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Scott T. FitzGibbon

Boston College Law School, fitzgisc@bc.edu

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MARRIAGE AND THE GOOD OF OBLIGATION

SCOTT FITZGIBBON*

*"[I]t seems to bind me with mighty cables."*¹

PART ONE: INTRODUCTION

I. THE SCOPE AND DIRECTION OF THIS ARTICLE

Marriage is obligatory. This is not to say, of course, that bachelorhood must be avoided or that everyone ought to get married. The point, rather, is that those who do wed form a relationship which embraces obligation as a fundamental component ("commitment norms," as Professor Elizabeth Scott has put it).² This article aims to show why this is a good thing, and fundamentally so.

Marriage and other affiliations, it seems, may involve obligation in two basic ways. The first way is instrumentally. The projects of married life require long-term commitment and fixity of purpose: raising children and paying off the mortgage take a long time and a steady hand. This article is not aimed primarily at establishing this obvious point.

The second kind of involvement is not instrumental: commitment, steadiness, loyalty, and fidelity to obligation are good in a basic way and a part of the basic good of marriage. This may be controversial and is the major thesis of this article. Obligation, it is here maintained, is sometimes a final

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1. Sullivan Ballou to his wife Sarah, 14 July, 1861, *Wing to Wing, Oar to Oar: Readings on Courting and Marrying (the Ethics of Everyday Life)*, Amy A. Kass and Leon R. Kass, eds., (Notre Dame, Ind.: University of Notre Dame Press, 2000), 564, 565 ("Sarah, my love for you is deathless, it seems to bind me with mighty cables that nothing but Omnipotence could break. . .").

2. Elizabeth Scott, "Symposium: The Legal Construction of Norms: Social Norms and the Legal Regulation of Marriage," *Virginia Law Review* 86 (2000) 1901.

good. Precepts such as those mandating sexual fidelity, requiring commitment to the raising of children, and enforcing a scrupulous commemoration of birthdays and anniversaries are fundamental to marriage. Marriage would not be fully marriage without obligation. Marriage comes into its own as man and wife embrace obligation to one another. Marriage seeks obligation, fosters it, and even rejoices in it. Marriage involves obligation just as fundamentally as it involves respect, mutual knowledge, and love. It is the purpose of this article to explain and defend this thesis (and to shed some light on related subjects such as the cultural deterioration of close affiliation).

This article approaches the matter from the point of view of secular philosophy, with special attention to Aristotle. It does not proceed on the basis of the extensive Catholic moral theology of marriage (brilliantly expounded by Professor Germain Grisez in his book *Living a Christian Life*).³

Odysseus' fidelity to Penelope illustrates several points, as does her loyalty to him. The *Odyssey* is the great epic of marital loyalty and is referred to from time to time herein.

II. SOME BASIC FEATURES OF OBLIGATION

Obligation has much to do with the good and the right. Not so, perhaps, with positive obligation and customary obligation, but this article is not focused on them (it is not primarily concerned with obligations which the law or public opinion attribute to marriage). How obligation aims at or expresses the good or the right is the major question discussed in Part Three.

An obligation is not only a good, but also has to do with how a good involves itself with or attaches itself to the person. No obligation is implied for me by a good which is disconnected from me and has no bearing on my actions—the goods and evils of situations in other galaxies, perhaps. If I deny that I have any obligation in some respect I assert this sort of disconnection: I deny, not that there is anything at stake by way of good and bad, but that the situation is any of my concern. If I accept that I have an obligation I mean that not only is some end or course of conduct good but that its goodness bears in a special way on my life. The Latin root of “obligation” is *obligatio*, a binding up; so to have an obligation is to be tied.

Further: to have an obligation is to be tied tight, not loose; with rope, not with rubber. Obligation involves duty; it is not supererogatory; it involves

3. (Quincy, Ill.: Franciscan Press, 1992), Chapter Nine. See Patrick McKinley Brennan, “Of Marriage and Monks, Community and Dialogue,” *Emory Law Journal* 48 (1999) 689, 703 (since the Second Vatican Council, “the marital union is no longer understood to be exclusively instrumental. The bond itself is now believed to be among the discovered purposes of marriage.”).

requirement or strong demand, not just suggestion or recommendation. In marriage, sexual fidelity is an obligation; entertaining conversation and a good income are merely desiderata. In the political community, to avoid supporting the enemy in wartime is an obligation; to pay taxes is an obligation; to get well informed and send intelligent letters to the editor on political issues is an "extra." This fits in with the bifurcation which many ethical thinkers depict between a strict core of ethical requirements and a supererogatory penumbra.⁴ Common sense and common usage of the term "obligation" support this understanding. We have an obligation to support our families; whereas sacrificial giving to the poor is not obligatory but is a good thing to do.

Another point is that obligation in its fullest form is social: it involves commitment to some specific person or group. There is some person or association "at the other end of the rope." The word usually has a transitive quality: "I have an obligation to my wife"; "I must not buy that boat because of my financial obligations to my children."⁵

Further, obligation often has the quality of perdurance: of persistence across time and circumstance. Obligation—anyway, of the kind discussed in this article—is not just a matter of one-off hits. Rather, it lasts and lasts, endures and perdures, in sickness and in health. And obligation may have a juristic character, taking the form of rules and principles and operating along the lines of general precepts.⁶

Finally, obligation seems to have a strong "personalist" element. As with a rope, so with an obligation: it, so to speak, pulls on *you*, and it may damage you if you try to pull away. And it change you, much for the better, if you accept and fulfill it. To be obliged is a part of what it means to be a person. Obligation is a component of the human good.

You can find many of these elements in Odysseus' obligations. They involved important goods (marital friendship and civil order); they were goods *for him*—involving him in a special way; pursuing them was not optional or

4. For discussion of the supererogatory compared to other moral categories, see David Heyd, *Supererogation: Its Status in Ethical Theory* (Cambridge: Cambridge University Press, 1982); Gregory Mellema, *Beyond the Call of Duty: Supererogation, Obligation, and Offence* (Albany: State University of New York Press, 1991) and works cited.

5. The elements of obligation introduced in this and the succeeding two paragraphs go beyond the meaning assigned that term in much of the scholarly literature. See, e.g., Roderick M. Chisolm, "Supererogation and Offence: A Conceptual Scheme for Ethics," *Ratio* 5 (1963) 1, 3 (adopting a usage in which the supererogatory is "that which it is good, but not obligatory, to do."). Common usage as well often implies a broader meaning for the term obligatory than that here proposed.

6. An obligation binds "as by a law." G. E. M. Anscombe, "Modern Moral Philosophy," in *Virtue Ethics*, Roger Crisp and Michael Slote, eds. (Oxford: Oxford University Press, 1997), 26, 31.

supererogatory, but rather firmly his duty; and his ends were specified and directed to a particular person and political group: they were not duties “to serve the goods of marital friendship and civil order,” but rather were to Penelope and to Ithaca. He could not have been fully himself if he had neglected them. Odysseus would not have been what he became had he languished in the arms of the goddess Calypso or if upon his return to Ithaca he had wimped out and left Penelope in the hands of the suitors. He would never have become the great historic Odysseus who emerges as the epic draws to its conclusion.

III. YOU CANNOT BOIL IT ALL DOWN TO PROMISE AND CONTRACT

Some writers indicate that obligation is entirely a matter of promise or contract.⁷ Many writers have said that about political obligation; Chicago School legal scholars say that about fiduciary obligation,⁸ and many modern authorities have taken the same approach to marriage.⁹

7. Some theorists (“voluntarists”) may insist that there can be no other ground for obligation. For a repudiation of this view, see Samuel Scheffler, “Relationships and Responsibilities,” *Philosophy and Public Affairs* 26 (1997) 189, 201 (“[T]he existence of a relationship that one has reason to value is itself the source of special responsibilities and those responsibilities arise whether or not the participants actually value [or have agreed to] the relationship.”).

8. See, e.g., Frank H. Easterbrook and Daniel R. Fischel, “Contract and Fiduciary Duty,” *Journal of Law and Economics* 36 (1993) 425, 427:

“Scholars of a non- or antieconomic bent have had trouble coming up with a unifying approach to fiduciary duties because they are looking for the wrong things. They are looking for something special about fiduciary relations. There is nothing special to find. There are only distinctive and independently interesting questions about particular consensual (*and thus contractual*) relations. . . . In short, there is no subject here, and efforts to unify it on a ground that presumes its distinctiveness are doomed.”

(emphasis added). See Frank H. Easterbrook and Daniel R. Fischel, “Corporate Control Transactions,” *Yale Law Journal* 91 (1982) 698, 702 (“[T]he fiduciary principle is fundamentally a standard term in a contract.”); John H. Langbein, “The Contractarian Basis of the Law of Trusts,” *Yale Law Journal* 105 (1995) 625, 629 (“despite decades of pulpit-thumping rhetoric about the sanctity of fiduciary obligations, fiduciary duties in trust law are unambiguously contractarian. The rules of trust fiduciary law mean to capture the likely understanding of the parties to the trust deal. . . .”); Roberta Romano, “Comment on Easterbrook and Fischel, ‘Contract and Fiduciary Duty,’” *Journal of Law and Economics* 36 (1993) 447. Judge Posner is also an advocate of this set of doctrines. See his dissent in *Jordan v. Duff and Phelps, Inc.*, 815 F.2d 429, 444-52 (7th Cir., 1987). But see Victor Brudney, “Contract and Fiduciary Duty in Corporate Law,” *Boston College Law Review* 38 (1997) 595; Victor Brudney, “Corporate Governance, Agency Costs, and the Rhetoric of Contract,” *Columbia Law Review* 85 (1985) 1403; Tamar Frankel, “Fiduciary Duties as Default Rules,” *Oregon Law Review* 74 (1995) 1209, 1242-51; Scott FitzGibbon, “Fiduciary Relationships Are Not Contracts,” *Marquette Law Review* 82 (1999) 303.

