* note 3, at 911–1254.

64. ROTH, *supra* note 2, at 61.

of no-rules.”<sup>65</sup> The story is *The Maypole of Merry Mount*<sup>66</sup>—Merry Mount having been an English trading post “that incensed the Puritans” because it was “a pagan hotbed”: “men drinking, selling arms to the Indians, palling around with the Indians . . . , [c]opulating with Indian women . . . ,” and dancing around a maypole.<sup>67</sup> As Kepesh explains to his anonymous and voiceless interlocutor:

Hawthorne based a story on that maypole. . . . Merry Mount was presided over for a time by a speculator, a lawyer, a charismatic privileged character named Thomas Morton. He’s kind of a forest creature out of *As You Like It*, a wild demon out of *A Midsummer Night’s Dream*. . . . The Plymouth Puritans busted him, then the Salem Puritans busted him—put him in stocks, fined him, imprisoned him. . . . He was a source of prurient fascination for the Puritans. Because if one’s piety isn’t absolute, it logically leads to a Morton. The Puritans were terrified that their daughters would be carried off and corrupted by this merry miscegenator out at Merry Mount. . . . Morton was going to turn their daughters into the Gutter Girls.<sup>68</sup>

Kepesh’s view is that “a great fight about the permissible took place here,”<sup>69</sup> pitting sex and freedom, on one side, against sexual morality and religion, on the other:

The Puritans were the agents of rule and godly virtue and right reason, and on the other side it was misrule. But why is it rule and misrule? Why isn’t Morton the great theologian of no-rules? Why isn’t Morton seen for what he is, the founding father of personal freedom? In the Puritan theocracy, you were at liberty to do good; in Morton’s Merry Mount you were at liberty—that was it.<sup>70</sup>

As Kepesh sees it, sex is liberty unmodified. And liberty unmodified is “it.” To indulge in sexual promiscuity, as Thomas Morton supposedly did, is thus to be the true champion of liberty. Likewise, the various radical movements for sexual freedom and free love that have emerged from time to time are in Kepesh’s eyes the truest expression of the liberal political tradition—an irrepressible tradition, in Kepesh’s reading, forever being suppressed by the sexual moralists but forever reasserting itself in both the literature and the behavior of America’s sexual renegades. Thus, in Kepesh’s idiosyncratic canon of great liberal texts, “the voice of Thomas Morton turns up in America again, unexpurgated, as Henry Miller.”<sup>71</sup>

Understanding full well that, to his son, all this is nothing but a set of self-serving rationalizations, (“I know all the objections that a pure and

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65. *Id.* at 61.

66. Nathaniel Hawthorne, *The Maypole of Merry Mount*, in HAWTHORNE’S SHORT STORIES 23 (Newton Arvin ed., 1955).

67. ROTH, *supra* note 2, at 58.

68. *Id.* at 58–59.

69. *Id.* at 36.

70. *Id.* at 61.

71. *Id.* at 61.



moral young man can give to claiming personal sovereignty. I know all the admirable labels to attach to not asserting one's sovereignty"),<sup>72</sup> Kepesh nonetheless expatiates on his philosophy of personal freedom, turning the sexual revolution of the sixties and seventies and his own philandering into nothing less than a full-blown philosophical system. He says explicitly that his aim was to "turn freedom into a system."<sup>73</sup> To that end, he "was determined . . . to follow the logic of [the sexual] revolution to its conclusion, and without having to become its casualty."<sup>74</sup> Instead, his son and his marriage would be the casualties. Marriage and fatherhood had to be abandoned, rejected, and systematically opposed for the sake of preserving personal freedom.