9. E.g., Gary S. Becker, *A Treatise on the Family* (Cambridge, Mass.: Harvard University

There is more than a grain of truth in all of this because obligations are often initiated by promise, obligation-bearing affiliations are often formed by mutual consent, and marriages commence with an impressive exchange of vows. Someone might therefore be tempted to say “well there you are: the good of obligation and of marital obligation is that it keeps a promise and honors a contract.” But really this cannot be the entire story; certainly not in any narrow “commercial agreements” understanding of the term “contract.” Many marital obligations are not even mentioned in the wedding vows—for example, the groom does not usually swear to live with his spouse in the same dwelling or to support her materially or to help with the babies. Many obligations have an open-ended character unfamiliar to the world of business agreements. Many go unspoken and many do not emerge until later in the course of the relationship. Even those that are specified at the outset seem to have a deeper, subpromissory basis. No one would think he had an excuse for adultery if he could reread his wedding vows in some future year and discover that they had omitted the part about “forsaking all others.”¹⁰

Such attributes have led several scholars to propose broader affiliative words than “contract.” Professor Sanford Katz uses the term “partnership”:

“[M]arriage *** is a contract *** It is also a partnership in that it is a fiduciary relationship of two individuals who love each other, and who share in and expect to reach mutual aspirations. Marital partners lead their lives with the hope that their conjugal and financial partnership will last. To that end each makes his or her contribution. . . . But the modern marriage partnership deviates from the commercial partnership in that . . . one of the partners may have to make certain sacrifices, such as abandoning a career entirely”¹¹

Professor Margaret Brinig uses the term “covenant.”¹²

Press, 1991), 43 (“marriage” is “the term for a written, oral, or customary long-term contract between a man and a woman to produce children, food, and other commodities in a common household.”). See John Witte, Jr., *From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition* (Louisville: Westminster John Knox Press, 1997), 194-215, and authorities cited.

10. As a thought experiment, imagine a couple whose wedding was the illusionary trick of some Genie. If this couple lives and thinks successfully as though man and wife for many years, only now to discover the illusory nature of their vows, have they significant ties to one another? You may with good reason deny that they are fully married, but if you think they have some such ties, then you believe that contract and promise are not the entire story.

11. Sanford N. Katz, “Marriage as Partnership,” *Notre Dame Law Review* 73 (1998) 1251, 1270.

12. Margaret F. Brinig, *From Contract to Covenant: Beyond the Law and Economics of the Family* (Cambridge, Mass.: Harvard University Press, 2000) (“In this book I argue that covenant is a preferable concept for describing families that are well under way . . . for, in brief, the covenant implies unconditional love and permanence.”). See generally Ira Ellman, “Contract

Such approaches are more promising than the narrowly contractual one and it is not the purpose of this article to reject them, but they do not bring us all the way down to the ethical foundation. Looking deeper, we need to inquire *why* there is an ethically binding character to any of these arrangements: what is the basis of the ethical obligation to keep a promise or honor a contract (Kantians have one approach, utilitarians another); and, similarly, what is the basis of the obligation you have to your partners or to those with whom you have a covenant. Similarly, we need to inquire into the reasons which support entering into such arrangements and adopting their obligations in the first place; and we may ask why married couples embrace many further obligations to one another as their relationship matures. Why do married people promise exclusive fidelity? Why do relationships develop a set of settled understandings about child care? This article is aimed at providing a portion of the answer to these questions.

PART TWO: THE ACHILLES SYNDROME: THE CULTURAL CRISIS OF AFFILIATION AND OBLIGATION¹³

Pope John Paul II has written that the twentieth century brought us into a crisis of solidarity.¹⁴ It brought us to a crisis of all sorts of affiliations—marriage, family, friendship, and citizenship. It was as though man were losing his capacity to be a political animal (as Aristotle called

Thinking Was *Marvin's Fatal Flaw*," at *Social Science Research Network*, <http://papers.ssrn.com/sol3/papers.cfm?cfid=676281&cftoken=92662125&abstractid=265067> (article posted April 1, 2001).

13. Much of the material in this Part Two, as well as some of the materials on Karol Wojtyła's work further on in this article, appeared in an earlier version in Scott FitzGibbon, "Wojtylan Insight into Love and Friendship: Shared Consciousness and the Breakdown of Solidarity," in Luke Gormally, ed., *Culture of Life, Culture of Death: Proceedings of an International Conference on 'The Great Jubilee and the Culture of Life'* (London: Linacre Centre, 2002).

14. "*Instrumentum Laboris* for the Synod Of Bishops—Second Special Assembly for Europe, in *L'Osservatore Romano*, Weekly Edition in English, November 18, 1999. See John Paul II, Message to Prof. Sergio Zaninalli, Rector Magnificent of the Catholic University of the Sacred Heart, May 5, 2000, in *L'Osservatore Romano*, Weekly Edition in English, May 24, 2000 at 9 ("The value of solidarity is in crisis, perhaps mainly because there is a crisis in the only experience which could guarantee its objective and universal value: that communion between persons and peoples which the believing conscience traces back to the fact that we are all children of the one Father, the God who 'is love' . . .").

him)¹⁵ and his capacity to be—as Aristotle also called him—a partnership-forming creature and a “household-maintaining animal.”¹⁶

Further, the twentieth century brought a crisis of obligation. A deterioration of the sense of being obliged to one another, or under duties to one another, or bound together by special ties. A dimming in the appreciation of the *good* of duty. A wave of impatience with and even hostility towards this aspect of life, as though the human person were some solitary deity who ought not to be tied up in any way. A distortion of our understanding of and respect for obligation: political obligation, contractual obligation¹⁷ and the obligations between friends,¹⁸ as well as marital obligation and the obligations

15. *Politics* 1253a.2-9. (Here and throughout this article, except where indicated, the translation of the *Politics* quoted is the Jowett translation in J. Barnes, ed., Volume II. *The Complete Works of Aristotle* (Princeton: Princeton University Press 1984), 1986-2129). Aristotle also identifies man as *politikon* in *Politics* 1278b 19-21, in *Nicomachean Ethics* 1097b 12, 1162a 17-19, and 1169b 17-19, and in *History of Animals* 488a 8-10. (Here and throughout this article the translation of the *Ethics* quoted is that by W. D. Ross (revised by J. O. Urmson) in J. Barnes, ed., Volume II. *The Complete Works of Aristotle*, 1729-1867.)

16. “*koinonikon anthrosos*” and “*oikonomikon zoon*.” Aristotle, *Eudemian Ethics* 1242a 22-24 (“[M]an is not merely a political but also a household-maintaining animal, and his unions are not, like those of the other animals, confined to certain times, and formed with any chance partner, whether male or female, but . . . man has a tendency to partnership with those to whom he is by nature akin.”) (elision in the text as quoted; note omitted). (Here and throughout this article the translation of the *Eudemian Ethics* quoted is that by J. Solomon in J. Barnes, ed., Volume II, *The Complete Works of Aristotle*, 1921-1979.)

A related phenomenon is the decline of trust and of participation in civic institutions. See Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon and Schuster, 2000). Compare Everett Carlil Ladd, *The Ladd Report* (New York: Simon and Schuster, 1999), which optimistically notes that American are still active joiners of many community-improvement groups but inquires hardly at all into the question of what sorts of groups and what degree of bonding. Marriage is ignored and families are hardly mentioned. (Cf. the endorsement of the term “amoral familialism” to characterize family loyalty in Southern Italy (p. 15).)

17. See P. S. Atiyah, *The Rise and Fall of Freedom of Contract* (Clarendon Press: Oxford, 1979), 649-59 (noting the “decline of principles” and of respect for the “sanctity of promises” in English life). In America recently, a related phenomenon is the explosive growth in bankruptcy filings by individuals and families. The statistics are set forth in Todd J. Zywicki, “Bankruptcy Law as Social Legislation,” *Texas Review of Law and Politics* 5 (2001) 393, 399-400 (reporting 1.3 million individual bankruptcies each year and that “[s]ome seven to ten percent of these individuals make more than the national median income and could repay a substantial portion of their debts with minimal hardship. . .”).

18. A sad depiction of the impoverished condition of friendship among students is presented in Allan Bloom, *The Closing of the American Mind* (New York: Simon and Schuster, 1987), 82-140 (e.g. at 109: “The young want to make commitments. . . This is what they talk about, but they are haunted by the awareness that the talk does not mean very much and that commitments are lighter than air.”).

within families. It was as though something in man had changed—as though man were experiencing an altered state anthropologically as well as ethically—so that he had ceased to understand himself as an obligation-bearing, “bonded” creature.

The Homeric exemplar is not Odysseus of course: rather, it is Achilles. Achilles became wildly destabilized as a result of his feud with his commander Agamemnon. “As his racing spirit veered back and forth” he set out to kill Agamemnon,¹⁹ but instead, restrained by the goddesses Hera and Athena, cut himself off from the Greek army. Though the son of a god, he fell for days into a frenzy like that of a beast. He ceased to display human traits. He ceased to eat. He said: “I have no taste for food—what I really crave is slaughter and blood and the choking groans of men!”²⁰ He is compared to an “inhuman fire raging on through the mountain gorges,” a “huge fireball . . . chaos of fire,”²¹ and to a dolphin,²² an eagle,²³ and “some lion, going his own barbaric way.”²⁴ He is also described as “godlike”²⁵ and compared to a “frenzied god.”²⁶

Dr. Jonathan Shay, in his study of combat veterans *Achilles in Vietnam*,²⁷ makes Achilles the type of the infantry fighter who, traumatized by combat and a sense of betrayal, suffered a loss of “responsiveness to the claims of any bonds, ideals or loyalties outside tiny circle of immediate comrades”²⁸ and, in extreme cases (the “berserkers”), fell into a constant, murderous rage.

Achilles is the extreme case of the *disaffiliated* man,²⁹ and he resembles the isolated individual characterized by Homer: “Lost to the clan, lost to the hearth, lost to the old ways, that one who lusts for all the horrors of war with

19. *Iliad*, Book 1, line 227. Here and throughout, this article uses the Robert Fagles translation (New York: Penguin Books, 1990) and the line numbering is that of the translation rather than the Greek except where otherwise indicated.

20. *Ibid.*, Book 19, lines 254-56 (and see lines 249-50: “[N]either food nor drink will travel down my throat, not with my friend dead. . . .”).

21. *Ibid.*, Book 20, lines 545-57.

22. *Ibid.*, Book 21, line 25.

23. *Ibid.*, Book 21, line 285.

24. *Ibid.*, Book 24, lines 48-49 (by Apollo).

25. *Ibid.*, Book 24, line 570 (by Priam).

26. *Ibid.*, Book 20, line 558 and Book 21, line 21.

27. *Achilles in Vietnam: Combat Trauma and the Undoing of Character* (New York: Simon and Schuster, 1994).

28. *Ibid.*, 23.

29. “To emphasize Achilles’ social detachment, Homer . . . [uses] a dramatic device much like the cinematic trick of cutting off the sound track: The Greek army vanishes, leaving Achilles alone with the Trojan soldiers that he slaughters. All cooperation and coordination with his own men fall away.” *Ibid.*, 86.

his own people.”³⁰ This passage is quoted by Aristotle in the *Politics* when he makes the point that man is a *politikon* animal and contrasts the “[t]ribeless, lawless, heartless”³¹ person who loves war. “He who is by nature [not *politikon*] is either a bad man or above humanity.”³² “[H]e who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god.”³³ Achilles is the extreme case of the obligation-less, obligation-ignoring man. “Don’t talk to me of pacts,” he says to Hector. “There are no binding oaths between men and lions—wolves and lambs enjoy no meeting of the minds.”³⁴

Somewhat similar post-traumatic stress symptoms are reported in survivors of war and the Holocaust by Dr. Judith Herman in her book *Trauma and Recovery*.³⁵ She reports that “[t]raumatic events ... shatter the sense of connection between individual and community, creating a crisis of faith”³⁶ and that victims are less likely to marry, more likely to experience marital problems if they do, and more likely to divorce.³⁷

The Western persona generally can be diagnosed as having the a version of the Achilles Syndrome: as suffering post-traumatic stress disorder caused by war, fascism, communism, and the collapse of the *ancien regime*. A kind of allergy to the obligatory has set in, rather as a wounded or infected arm ceases to tolerate the touch of the rope. Modern men, or some of us, have become affiliationally destabilized, inconstant, “*liga-phobic*.”

30. *Iliad*, Book 9, lines 73-75.

31. *Politics* 1253a 4.

32. *Ibid.*, 1253a 3.

33. *Ibid.*, 1253a 28-29.

34. *Iliad*, Book 22, lines 309-311.

35. Judith Lewis Herman, *Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror* (New York: Perseus Books, 1992).

What are the basic mechanisms by which trauma diminishes the capacity for obligation? Several possibilities suggest themselves. First, trauma may produce fearfulness and a diminution of trust: trauma produces risk-aversion whereas obligation often involves risk. Second, trauma may diminish the victim’s awareness of other people, even his intimate friends. A third possibility—the most fundamental and directly ethical—is that trauma alters the victim’s beliefs in and ability to comprehend the good of others.

36. *Ibid.*, 55. See *Achilles in Vietnam*, 86: the Vietnam berserker is “cut off from all human community. . . . No living human has any claim on him, not even the claim of being noticed and remembered.”

37. *Trauma and Recovery*, 63.

PART THREE: OBLIGATION—ESPECIALLY MARITAL OBLIGATION—AS A
MATTER OF ETHICAL THEORY

I. THE DISTINCTION BETWEEN INSTRUMENTAL AND FINAL GOODS; WHY
WE CAN SUSPECT THAT MARITAL OBLIGATIONS ARE NOT PURELY
INSTRUMENTAL

It seems that obligation might be good in either of two basic ways: one obvious, the other little noticed and likely to be disbelieved-in. First, obligation can apply for another good. Second, obligation might under some circumstances itself *be* a good independent of its usefulness.

Obligation can be—sometimes is—a good instrumentally only: you must be at work on time *to* earn money *to* buy groceries. A good is instrumental to some other end when we “choose it for the sake of something else.”³⁸ Something which is good in only this limited way is dispensable. If your job is of instrumental good only (that may not be true for the artist or for the person who works for Mother Teresa’s sisters, but it is true for most employees), then you will quit if you inherit wealth. An instrumental project is malleable according to what conduces to the achievement of final good, and is not loveable for its own sake, nor ever likely to be the subject of intense devotion or of fine poetry and music.

The second possibility is that obligation might sometimes be a good noninstrumentally; “finally”; something “which we desire for its own sake.”³⁹ We can suspect that a good is noninstrumental when we would not readily

38. This paraphrases the portion of the *Nicomachean Ethics* quoted in the next footnote.

39. Thus, in a famous passage (not addressed to obligation), the *Nicomachean Ethics* states (at 1094a 18-22):

If, then, there is some end of the things we do, which we desire for its own sake (everything else being desired for the sake of this), and if we do not choose everything for the sake of something else (for at that rate the process would go on to infinity, so that our desire would be empty and vain), clearly this must be the good and the chief good.

For a similar distinction, see Robin Attfield, *A Theory of Value and Obligation* (London: Croom Helm, 1987), 25:

Literally, what is of intrinsic value is what is of value in itself, rather than of value instrumentally. If something is valued simply as a means to a further state of affairs beyond itself, it is being regarded as of instrumental value only. But not everything which is of value . . . can be so only instrumentally. Some things are of value in themselves and for no reason beyond themselves . . . And whenever this is so the state of affairs in question will supply a reason for action which is independent of other desirable end-states or values, and which derives from nothing but itself. Thus intrinsically valuable states of affairs will be ones which there are nonderivative reasons for fostering, desiring or cherishing.

forfeit or truncate it as circumstances varied; when it seems to “mean a lot” to the people who seek and possess it—when they love it for its own sake; and when it appears as the subject of devotion, ceremony, poetry, and art. We can suspect that a good is more than instrumental when people continue to pursue and make much of it even after the disappearance of whatever consequences might seem to have justified it on instrumental grounds. We can suspect that a good is “final” when people who have forfeited it make much of their loss (and not just of the ensuing deprivations).

Marital obligation displays characteristics which imply that it is more than instrumentally good. It often persists beyond the loss of its utility, as in the instance of sexual loyalty even when “what she doesn’t know won’t hurt her” and when, owing to old age, philandering would carry no risk of illegitimate offspring. (It may even persist when the spouse has died, as in those cultures which have commended the widow who remains celibate.)⁴⁰ Couples make much of obligation, craft it, further develop it, and sense it to be central to the relationship.

Obligation, and especially marital obligation, is celebrated in poetry and song, from the *Psalms* and the *Odyssey* to *Fidelio* and *Guys and Dolls*. Its violation in divorce can inflict trauma lasting years and far exceeding the instrumental damage. The words of the oath: “For richer for poorer; in sickness and in health; forsaking all others; ‘til death do us part . . .” —the drumbeat, the great *chamade* of the marriage rite—amount to no less than a formal renunciation of instrumentalist thought.

II. SOME COUNTERPOSITIONS: REPUDIATING OBLIGATION; MAKING IT INSTRUMENTAL TO UTILITARIAN GOODS

A. Rejecting Obligation: Romanticism and Other Antinomian Approaches—The literature and biography of the nineteenth and twentieth centuries is littered with narratives of romantic relationships in which the man and woman freed themselves, as they thought, from the bonds of convention, attached themselves to one another, as they hoped, by forces of a more vehement character, and descended to a relational condition, as they discovered in the course of its demise, characterized by misery and shame.