Hence the disappointment Kepesh expresses in the movement for gay marriage: "I expected more from those guys, but it turns out there's no realism in them either."<sup>75</sup> Realism, for Kepesh as for the eighteenth-century libertine, implies a thoroughgoing cynicism about love and marriage. Kepesh opposes gay marriage not because it undermines the "institution of marriage" but precisely because it preserves it. Instead of gays assimilating to the dominant heterosexual culture of legally-sanctioned monogamy, Kepesh would rather that heterosexuals had patterned themselves on the promiscuous gay culture of the post-Stonewall, pre-AIDS seventies. In his analysis, "[t]he nature of ordinary marriage is no less suffocating to the virile heterosexual—given the sexual preferences of a virile heterosexual—than it is to the gay or the lesbian."<sup>76</sup> Hence his lamentation: "now even gays want to get married. . . . [T]hey want marriage and they want to openly to join the army and be accepted. The two institutions I loathed. And for the same reason: regimentation."<sup>77</sup>

The great aim, then, is to resist regimentation. "Give me liberty or give me death."<sup>78</sup> In this formulation, sex and divorce are freedom, marriage and attachment are death. These are the classic libertine's equations.<sup>79</sup>

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72. *Id.* at 83.

73. *Id.* at 64.

74. *Id.* at 63.

75. *Id.* at 68.

76. *Id.* at 67.

77. *Id.* at 68.

78. *See supra* note 56 and accompanying text.

79. The understanding of sex as the antidote to death that Roth attributes to Kepesh is explicit (in every sense): Sex according to Kepesh is precisely "the revenge on death" because unlike (or more so than) any other human pursuit, it "is based in your physical being, on the flesh that is born and the flesh that dies. Because only when you

In the libertine's scheme of things, sex is a good that is equated with the good of personal freedom—and vice versa. Marriage—and love—have to be resisted for the sake of preserving one's personal independence. The only cardinal sin in the libertine's otherwise sinless world is that of falling in love—that is, succumbing to the condition of emotional dependency on another person. Following the libertine's credo, Kepesh holds that to love is to relinquish one's freedom. And to “[r]elinquish[] one's freedom voluntarily—that is the definition of ridiculousness.”<sup>80</sup> This is why the classic libertine storyline, exemplified by LaClos's *Dangerous Liaisons*,<sup>81</sup> is that of the libertine potentially ensnared by love (it is precisely the peril of falling in love that makes the liaison dangerous). Roth's *The Dying Animal* falls neatly into this tradition.

Tolstoy's *Kreutzer Sonata* also is a tale of a libertine undone by love. But in this version of the story, love and sex—or what passes for love and monogamous attachment in conventional society—are equally and indistinguishably opposed to true liberty. And so things will remain so long as love remains rooted in sexual attraction. Marriage is to be renounced then, not for the sake of mastering the libertine's art of sexual freedom and avoiding the “ridiculousness” of emotional dependency, but rather, for the sake of a much purer and more virtuous ideal, an *antilibertine* ideal of love and liberty which depends on rising above the baser animal appetites and rests, ultimately, in Tolstoy's view, on the love of God.

In this first reading presented, neither Tolstoy's Pozdnyshev nor Roth's Kepesh looks like an exponent of liberalism, properly understood. This is perhaps the most obvious in the case of Tolstoy. The religious philosophy of love that he is espousing is readily dismissed as a “conservative” philosophy, based on repressive views of sex and antiquated views of women and men. Inasmuch as it demands subordinating “base” appetites to something higher—agapeic love—it appears to be based on an outmoded view of psychology and the emotions. And inasmuch as it conceives of freedom as depending on submission to God, it appears to be based on just the sort of “puritanical” repressive religious morality that Roth's Kepesh so fiercely opposes.

But Roth's antipuritanical Kepesh is no liberal either, by conventional

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fuck is everything that you dislike in life and everything by which you are defeated in life purely, if momentarily, revenged. Only then are you most cleanly alive and most cleanly yourself. It's not the sex that's the corruption—it's the rest. Sex isn't just friction and shallow fun. Sex is also the revenge on death. Don't forget death. Don't ever forget it. Yes, sex too is limited in its power. I know very well how limited. But tell me, what power is greater?” ROTH, *supra* note 2, at 69.