A fearsome example is afforded by the life of Harvard University’s pioneer in nonbehavioral psychology, Professor Henry A. Murray, and his lover,

40. See Susan Treggiare, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford: Clarendon Press, 1991), 233-34 and 501-502 (for a widow to remarry was socially acceptable and even sometimes encouraged, but for her to refrain from remarriage was commended in literature and carried the right, not held by those who remarried, to sacrifice to the goddess Pudicitia).

Christiana Morgan. Their relationship extended for more than forty years (1925 to 1967) and exhibited all the basic characteristics: the repudiation of conventional morality (“the Church” and its “damn rules”),⁴¹ the adoption of an alternative ethic (“erotic adoration is the most natural religion”⁴²—their relationship will “transform the world”⁴³—“[t]he whole spiritual course of man will pivot on you”⁴⁴), and its unpleasant demise. (After the death of his wife in 1962, Henry refused to marry Christiana and she took to drink and drowned herself.)⁴⁵ Someone should write an entire slim volume about the effects of various psychological movements on marital relationships during the course of these past centuries.

Professor Gilbert Meilaender gives another example:

I had occasion recently to ponder the service folder from a wedding. . . . There in the folder was the now almost obligatory candle ceremony, a reading from Kahlil Gibran’s *The Prophet*, . . . [and] on the last page was a passage from Lord Byron . . . addressed here by the bride to her groom:

Is there anything on earth or heaven
that would have made me so happy
As to have made you mine long ago? . . .
You know that I would with pleasure give up
All here and beyond the grave for you. . . .
I was and am yours freely and most entirely,
To obey, to honor, to love
And fly with you when, where, and how
You yourself might and may determine.

What caught my attention immediately was how obviously pagan such a sentiment is. To give up—with pleasure—“All here and beyond the grave” for another human must be idolatrous. * * *

41. Behind “the sacrament and the state of marriage,” Professor Murray wrote, “was the Church and the great bulk of respectable men and women with their damn rules, customs, formalities, manners, fads, proprieties, pretensions, rites, rituals, decrees, ordinances, laws, taboos, sentiments, beliefs, principles, Catechisms, creeds, and categorical negations.” This is Henry Murray characterizing the attitude of Herman Melville, quoted, apparently from an unpublished manuscript, in Forrest G. Robinson, *Love’s Story Told: A Life of Henry A. Murray* (Cambridge, Mass.: Harvard University Press, 1992), 241. Robinson observes that Murray agreed.

42. Henry A. Murray, quoted in *ibid.*, 381. The quotation in the text omits a comma which appears after the word “adoration.”

43. *Ibid.*, 170.

44. *Ibid.*

45. Probably but not certainly on purpose. He told her she was disgusting and took a nap; when he awoke he found her drowned in two feet of water.

[The poem] comes from the postscript to a letter written by Byron, probably in August 1812, to Lady Caroline Lamb. When she and Byron met in 1812 she was married to William Lamb. . . . Their affair lasted about three months, though Lady Caroline continued to pursue Byron's attention and affection after the affair had ended. Indeed, explaining why he no longer was attracted to her as he had been, Byron went so far as to write to her (in November 1812) that 'our affections are not in our own power'—which is true enough, of course, and is precisely the reason that the marital vow exists to bind us even as our affections come and go. . . .

To what point have we come—how greatly have we failed—when a Christian bride thinks it appropriate to express her love for her husband in these terms? They come not from the Church's tradition or sacred books, nor even from the wisdom of acknowledged Christian thinkers. Yet they appealed to an uninstructed mind, who perhaps thought of the marriage rite not as the Church's but as her own. If the day comes that devotion in such a marriage flags, or if love—as is its wont—is urgently drawn towards a new beloved, it is unlikely that the Church will be in a position to say much. If it is 'our' marriage, founded on our own fleeting emotions and attachments, we will do with it pretty much as we please.⁴⁶

So: a Romantic understanding of marriage, which, while purporting to emphasize its depth and strength, removes it from its basis in ethics, morality, and moral theology and ultimately destabilizes the relationship and weakens its bonds.

B. An Approach Which Doubts the Value of Obligation in Close Affiliations—Daniel DeNicola has written:

Acts of love, friendship, fellow-feeling, affection, and a sense of community, are beyond our basic moral duties. To carry them out dutifully is to treat the people involved impersonally, as 'other persons' in the abstract. Acts done from duty reveal only that we are dutiful and moral in a narrow house-rules sense. There are other worthy virtues, of course, and these can be evinced in action that is gratuitous.⁴⁷

A major purpose of this article is to dispute this thesis and to show that obligation is a part of close affiliation and has a personalist character.

C. Utilitarian Instrumentalism—Action can be justified, from a utilitarian point of view, only on the basis that it maximizes pleasure or the satisfaction of preferences.⁴⁸ That leaves little space for obligation in the sense in which

46. "The Mess That Is Marriage," in *First Things*, February 2002, page 18.

47. "Supererogation: Artistry in Conduct," in *Foundations of Ethics*, Leroy S. Rouser, ed. (Notre Dame, Ind.: University of Notre Dame Press, 1983), 149, 161-62.

48. Pleasure-based utilitarianism "holds that actions are right in proportion as they tend to promote happiness; wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of

that term is used here. Utilitarians are consequentialists and so look primarily to the future rather than to the bonds of the past, and they make their decisions act-by-act, relegating precepts, principles, and other generalities to the status of rules of thumb, always subject to being set aside when circumstances dictate.⁴⁹ Further, utilitarianism provides little basis for gradations of norms and so makes little room for the differentiation between the mandatory and the supererogatory.⁵⁰ And utilitarians tend to have a primitive and mechanistic understanding of human nature and a similarly primitive view of human relations which would preclude their crediting the character-based foundations for obligation discussed in this article below.

Marriage should be conducted, according to utilitarianism, only as a project for the maximization of pleasure or the satisfaction of preferences.⁵¹ Classic utilitarianism implies that marital obligations—the obligation of sexual fidelity; the obligation to return home from the Trojan War; the obligation to punish the suitors and restore peace to Ithaca—apply only when, if, and insofar as they indicate the course of action which best maximizes pleasure or preferences. More pleasure and less pain somewhere else indicate abandoning those projects. Thus, classic utilitarianism mandates marital instability—less so than Byronic romanticism, but still, to a marked degree.⁵²

pleasure . . .” John Stuart Mill, *Utilitarianism*, Roger Crisp, ed. (Oxford: Oxford University Press, 1998), 55 (a reprint of the Fourth Edition (1871); the quoted passage is from Chapter Two, lines 3-5). There are many varieties of pleasure-based and similar experience-based utilitarianism; an entree into the literature which identifies some of them is afforded at pages 33-35 of the introduction to the Crisp edition, *supra*. The present article discusses the theory in its act-utilitarian, not its rule-utilitarian, version.

For discussions of preference-based utilitarianism, see Martin Hollis and Robert Sugden, “Rationality in Action,” *Mind* 102 (1993) 1, 5-7 and Amartya Sen, “The Formulation of Rational Choice,” *American Economic Review* 84 (1994) 385.

49. Thus, the utilitarian sheriff would frame and hang the innocent man when doing so was the only way to avert a riot, setting aside the moral principle forbidding direct killing of the innocent which applies to all people and the more specific rules which define the obligations of an officer of the law. See John Finnis, *Fundamentals of Ethics* (Washington, D.C.: Georgetown University Press, 1983), 95 et seq. for a review of consequentialists’ responses to this classic hypothetical and for decisive rejoinders.

50. A discussion of this point is in Atfield, *A Theory of Value and Obligation*, 116 et seq. The point is also briefly made and extended in Terrance C. McConnell, “Utilitarianism and Supererogatory Acts,” *Ratio* 22 (1980) 36.

51. For a historical discussion of utilitarianism and marriage, see Chapter Five of Witte, *From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition*.

52. A similar point is made in Robert N. Bellah, Richard Madsen, William M. Sullivan, Ann Swidler and Steven M. Tipton, *Habits of the Heart: Individualism and Commitment in American Life* (New York: Harper and Row, 1985) discussing relationships founded on the “therapeutic attitude.”) For people who believe that the point of their lives is to have feelings and to express them, “love means the full exchange of feelings between authentic selves, not

Fidelity—sticking to one person, sticking to one line of approach towards one person and one's life with her—do find some foothold on the utilitarian foundation on grounds of expertise and reliance. Because you know her well, you can be more efficiently benevolent towards your spouse than towards someone new; because she knows she can count on you, she can efficiently rely on your help. These factors introduce some ballast into utilitarian affiliations but only to a limited extent. They do not seem to cut much ice for Odysseus and Penelope, after all those years of separation. Had Odysseus been a utilitarian, he would not have acted as he did. He would have included the pains and pleasures of *the suitors* in the balance and counted them as reasons against returning to Ithaca. The suitors were having a fine time, feasting and dreaming about going to bed with Penelope; so their feelings would have to be registered with quite a lot of weight, especially since there were so many of them: young guys with strong, intense passions, who were not likely to enjoy being shot through with arrows.

You should set aside loyalty to a spouse when the aggregate of pleasure or preference-satisfaction in the world is best maximized by some other affiliational modality. Pushed along to its natural conclusions, utilitarianism is inconsistent with obligation in the fullest sense, and a bunch of people who stick to utilitarianism for guidance become, not wild animals, but a semi-socialized herd, among whom affiliation perdures only in a shallow way.