80. ROTH, *supra* note 2, at 104.

81. Choderlos de LaClos, *Dangerous Liaisons*, in *THE LIBERTINE READER*, *supra* note 3, at 911–1254.

liberal reasoning. Notwithstanding his repeated invocations of America's canonical liberal texts, it is not difficult to imagine how a liberal philosopher would refute him (if Kepesh would ever permit himself to be on the receiving end of a lecture). Kepesh's is a philosophy of "no-rules,"<sup>82</sup> explicitly intended to resist "what Hawthorne called 'the limit-loving class.'"<sup>83</sup> It expresses a notion of liberty that knows no bounds. But liberalism, one imagines the liberal philosopher lecturing Kepesh, is not, after all, a philosophy of "no-rules." Nor does it rest on a notion of a liberty without limits. On the contrary, the liberal intellectual project, from Milton and Locke to Mill and Rawls, has always been precisely to identify the "proper limits" of the scope of personal freedom. A belief in the existence of such limits is what has traditionally differentiated the normative liberal project from anarchism, libertinism, and more radical forms of libertarianism, just as a belief in the importance of protecting personal liberty (within those limits) is what has traditionally differentiated normative liberalism from inappropriately repressive systems of regulation or "Puritanism." To reject all limits as inconsistent with the liberal project of preserving personal independence, one imagines the liberal philosopher saying, is just to make a conceptual mistake. It is to mistake liberty for license, as early exponents of liberalism like Milton were wont to say. Or, in a more modern idiom, it is to mistake a conception of liberty bounded by respect for the equal liberty of all for a delusional philosophy of individual omnipotence and unlimited power.

This basic difference between Kepesh's philosophy of "no-rules" and normative liberalism can be discerned in the statements he makes about sexual equality and power. Kepesh is no liberal here:

There is no sexual equality and there can be no sexual equality, certainly not one where the allotments are equal, the male quotient and the female quotient in perfect balance. There's no way to negotiate metrically this wild thing. It's not fifty-fifty like a business transaction. It's the chaos of eros we're talking about, the radical destabilization that is its excitement. You're back in the woods with sex. You're back in the bog. What it is is trading dominance, perpetual *imbalance*. You're going to rule out dominance? You're going to rule out yielding? The dominating is the flint, it strikes the spark, it sets it going. Then what? Listen. You'll see what dominating leads to. You'll see what yielding leads to."<sup>84</sup>

In content, this passage could be straight out of the annals of the

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82. ROTH, *supra* note 2, at 61.

83. *Id.* at 51.

84. *Id.* at 20.

libertinism. (Think of de Sade, and the mockery he makes—back in the woods—of liberal notions of equal rights.) But in style, the passage bears an uncanny resemblance to Tolstoy (““would you like me to tell you how that love led to what happened to me?””)<sup>85</sup> In Tolstoy’s case, the story of “what yielding leads to” is the story of how sexual relations inevitably led to sexual dependency and domination, possessiveness, jealousy, and death (murder). In Roth the sequence is much the same. (Cancer takes the place of murder in *The Dying Animal*, but the torment of sexual jealousy borne of dependency, dependency borne of love, and love borne of sexual attraction remain—as does the spectre of death). Which raises the question, whether these seemingly opposite stories—the tale of the libertine and the tale of the antilibertine—are not actually in some fundamental respect the same.

## II. SECOND READ: LIBERTINISM, LIBERALISM, AND MARRIAGE.

In this second (shorter!) reading, the boundary line between libertinism and antilibertinism collapses, and, with it, the boundary line between libertinism and liberalism. What is left in the place of three neatly delineated philosophies is a fundamental ambivalence concerning the appropriateness of placing limits on the expression of sexual desire, as well as a profound uncertainty about the relationship of sexual desire to love. Ultimately, the question that liberalism must struggle with is the relationship of liberty to both love and desire. What the contemporary debates about marriage reveal is just how undertheorized that relationship is. It is perhaps not surprising that it is our great fiction writers who have come closest to theorizing, or at least problematizing, the relationship between liberty and love, as seen in the libertine/antilibertine novella.

The boundary line between libertinism and antilibertinism has always been fuzzy. The standard storyline of the libertine *roman*, made familiar to many by *Dangerous Liaisons*,<sup>86</sup> is that of the libertine who violates his own principles by succumbing to sexual possessiveness, jealousy, dependency—in a word, love. Roth replicates this storyline exactly: “No matter how much you know,” Kepesh admits to his unnamed confidante, “no matter how much you plot and you connive and you plan, you’re not superior to sex. It’s a very risky game.”<sup>87</sup>

The risk, of course, the danger that makes dangerous liaisons dangerous, is that sex will lead to attachment. The libertine contract is

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85. Tolstoy, *supra* note 1, at 163.

86. *DANGEROUS LIAISONS* (Warner Bros. 1988).

87. ROTH, *supra* note 2, at 12, 33.

for sex without strings. But “jealousy is the trap door to the contract.” The conventional solution to the problem of male jealousy, as Kepesh understands, is marriage:

Men respond to jealousy by saying, “Nobody else is going to have her. I’m going to have her—I’ll marry her. I’ll capture her that way. By convention.” Marriage cures the jealousy. That’s why many men seek it out. Because they’re not sure of that other person, they get her to sign the contract: *I will not, et cetera*.<sup>88</sup>

But like any self-respecting libertine, Kepesh has renounced this traditional solution to the problem of jealousy. The libertine’s preferred solution is supposed to be the cultivation of indifference to one’s partner’s promiscuity. Striving to make of promiscuity a virtue, the libertine is supposed to be a professional who avoids emotional attachment and possessiveness altogether. But that of course is just the theory. In practice, the libertine plays at lovemaking, and there is always the risk that he will fail to maintain his emotional indifference, and be foiled at his own game.

That Kepesh’s jealousy emerges at the just the moment when his lover tells him that she could never marry him is telling in this regard. “‘It was in that moment . . . while she explained that she could not be my wife, that my terrible jealousy was born.’”<sup>89</sup> And terrible it is, rivaling that of Pozdnyshev in its self-punishing intensity if not in its murderous consequences: “[F]rom the evening we first went to bed eight years back, I never had a moment’s peace . . . the fear of losing her to someone else never left me.”<sup>90</sup> Just as Tolstoy’s Pozdnyshev drives himself to murderous distraction by imagining, and practically hallucinating, his wife in the arms of the young musician who may or may not actually be her lover, so Kepesh is driven crazy by the “pornography of jealousy. The pornography of one’s own destruction,” that is, mentally picturing his lover having sex with another man. It is precisely this picturing that shatters the libertine’s sublime indifference because “picturing it, it is impossible to think in what you rationally construe as your own self-interest.”<sup>91</sup>

But picturing is hard to avoid once one has entered into a sensual relationship. This is, in Kepesh’s blunt analysis, “the eternal problem of

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88. *Id.* at 40.

89. *Id.* at 26.

90. *Id.* at 23.

91. *Id.* at 42.

attachment.”<sup>92</sup> “Attachment is ruinous and your enemy. Joseph Conrad: He who forms a tie is lost.”<sup>93</sup> As Kepesh laments, “Jealousy creeps in. Attachment creeps in. The eternal problem of attachment. No, not even fucking can stay totally pure and protected.”<sup>94</sup> And, in a still more anguished formulation: “These crazy distortions of longing, doting, possessiveness, even of love. This need. This derangement. Will it never stop?”<sup>95</sup> It is the technical definition of ridiculousness: the “voluntary” relinquishment of freedom. Kepesh is in love.

In adhering strictly to the standard storyline of the libertine novel, Roth replicates the ambiguities that have always attended the genre. As scholars of libertinism have pointed out, it is in point of fact extremely difficult to distinguish the genre of libertine literature from antilibertine literature since both typically end with the libertine failing at his game. Is the moral of the story of the lapsed libertine the antilibertine message that libertinism is a trap to be escaped, that true liberty comes with true love, and that love conquers all? Or is it rather the ironic and cautionary message the more cynical libertine would urge us to draw? (Watch out, reader, or this could happen to you.) It is impossible to say because of the ambiguities that are deliberately built into the structure of the story.