The instability of the utilitarian life derives largely from the inconstancy of pleasures and preferences. Someone who makes pleasures the center of his thinking will find himself blowing in the wind of adventitious circumstances and the ebb and flow of appetites and impulses, often ones in conflict with one another.⁵³ His will and reason—his character generally—will fall under the sway of his passions.

These inconstancy-producing attributes undermine the credibility of utilitarian ethics. In some groups, in friendship, and in marriage, inconstancy is generally apprehended to be a bad not a good thing: a successful marriage is one which endures, not one which is efficiently wound up in a timely fashion when circumstances change. In the individual life and the individual character, similarly, we apprehend that the good for a person surely must involve consistency and coherence. As Aristotle wrote, “no one would choose to live with the mind of a child throughout his life, however much he were pleased at the things that children are pleased at”⁵⁴ The good for

enduring commitment resting on binding obligations.” *Ibid.*, 102.

53. As Aristotle says of “most men”: “their pleasures are in conflict with one another.” *Nicomachean Ethics* 1099a 12.

54. *Ibid.* 1174a 1-3 (but departing from the translation in Barnes, *supra*). The sentence continues: “nor to get enjoyment by doing some most disgraceful deed, though he were never

man involves steadiness, *gravitas*, and a constancy of life unfathomable to a child.

III. AN ACCOUNT OF MARITAL OBLIGATION BASED ON THE GOODS OF KNOWLEDGE AND BENEVOLENCE?

What, then, about an account which rests on some final goods other than pleasure? A great turn in ethical theory over the last few decades, prefigured by Philippa Foot and led by Professors John Finnis and Germain Grisez, proposes a set of goods worthy to be pursued in themselves, even when they may not be instrumental to other benefits. The goods of knowledge and benevolence are likely instances and this section considers them alone (not in this respect purporting to replicate the Finnis and Grisez view, which is far richer). One seeks wisdom and knowledge; seeks things to know; thinks and rethinks about what one knows and deepens one's understanding, aspiring for more occasions to do these things, not for the instrumentalist reasons that one might seek a bus to the library or the grocery store, but because such activities—and the possession of the traits which make them possible—are what it is to flourish as a human being.

Affiliations instantiate the final goods of knowledge and benevolence. Aristotle describes friendship this way:⁵⁵ it involves “mutual recogni[tion] as bearing goodwill and wishing well to each other⁵⁶ and involves “sharing in discussion and thought.”⁵⁷ Common sense supports this conclusion. You cannot be friends unless you know one another and the more your friendship develops the deeper grows the understanding. You surely are not friendly towards one another unless you aim at one another's good; helping one

to feel any pain in consequence. And there are many things we should be keen about even if they brought no pleasure, e.g. seeing, remembering, knowing, possessing the excellences.”

55. For an entree into the literature on friendship in Aristotle, see David Konstan, “Altruism,” in *Transactions of the American Philological Association* 130 (2000) 1. See generally Suzanne Stern-Gillet, *Aristotle's Philosophy of Friendship* (Albany: State University of New York Press, 1995); A. W. Price, *Love and Friendship in Plato and Aristotle* (Oxford: Clarendon Press, 1989).

56. *Nicomachean Ethics* 1156a 3-5. And friends know one another's feelings: “[f]or many people have goodwill to those whom they have not seen but judge to be good or useful . . . but how could one call them friends when they do not know their mutual feelings?” *Ibid.*, 1156a 1-3. See *ibid.* 1167a 23-24. And friends, anyway full friends, know one another's choices and think and know together as a part of choosing together. Full friendship involves “reciprocal choice of the good and pleasant” (*Eudemian Ethics* 1237a 31-32) and in order to choose together (“reciprocally”) they must, it seems, think and know together since “[c]hoice arises out of deliberate opinion.” *Ibid.* 1226a 8-9. Thus, as part of choosing, reciprocal reasoning and judging.

57. *Nicomachean Ethics* 1170b 11-12.

another in the projects of life is close to the heart of what it means to be a friend.

Marriage is a kind of friendship, and it involves knowledge and benevolence in special ways. Marriage is, you might say, a “field” for knowledge. That might sound a little dry. Marriage is not a study group, after all. But Pope John Paul II shows how interesting it really can be when he tells the story of Teresa and Andrew in his play *The Jeweler’s Shop*⁵⁸ and shows how knowledge is involved in marriage in a distinctive way. Teresa and Andrew, a young couple recently engaged, encounter one another as though by chance in a city street. Andrew says:

“I met Teresa when she had just paused
in front of a large window . . .
I stopped by her quietly and unexpectedly—
and suddenly we were together
on both sides of the big transparent sheet
filled with glowing light.
And we saw our reflections together,
because behind the widow display
is a great, immense mirror

. . . [W]e found ourselves all of a sudden
on both sides of the great mirror
—here alive and real, there reflected”⁵⁹

Soon Teresa and Andrew find themselves standing in front of a jeweler’s shop. Again, in front of a window—Teresa and Andrew are looking at wedding rings. This time the window *becomes* a mirror. Teresa says:

“. . . [T]he window has turned into a mirror of our future ;
it reflects its shape.”
“I already saw, as in a mirror,
myself, in a white wedding dress, kneeling with Andrew”⁶⁰

(Later Andrew says that the mirror was “not an ordinary flat mirror but a lens absorbing its object. We were not only reflected but absorbed.”⁶¹).

58. K. Wojtyła, *The Jeweler’s Shop* in *The Collected Plays and Writings on Theater* (Berkeley and Los Angeles: University of California Press, 1987), 278-322 (B. Taborski, trans.). The play is subtitled “A Meditation on the Sacrament of Matrimony, Passing on Occasion into a Drama.”

59. *Ibid.*, 285.

60. *Ibid.*, 288 and 287. In the original these two phases appear in the reverse order.

61. *Ibid.*, 292. The next sentence is: “I had an impression of being seen and recognized by someone hiding inside the shop window.”

The mirror—a recurrent image in Wojtylan writings⁶²—is a metaphor for consciousness, which is an aspect of knowledge. A wide mirror displays not only the observer but also the scene around her and the objects behind the place where she stands,⁶³ and a Wojtylan mirror not only receives and reflects: it retains and records.⁶⁴ Teresa observes: “The window absorbed my person at various moments and in different situations . . . I am also convinced that our reflection in that mirror has remained forever, and cannot be extracted or removed. A little while later we concluded that we had been present in the mirror from the beginning . . .”⁶⁵ Consciousness in Wojtylan thought is the

62. See, e.g., Karol Wojtyla, *The Samaritan Woman Meditates, in Easter Vigil and Other Poems* (New York: Random House, 1979), 13 (J. Peterkiewicz, trans.) (“I—yes, I—conscious then of my awakening/ as a man in a stream, aware of his image,/ is suddenly raised from the mirror and brought/ to himself, holding his breath in amazement,/swaying over his light.”).

63. See Karol Wojtyla, *The Acting Person* (“Dordrecht: D. Reidel Publishing Co., 1979), 31 (A. Potocki, trans.; A.-T. Tymieniecka, ed.) (Consciousness is . . . the reflection, or rather the mirroring, of everything that man meets with in an external relation by means of any and all of his doings . . .”). *The Acting Person* is the English edition of Karol Wojtyla, *Osoba i Czyn* (Krakow: Polskie Towarzystwo Teologiczne, 1969). There has been controversy concerning whether *The Acting Person* is faithful to *Osoba i Czyn* and to Wojtyla’s thought. See, e.g., K. Schmitz, *At the Center of the Human Drama: The Philosophical Anthropology of Karol Wojtyla/Pope John Paul II* (Washington, D.C.: Catholic University Press, 1993), 60, n. 6 (“gravely misleading in important passages, and, . . . because of an unstable rendering of important technical terms, simply muddled.”); see also the discussion on page 59 and page 155, n. 48. But then, *The Acting Person* is not just a translation: it is endorsed by Wojtyla in the preface as an “improved presentation” (page ix). (And see page xiv: “I thank the editor, Professor A.-T. Tymieniecka, who, guided by her excellent knowledge of the philosophical environment of the West, gave to my text its final shape. . . although the basic concept of the work has remained unaltered.”). Some say that the revision process was hijacked by Tymieniecka once Wojtyla had become too busy to keep involved. This view seems to be embraced, accompanied by insider’s familiarity, in George Weigel, *Witness to Hope: The Biography of Pope John Paul II* (New York: HarperCollins Publishers, 1999), 174-75, n. 8. But apparently some of the revisions, at least, came from the pen of Wojtyla. See S. Gregg, *Challenging the Modern World: Karol Wojtyla/John Paul II and the Development of Catholic Social Teaching* (Lanham, Md: Lexington Books, 1999), 56, n. 26 (noting that “there is little question that Wojtyla revised parts of AP throughout the 1970’s in anticipation of its English publication.”).

Doubts about *The Acting Person* do not undermine the conclusions of this article, since the relevant passages of that book are consistent with *Osoba i Czyn*. Under the guidance of Professor Mark F. O’Connor, the Director of the Arts and Sciences Honors Program at Boston College, correspondences are identified in some of the footnotes, *infra*. The portion of *The Acting Person* quoted in this footnote closely follows *Osoba i Czyn* at 36.

64. See *The Acting Person*, 31 (“once the action is accomplished consciousness still continues to reflect it.”). This closely follows *Osoby i Czyn*.

65. *The Jeweler’s Shop*, 292.

repository and reflector of what has been encountered or comprehended,⁶⁶ and the medium upon which those things which we experience or understand are preserved, “penetrated,” “illuminated,”⁶⁷ and reflected back to the inner self.⁶⁸ Consciousness is, Wojtyla says at one point, “understanding.”⁶⁹ Andrew and Teresa grow in awareness, each of how the other experiences the world, each coming to see things from the other’s perspective; each coming to see how the other is conscious of herself.⁷⁰

Another special feature of knowledge within friendship is the attribute of “doubling.” Andrew can be conscious of how Teresa’s consciousness of himself is structured. Andrew can become conscious of himself *in the way that* she is conscious of him. Because he knows her well, he can see how he looks to her. As Aristotle states: “[t]o perceive a friend must be in a way to perceive one’s self and to know a friend to know one’s self.”⁷¹ These help

66. *The Acting Person*, 31-32, closely following *Osoba i Czyn*, 35-36.

67. *The Acting Person*, 33: “[W]e attribute to consciousness the specific quality of penetrating and illuminating whatever becomes in any way man’s cognitive possession.” (This closely follows *Osoba i Czyn*, 35.) Compare A. Damasio, *The Feeling of What Happens: Body and Emotion in the Making of Consciousness* (New York: Harcourt, Brace and Company, 1999), 315:

It all begins modestly, with the barest of senses of our living being related to some simple thing inside or outside the boundary of our bodies. Then the intensity of the light increases and as it gets brighter, more of the universe is illuminated. . . . Under the growing light of consciousness, more gets to be known each day, more finely, and at the same time.

68. *The Acting Person*, 36 (“consciousness can mirror actions and their relations to the ego.”). (This closely follows *Osoba i Czyn*, 39.)

69. *The Acting Person*, 32: “Consciousness is, so to speak, the understanding of what has been constituted and comprehended.”

70. Andrew’s consciousness of Teresa embeds even awareness of her suffering: “that discreet suffering [he calls it] which at the time I did not want to know, and today am willing to regard as our common good.” *The Jeweler’s Shop*, Act I, Scene 1.

71. *Nicomachean Ethics* 1245a 35-36. The phrase could instead be translated, “to perceive one’s self in a certain manner.” Price, *Love and Friendship in Plato and Aristotle*, 121.

Self-perception through the mirror of friendship has a unique character, since it is “from the outside.” When you act directly, you focus on the object of your action—your goal and the things that lead to it. When your friend acts, you can also focus on him, the actor. You always see other people that way; and when you see a friend that way you are enabled (since a friend is “another self”) to take the important step of seeing yourself that way as well. See Price, *Love and Friendship in Plato and Aristotle*, 121-22:

[I]n perception we become transparent to what we are perceiving, so that perceiving it and perceiving ourselves are the same mental act (something like seeing outside and seeing through a window). . . . [But if] I see a friend looking into my eyes, his looking is to me not transparent (as it is to him) but opaque, so that I see him looking into my eyes without thereby seeing them myself. . . . It is from him that I can learn most easily to distinguish the perceiver from the perceived; I then generalize to my own case. . . .

explain and support the numerous findings in recent studies emphasizing the importance of good communication and self-revelation within marriage.⁷²

The other basic element of affiliation—benevolence—also finds a special field within marriage. Marriage is a long-term project of wishing well to the other and doing well for the other. And it seems that marriage and other friendships can “double” benevolence in much the way they double knowledge. Helping Andrew is also a good for Teresa; helping Teresa is a good for Andrew. Helping Teresa by making himself available for *her* to help *him* is a good for Andrew and a good for her. Allowing himself to be seen and understood by her in all his vulnerability is a way of helping her to achieve the good of helping him.

But what about obligation? Unless somehow supplemented, the theory can generate only this answer: obligation in marriage is a means to knowledge and benevolence. How could it be otherwise? The theory specifies for only two final goods of marriage and cannot fit obligation in except as their instrument.

And indeed obligations are often instrumental in just that way. Honoring commitments promotes reliance and so facilitates beneficence; learning to know someone well takes a long time and a lot of patience. Thus “Ted,” in *Habits of the Heart*:

When he is asked why one should not go from one relationship to another if one is tired of one’s spouse or finds someone else more exciting, he begins . . . with a statement of his preferences, but moves rapidly to a discussion of the virtues of sharing: “It [shifting relationships] is just not something that interests me. I have seen us get from a good relationship in terms of sharing with each other and so on to one that’s much, much deeper. . . .” This “deeper” sharing in turn suggests the value of a shared life, a sense of historical continuity, a community of memory. Ted continues, “You can’t develop a deeper relationship over a brief period of time, and also I think it is probably harder to develop with somebody new at this stage in your life. Your having grown through the

[The] analogue with choice and action shared with a friend of similar character yields a richer self-awareness: in my own person, my projects are (to extend the metaphor) transparent on to their objects, so that my focus is upon the objects, not my pursuit of them; but joining in those projects with a friend I become conscious of his pursuing them, and so conscious in a new way of pursuing them myself (for we are pursuing them together). I thus become explicitly aware of myself not just abstractly as an agent, but as an agent with a certain character, thereby achieving not a bare self-consciousness but a real self-knowledge.

See generally Stern-Gillet, *Aristotle’s Philosophy of Friendship*; John M. Cooper, “Aristotle on the Forms of Friendship,” *Review of Metaphysics* 30 (1977) 619.

72. Described and extensively cited in Milton C. Regan, Jr., *Alone Together: Law and the Meaning of Marriage* (Oxford: Oxford University Press, 1999), 22.

twenties with someone is good. Having first children and doing all those things, you could never do it again with somebody else.” He concludes by moving from the notion that life is more enjoyable when shared with one person to the idea that only a shared history makes life meaningful. “I get satisfaction in growth with Debby in proceeding through all these stages of life together. . . . It makes life meaningful and gives me the opportunity to share with somebody, have an anchor, if you will, and understand where I am. That, for me, is a real relationship.”⁷³

As Ted’s comments imply, obligation is instrumental to the “doubling” of knowledge: it is the basis for developing shared experiences, and for establishing a condition of reciprocal mirroring and the reflection of long passages of one another’s lives.

Where does all of this take us as regards fidelity: sticking to one person, sticking to one line of approach towards one person and one’s life with her? Fidelity, permanence, exclusivity, and related conditions do find a much firmer foothold on the foundation of benevolence and knowledge than they can plant on utilitarian grounds. There is an “economy of benevolence,” as Dean John Garvey calls it, which precludes spreading oneself too thin;⁷⁴ and there is, similarly, an “economy of sharing of discussion and thought.” Some of Ted’s comments imply this, as does Aristotle when he states in the *Ethics* that “for friends . . . there is a fixed number—perhaps the largest number with whom one can live together . . . one cannot live with many people and divide oneself up among them”⁷⁵ These considerations take us some distance but not all the way. Benevolence and knowledge may sometimes be amplified by *breaking* commitment—by shifting over to another partner—when one’s spouse is boring and insensitive and when another partner stands in greater need of one’s benevolent attentions.

IV. A NONINSTRUMENTAL ACCOUNT OF MARITAL OBLIGATION

A. *A Noninstrumentalist Account of Obligation in General*—It seems, then, that obligation may be a part of final good. The Homeric epics illustrate this

73. Bellah, Madsen, Sullivan, Swidler and Tipton, *Habits of the Heart: Individualism and Commitment in American Life*, 105. (The material between brackets appears, bracketed, in the original.)

74. John H. Garvey, *What Are Freedoms For?* (Cambridge, Mass.: Harvard University Press, 1996), 34-35.

75. *Nicomachean Ethics* 1171a 1-9. The passage continues: “Further, they too must be friends of one another, if they are all to spend their days together; and it is a hard business for this condition to be fulfilled with a large number. It is found difficult, too, to rejoice and to grieve in an intimate way with many people, for it may likely happen that one has at once to be merry with one friend and to mourn with another.”

conclusion. They often use the term *empedos*, which means “steadfast”—literally, “rooted in the earth”: firmly standing, fixed, safe, secure, and certain.⁷⁶ This virtue is a key to the character of Odysseus. On his visit to the underworld, he remains *empedos* awaiting the opportunity to speak with his mother and with the fallen warriors of earlier days.⁷⁷ As his ship passes the island of the Sirens, he has himself bound *empedos* to the mast.⁷⁸ Stringing his great bow as his battle with the suitors approaches, he rejoices to find his strength still *empedon*.⁷⁹ Slammed on the back with a footstool he withstands the attack, as firm—*empedon*—as a rock.⁸⁰ (Paris, by way of contrast, lacks this quality: Paris, the seducer of Helen, the pleasure-seeker and romantic, is characterized by Helen herself at one point as lacking *empedos* of mind.)⁸¹

Steadfastness, in Homer, is central to the human character. It distinguishes mankind here on earth from the beasts, the gods, and the dead.⁸² Beasts cannot fully achieve it since, after all, it is a quality of *mind*. Gods, the poets may have felt, did not need to achieve it since in the Homeric world the major function of the *empedos* attribute was to buttress mortals against fear of death and to steady those who grieved for fallen friends. Old people, in Homer, have lost much of their steadfastness, and the dead have lost it all. Only the fully human have it in full. A man needs steadfastness in order to take what the gods dish out.