There are in fact two layers of ambiguity. First, it is ambiguous whether the standard ending (the libertine in love) is to be understood as a happy ending, or a sad or ironic one. If we take it as a happy ending, then the libertine’s story becomes indistinguishable from the antilibertine’s. The lapsed libertine, after all, repudiates libertinism—at least in practice, if not also in theory—just as the antilibertine does. (Neither Kepesh nor Pozdnyshév is, by the end, a practicing libertine, though both may be forever recovering ones.) As for the lapsed libertine’s theoretical commitments, there is a further ambiguity. If we do take the ending as a happy one, as many readers are wont to do, it is open to interpretation whether it represents the sacrifice of liberty for something else, something “higher”—love or God, or both, as the case may be—or alternatively, whether it represents the replacement of a warped conception of liberty for a truer one.

Which of these, in other words, is “liberty worth the name”?<sup>96</sup> That is the question posed by the ambiguous ending of the libertine/antilibertine novel. Is it the freedom that the professing libertine prizes, which gives the instincts and drives free reign? Or is it the freedom of normative

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92. *Id.* at 105.

93. *Id.* at 100.

94. *Id.* at 105.

95. *Id.* at 106.

96. The phrase is drawn from *Liberty Worth the Name: Locke on Free Agency*, Giden Yaffe’s excellent study of Locke’s view of free agency.

liberalism, which depends on the idea of a properly ordered psyche, in which the instincts and drives are sublimated in the “higher faculties” which alone enables people to become truly free? The tale of the lapsed libertine is open to either interpretation.

Traditionally, liberalism explicitly depended upon just the sort of moral psychology described above. Alongside religious theology, a theory of moral psychology that subordinated the appetites to virtue and reason supplied the theoretical foundations of the earliest formulations of liberal political philosophy, which allowed and indeed compelled liberalism to distinguish itself from libertinism. “Liberty, not license” is a refrain one finds in most of the early liberal theorists, including Kepesh’s beloved Milton,<sup>97</sup> who, as a deeply committed Protestant subscribed to much the same view of human psychology, love, and liberty as did Tolstoy, with his Russian Orthodoxy. For both Milton and Tolstoy, true liberty was “Christian liberty.”<sup>98</sup> Christian liberty entailed freedom of choice and liberty of conscience, which in turn entailed the freedom to disbelieve or disobey God; but it also entailed choosing wisely, virtuously, and rightly—choosing to submit to or love God. Otherwise, it was not liberty worth the name.<sup>99</sup>

As articulated by its early exponents, like Milton and Locke, liberalism rested both on a religious theology and on a moral psychology—the two were mutually reinforcing—diametrically opposed to Kepesh’s “theology of no-rules.” What, then, becomes of liberalism when it frees itself from its original foundations in Christian theology? It is tempting to conclude that modern liberalism freed itself from the psychology of virtue when it freed itself from its original theological foundations. But if so, what if any moral psychology is liberalism

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97. See Milton, *supra* note 6, at 698.

98. On the concept of Christian liberty, see Michael W. McConnell, *New Liberalism, Old Liberalism, and People of Faith*, in *CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT* (Michael W. McConnell et al. eds., 2001).

99. The affinity suggested here between Tolstoy’s views and those of classical liberals may help to explain what otherwise remains a puzzle: why Tolstoy’s *Kreutzer Sonata*, which could easily be read as resting on the most conservative views of sex and of gender roles, was enthusiastically embraced by most left-leaning readers of the late nineteenth and early twentieth centuries. Notwithstanding the fact that Tolstoy’s novella hardly endorsed “free love,” as the anarchists practiced it, and the further fact that Tolstoy plainly based his ideas on Christian faith, while the anarchists purported to reject all forms of religion as the opiate of the masses, *The Kreutzer Sonata* was widely reprinted in anarchist journals, and embraced by both anarchists and more moderate liberal exponents of early feminism and marriage reform.

committed to now? More specifically, what view does liberalism take, and what view should it take, of the appropriateness of subjecting sexual desire, and subjective preferences or “appetites,” more generally, to normative limits?