In Aristotle, a similar trait can be found not far under the surface of the system of virtues in the *Ethics*. Behind any good deed—if it is fully good and a component of excellence of life—must lie the right state of character. It is not enough just to do what is right. Plainly “some people who do just acts are not necessarily just”⁸³—not those, for example, who act only out of fear or

76. Much of the material about this characteristic herein is from Froma I. Zeitlin, “Figuring Fidelity in Homer’s *Odyssey*,” in Beth Cohen, ed., *The Distaff Side: Representing the Female in Homer’s Odyssey* (Oxford: Oxford University Press, 1995), 117.

77. *Odyssey*, Book 11, lines 173 and 719 (lines 152 and 628 of the Greek). Here and throughout, this article uses the Robert Fagles translation (New York: Penguin Books, 1990) and the line numbering is that of the translation rather than the Greek except where otherwise indicated.

78. *Ibid.*, Book 12, line 175 (line 161 of the Greek).

79. *Ibid.*, Book 21, line 475 (line 426 of the Greek).

80. *Ibid.*, Book 17, line 512 (line 464 of the Greek).

81. *Iliad*, Book VI, lines 414-18 (“I wish I had been the wife of a better man. . . . This one has no steadiness in his spirit, not now, he never will . . .”).

82. See *Odyssey*, Book 11, line 446 (line 393-94 of the Greek)(the shade of Agamemnon is no longer *empedos*) and Book 10, lines 542-45 (lines 493-95 of the Greek)(among the dead only Teiresias has been granted the gift of a steadfast mind; “the rest of the dead are empty, flitting shades.”).

83. *Nicomachean Ethics* 1144a 14-15.

ignorance.⁸⁴ Looking deeper, we find that fully good deeds are only those which are performed “as a result of choice and for the sake of the actions themselves.”⁸⁵ Choice involves balanced and mature assessment. Choice involves “consideration and deliberation . . . [and] arises out of deliberate opinion.”⁸⁶ Choice, consideration, and deliberation can only arise from a steady character:

[T]he case of the arts and that of the excellences are not similar; for the products of the arts have their goodness in themselves, so that it is enough that they should have a certain character, but if the acts that are in accordance with the excellences have themselves a certain character it does not follow that they are done justly or temperately. The agent must also be in a certain condition when he does them; in the first place he must have knowledge, secondly he must choose the acts, and choose them for their own sakes, and thirdly *his action must proceed from a firm and unchangeable character.*⁸⁷

Here, then, is one component of the major thesis of this article: firmness, stability, and steadiness of character are a major part of the good for man; and again not only because of their obvious instrumental value but also because to be unstable and unsteady is to be less than a fully developed person. Only the steady, firm person, steadily reflecting and firmly choosing, “is at one mind with himself” when he acts and so to speak puts his entire self behind each action.⁸⁸ Only the steady man acts “with an eye to [his] life in its entirety”⁸⁹ and so embeds his action in a “complete life.”⁹⁰ Only the steady man with a consistency of mind and purpose across the years can fully display and instantiate his virtuous character in all its temporal fullness.⁹¹

A man will lack these qualities if he makes pleasure his sole aim. Inevitably, since the currents of pleasurable opportunity flow, now this direction, now that. But so also may even a man lack this quality who on some occasions pursues justice or learning. He is not fully virtuous unless he

84. *Ibid.*, 1144a 14-16.

85. *Ibid.*, 1144a 19-20.

86. *Eudemian Ethics* 1226b 8-9.

87. *Nicomachean Ethics* 1105a-26 through 1105b-1 (emphasis added).

88. Not so the wicked, who are “at variance with themselves” (*Nicomachean Ethics* 1166b 6-7) and “rent by faction” (*ibid.* 1166b 19). For a discussion of the unity of the self in Aristotle, see Stern-Gillet, *Aristotle's Philosophy of Friendship*.

89. A.W. Price, “Aristotle's Ethical Holism,” *Mind, New Series* 89 No. 355 (July, 1980) 338, 342.

90. That a “complete life” is a condition of *eudaimonia* is stated in *Nicomachean Ethics* 1098a 18 and 1100a 5.

91. Cf. Price, “Aristotle's Ethical Holism,” 342 (“it must take a lifetime to display [‘firm and unchangeable character’] fully.”).

is also fully self-governing, possessed of solidity of character, and thus stable in his consideration and deliberation. And similarly the person who pursues benevolence, but only episodically and without sustained insight or self-governance, “practicing random acts of kindness” as the bumper sticker suggests. Children, for example, and young teenagers often experience strong and pure beneficent impulses. But who would become a child again—still less an early adolescent—in order to exercise the beneficence of the young? In this uncertain and fluctuating world, pursuit of the good will produce a degree of instability of commitment except for the man who recognizes that stability of commitment is itself a part of final good.

Obligation is noninstrumentally good as an instantiation of the good of steadfastness and stability. To recognize obligation and to fulfill it even under adverse conditions is to be steadfast: to manifest steadfastness, to exercise it, and to strengthen it. To recognize obligation, to embrace it, and to develop it, and as part of this line of development to identify and develop rules of conduct for life and to act on principle: to embrace what might be called the “juristic attitude.”

In the *Summa Theologica*, Thomas Aquinas makes this point, or something like it, in his discussion of vows. Why take a vow? What good may there be in taking a vow and carrying it out, over and above the good of the action you promise to take? Would it not be just as meritorious to do the good thing without the vow? No: the vow adds something important. Vowing “strengthens the will.”⁹²

[A] vow fixes the will on the good immovably and to do anything of a will that is fixed on the good belongs to the perfection of virtue according to the Philosopher. . . .⁹³

Of course, vows are a special, limited case of obligatory circumstances (Thomas uses the term to mean promises to God). But Thomas may imply a similar point about promises generally.⁹⁴ And surely the same could be said about all obligations, whether or not initiated by vowing or promising. To

92. Fathers of the English Dominican Province, trans, 1947, II-II question 88, article 6, reply to objection 2: “According to the Philosopher, necessity of coercion, in so far as it is opposed to the will, causes sorrow. But the necessity resulting from a vow, in those who are well disposed, in so far as it strengthens the will, causes joy.”

93. *Ibid.* II-II question 88, article 5, corpus. The passage continues: “just as to sin with an obstinate mind aggravates the sin, and is called a sin against the Holy Ghost”

94. See John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford: Oxford University Press, 1998), 198 and note 58 (in a promise, an intention is affirmed in the sense of “asserted” but also in the sense of “made firm”) (and note his use of the phrase “exercises of self-mastery” to characterize promissory obligations on page 199).

shoulder long-term projects, to undertake lasting responsibilities, to develop rules and principles for life and to stick to them⁹⁵—these courses of conduct also involve fixing and strengthening the will.

B. A Noninstrumental Account of Obligation in Affiliations, Especially Marriage—Someone might exercise and develop his steadfastness of character in individual, isolated projects: through lonely pilgrimages, for example, or in his work as a solitary craftsman. But fidelity usually means steadfastness of loyalty to a person or group. Odysseus' steadfastness culminates in his reunion with Penelope; and Penelope's with Odysseus.⁹⁶ Odysseus' and Penelope's marriage bed is an emblem of the *empedos* marriage. One of its posts was the trunk of a living olive tree; on his return, Odysseus hopes that "the bed . . . still stand[s] planted firm [*empedon*]."⁹⁷

Steadfastness and fidelity are the more radically committed when the commitment is to a person rather than a journey, for example, or a craft, because only there—at the other end of the rope—is a human life, in all its variability and complexity. Steadfastness and fidelity are the more personalist when a person is at the other end of the rope: you can commit more of yourself—your "heart."

Steadfastness and fidelity are "doubled" within a close affiliation: the ropes run both ways. The doubling of knowledge and benevolence within close affiliations has been discussed above:⁹⁸ because I can see myself through her eyes, what she knows of the world and what she knows of me are added to my knowledge. Now we can add that constancy and steadfastness are doubled as well. I can steady myself from her steadfastness of character. The point is vividly illustrated in a poem by John Donne which compares the couple to the two arms of a draftsman's compass:

95. Thomas notes that vows can be made by thought and need not involve pronouncements. Thomas Aquinas, *Summa Theologica* II-II question 88, article 1, corpus: vowing involves promising, but whereas "a promise between man and man can only be expressed in words or any other outward signs A promise can be made to God by the mere inward thought"

96. Here is how she herself characterizes her great alternatives: "Either to remain beside her child and keep everything *empeda*, her possessions, maidservants, and high roofed house, respecting the bed of her husband and the opinion of the people—or to follow after that one, the best of the [Suitors] who is wooing her in the halls and offering her gifts." (*Odyssey* Book 16, lines 74-77 in the Greek; the translation is from Zeitlin, "Figuring Fidelity in Homer's *Odyssey*," 125.). See generally Marilyn A. Katz, *Penelope's Renown: Meaning and Indeterminacy in the Odyssey* (Princeton: Princeton University Press, 1991), 93 et seq.