In fact, modern liberalism appears to be internally conflicted on the subject. Worse still, this appears to be a subject to which liberal theorists, outside the realm of fiction, have given relatively little thought. There has been a spate of recent philosophical writing on the subject of love and the emotions, more generally, which is to be welcomed.<sup>100</sup> But the appearance of this body of work attests more to the ongoing need for a theory of love and emotional attachments than to the actual provision of one that can adequately answer the question posed above.

The basic conflict evident in these works is the same conflict evident in Roth and Tolstoy. Modern liberalism would seem to be opposed to the supposedly outmoded religious ideas about sex and virtue, the emotions and reason that underlay early liberal thought. This might suggest that modern liberalism supports the sort of antipuritanical libertinism that Kepesh preaches (but fails to practice). However, liberalism is not so cleanly separated from antilibertine ideas of the sort expressed by Tolstoy, about the necessity of subordinating the realm of the appetites to something higher. Nor, on the other hand, is it so easily separated from libertine ideas which insist on freedom from all limits, including the self-imposed limits of emotional commitment and love. Indeed, liberalism might best be viewed as embodying the predicament of perpetually trying to navigate between the shoals of no-rules, no-limits libertinism, on the one hand, and repressive “Puritanism” on the other—without ever succeeding in circumventing either one.

The ambivalence of this position can be seen in the ambivalence liberalism expresses in the contemporary debate about marriage. On the one hand, liberalism might well be taken to support the view put forth by Roth’s Kepesh about marriage in general, and gay marriage in particular. There is an impeccable logic to the view that marriage is a system of

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100. See, e.g., HARRY G. FRANKFURT, *THE REASONS OF LOVE* (2004); JONATHAN LEAR, *LOVE AND ITS PLACE IN NATURE* (1994). There is of course a centuries-old tradition of philosophical discussions of love (see the writings collected in the useful anthology, *THE PHILOSOPHY OF (EROTIC) LOVE* (Robert C. Solomon & Kathleen M. Higgins eds., 1991)), and I do not mean to imply that there is no philosophical writing on the subject. However, the question of how to reconcile the various conditions of emotional dependency, attachment, and commitment associated with love with the liberal ideal of personal freedom is a subject that remains in need of further investigation, though it is a central theme of many literary works. In the domain of psychological theorizing, contemporary writers engaged at least tangentially with the subject include Adam Phillips and Stephen Mitchell. See, e.g., ADAM PHILLIPS, *ON FLIRTATION* (1994); ADAM PHILLIPS, *MONOGAMY* (1996); STEPHEN MITCHELL, *CAN LOVE LAST?* (2002).



state-sponsored regulation that impinges on personal liberty that ought to be opposed on liberal grounds. On the other hand, the case against marriage, exemplified by *Keppel* and that minority of gay rights advocates who (in keeping with the gay libertine tradition) continue to argue against marriage, seems to depend on a conception of liberty that admits no limits.

In viewing every lasting emotional attachment as a species of sinister control, this is a conception of liberty that threatens to leave its adherents loveless, radically alone and truly unfree, slaves to their own fear of attachment and addiction to sex. This is a vision of liberty that many liberals recoil from. But in order to square this rejection of the libertine's version of freedom with the liberal ideal of freedom, liberalism requires a theory of limits that can explain when and why the condition of emotional dependency that attachments entail is consistent with the value of freedom. It requires a theory of psychology that can explain why it is appropriate to subject sexual desire to limits, that can explain what kinds of limits are acceptable, and what kinds of social institutions they should be embodied in. In short, liberalism requires a theory of love.