97. *Odyssey*, Book 23, line 228 (line 203 in the Greek).

98. In Part Three, Section III.

Thy firmness draws my circle just
and makes me end where I begun.⁹⁹

I can steady myself with her help and she with mine. She can instantiate and fulfill her obligations to me by making calls on my obligations to her.

The special features of affiliational knowledge reinforce obligation. I can know my own steadfastness better as I see it reflected in the mirror of her consciousness; and knowing it better, I can develop it further and apply it more effectively. Something similar applies with respect to the special features of affiliational benevolence: he confers more good when the giver donates, so to speak, not only the gift but the giver himself. Thomas says this about the good of vowing: “he gives more who gives the tree with its fruit, than he that gives the fruit only.”¹⁰⁰ The same can be said, more generally, about the good of shouldering obligation. Someone gives more to his wife who gives not only his services but also his commitment to serve: not only support but also commitment to support. Marriage is a drama of mutual reinforcement of obligation.

C. What Obligations?—If the thesis of this article is correct, it make sense for a couple to emphasize obligations with certain characteristics: ones well integrated into the other purposes of married life: mutually known, and mutually beneficent. Here are two types:

Romantic and sexual fidelity—This obligation—in its strongest form, a lifetime commitment to “forsaking all others”—is eminently eligible to be embraced as part of noninstrumental good, as it persists across time, it is “personal,” it reflects benevolence (depth of love, unwillingness to hurt), it is difficult, and indeed it involves an arduous conquest of the wildest and most unsteady part of the psyche, Eros. Scholarship, song, and story throughout history celebrate the taming by marriage of the unruly male spirit. Thus Durkheim:

By forcing a man to attach himself forever to the same woman, marriage assigns a strictly definite object to the need for love, and closes the horizon. This determination is what forms the state of moral equilibrium from which the husband benefits. Being unable to seek other satisfactions than those permitted, without transgressing his duty, he restricts his desires to them. The salutary

99. John Donne, “A Valediction Forbidding Mourning,” quoted in Garvey, *What Are Freedoms For?*, 35.

100. *Summa Theologica* II-II question 88, article 6, corpus. Thomas is speaking here not of giving to man but to God: “he that vows something and does it, subjects himself to God more than he that only does it; for he subjects himself to God not only as to the act, but also as to the power”

discipline to which he is subjected makes it his duty to find his happiness in his lot, and by so doing supplies him with the means.¹⁰¹

More than just a good idea, marital fidelity is necessary to the final good of firmness. Without it, whatever other projects the couple undertake together will be unsteadily committed.

Household chores—Chores, of course, are not essential. Rich couples may avoid them entirely. Some couples might undertake them for instrumental reasons only. Many husbands and wives, however, may find that cooperating in the practical tasks of keeping a household running is part of the warp and woof of their relationship. Household chores are eligible—like marital fidelity but not so pronouncedly—to instantiate the noninstrumental good of obligation. Getting the place spiffy for her return from her business trips, cooking dinner for him even when you are tired, are also recurrent across time, personal, beneficent, and conducive to self-discipline.

D. Noninstrumentalism in Practice?—If the thesis of this article extends beyond theory into belief and practice, we should be able to detect respect for marital obligation to a greater extent than would be predicted by the instrumentalist, and to detect distributions of obligations according to different patterns than he might foresee. Further, we should observe a correlation between obligation and happiness and between obligation and firmness of character. There is some evidence to support these predictions:

Fidelity—Classic utilitarianism seems to justify and predict adultery—and even to recommend it—when you won't be detected and won't beget a child (and sometimes even when you may); other forms of instrumentalism do not seem to rule it out either. But public opinion does not concur: studies show that large majorities disapprove of extramarital sex and that large majorities of spouses have avoided committing it even once.¹⁰²

Classic utilitarianism and other forms of instrumentalism seem to justify and predict divorce when the result for both parties will be an affiliational deal sufficiently improved to cover the transaction cost. Professor Gary Becker's leading treatise predicts divorce when each spouse's predicted

101. Emile Durkheim, *Suicide: A Study in Sociology* (New York: Free Press, 1951), 270-71 (John A. Spaulding and George Simpson, trans.), quoted in Steven L. Nock, *Marriage in Men's Lives* (Oxford: Oxford University Press, 1998), 11-12.

102. See Nock, *Marriage in Men's Lives*, 22-23 (77% say that extramarital sex is "always wrong" and "among those whose marriages are intact, 15% of men and 5% of women admit to having had an extramarital relationship. When those whose marriages are no longer intact are included, these percentages rise only slightly, to 25% for men and 10% for women."); Anthony Peter Thompson, "Emotional and Sexual Components of Extramarital Relations," *Journal of Marriage and the Family* (February, 1984) 35 (about 43% report ever, even once, having had a relationship outside marriage which included either sex or love).

“commodity wealth” will rise.¹⁰³ But although the divorce rate, notoriously, rocketed upwards during the 1960s and 1970s,¹⁰⁴ it still stands at a level far lower than what such analyses would predict. That fifty percent last a lifetime could not be predicted of truly instrumental affiliations such as those between commercial transactors or even social friends. Studies ranking the causes of divorce report high ranks for personality factors and components of bad personal relations; low rank for economic concerns; and no significant rankings for “better deals elsewhere” of either an economic or a social nature.¹⁰⁵

Chores—Instrumentalism predicts a pattern of allocating household duties which maximizes output, and this implies a lot of flexibility as changes occur in skill and marketability, in-home compared to outside-the-home (and it predicts that the spouse who can earn less will do more chores). But Sarah Berk’s book *The Gender Factory* finds that task allocation tends to be stable not flexible, and studies indicate that the man may not increase his load when he begins to work less at a job or his wife more.¹⁰⁶ Gender roles help explain this, but so does the noninstrumental good of stable obligations discussed in this article. The man who keeps on doing the yardwork and repairs even when he is under major pressure from a second job may be implicitly saying, not simply “I am a real man” but, more basically, “I am *your* man and sticking by these tasks shows that nothing in my work situation can change that.” The woman who continues to cook for her husband when he has been laid off—rather than saying to him, “you’re unemployed, *you* do the cooking”—may be emphasizing her fidelity at a juncture where it counts for a lot.

A Harvest of Happiness and Steadiness of Character? Instrumentalism might predict that married couples would be less happy than cohabiting couples, since married couples have shut themselves out of the marketplace whereas cohabitators can look forward to trading up. Studies show that married

103. *A Treatise on the Family*, 331-32 (stating that a couple (a “risk-neutral” couple) will consent to divorce if the “expected commodity wealth” of each is higher after divorce than without divorce). “Commodity” is given a fairly broad meaning and is not limited to things that could move in commerce.

104. Stacy J. Rogers and Paul R. Amato, “Have Changes in Gender Relations Affected Marital Quality?” *Social Forces* 79 (2000) 731.

105. See Gary C. Kitson and William M. Holmes, *Portrait of Divorce: Adjustment to Marital Breakdown* (New York: Guilford Press, 1992), Chapter 5.

106. Sarah Fenstermaker Berk, *The Gender Factory: The Apportionment of Work in American Households*, 197-98 (New York: Plenum Press, 1985). For recent findings, see Suzanne M. Bianchi, Melissa A. Milkie, Liana C. Sayer and John P. Robinson, “Is Anyone Doing the Housework? Trends in the Gender Division of Household Labor,” *Social Forces* 79 (2000) 191; Rogers and Amato, “Have Changes in Gender Relations Affected Marital Quality?” 731.

couples are happier and healthier.¹⁰⁷ This makes sense to the noninstrumentalist, who understand that obligation is a part of well-being and that life without it is impoverished and deprived. Instrumentalism might predict that married people would be worse employees because of their heavy duties at home. But studies show that married men are better workers;¹⁰⁸ a conclusion which may be explained by their steadier characters.

If this article is correct, we can use it as a basis for understanding the concluding episode of Professor June Carbone's recent book *From Partners to Parents*:

Shortly after the birth of my first child, a friend . . . asked me if I felt more "mature." With the stress of childbirth and sleepless nights still fresh in my mind, I answered an emphatic "no." Three years later, during a walk in the park with what had by then become two children, I understood what she meant. A large dog approached us and began to bark. I have always been terrified of dogs, but this time I quickly gathered the one-year-old into my arms, held my three-year-old close to me, and confronted the intruder. The amazing thing to me was that I felt almost no fear. I no longer had the luxury: I was a parent.¹⁰⁹

Parenthood, like marriage, is obligatory; and obligation involves steadiness and courage. Odysseus would have done no less.

107. The literature on the differences between married and cohabiting couples is cited in Margaret F. Brinig, "Unmarried Partners and the Legacy of *Marvin v. Marvin*: The Influence of *Marvin v. Marvin* on Housework During Marriage," *Notre Dame Law Review* 76 (2001) 1311, 1316-17. See Linda J. Waite and Maggie Gallagher, *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially* (New York: Doubleday, 2000).

108. Brinig, "Unmarried Partners and the Legacy of *Marvin v. Marvin*: The Influence of *Marvin v. Marvin* on Housework During Marriage."

109. June Carbone, *From Partners to Parents: The Second Revolution in Family Law* (New York: Columbia University Press, 2000), 241.

