In “Marriage and Morals,” Elizabeth Brake criticizes a number of philosophical arguments purporting to show that marriage is in some way morally required for persons involved in a relationship of erotic love. Brake notes that the purpose of the paper may seem surprising, since for many philosophers it may be obvious that marriage is not morally required, that those involved in an erotic love relationship do not do moral wrong if they are not also married. I must admit that while reading the first few sentences of the paper, I put myself in the category of philosophers who haven’t thought it necessary to address arguments for marriage as a moral requirement, because they seem so obviously unsound. I figured I might have a hard time commenting on the paper, because I assumed I would just be thinking throughout: “Yes, right, exactly, of course….” Which is pretty much exactly what I did think, and I did have a hard time coming up with useful comments.

But the paper also made me consider further the clear social, political, legal and economic pressures individuals experience to find a partner and marry (in North America, at least – my knowledge of such pressures elsewhere is lacking basis in experience or research into facts). It made me think about what sorts of arguments could justify these pressures (leaving aside the question of procreation and childrearing), and whether moral values might legitimately lie behind them. Since such pressures do exist, and since they have been and continue to be justified in moral terms by philosophers, social/political leaders, and others, it’s crucial to evaluate their arguments, encouraging public debate on whether marriage is morally important enough to justify the social, political, and economic rewards that are often currently attached to it. Enough people think marriage is worth heavy encouragement, that this pressure is likely to continue if not carefully analyzed and evaluated. If we think it should not continue because there are not good arguments for why marriage is morally required, then we should enter into the public debate and criticize the arguments being offered.
Brake criticizes two kinds of arguments commonly given for how/why marriage is morally required: (1) that it is morally obligatory (she focuses on Kantian arguments to this effect), and (2) that it is “uniquely conducive to virtue” (p. 1) (she focuses on Roger Scruton’s Aristotelian argument along these lines in Sexual Desire (1986)). According to Brake, any argument that purports to show that marriage is somehow morally required in relationships of erotic love must show that its moral value lies in either or both: “the (contractual) exchange of rights and responsibilities (legal marriage),” or the “public recognition of the relationship (the social institution)” (9). It can’t just be that there is moral value in the kind of intimate relationship that is said to be ideally involved in marriage, because, as she puts it, “that does not, by itself, pick out marriages” (10). Marriage as a social and/or legal institution must be where the moral value lies, according to any argument that marriage (rather than a particular kind of intimate relationship) is morally required.

It is important to keep in mind this focus on the social and legal aspects of marriage – the kinds of moral arguments Brake considers attempt to show that persons in erotic relationships are somehow morally required to commit to each other in a way that is sanctioned by a community, and/or in a way that entails certain legal rights and obligations. What kinds of arguments could one offer to show that an otherwise private relationship gains moral value by being socially sanctioned? If a couple made an entirely private commitment similar to a marriage vow (made only to each other with no witnesses), or one that only a few others knew about, why could this not fulfill the same moral function as a public one? What is it about the publicity of the commitment that is morally required, according to those who argue for the moral value of marriage? Those are the kinds of questions that kept coming up for me as I read this paper, and they lie in the background of my comments here.

One of my initial questions about the paper, which perhaps can be easily answered in a way I’m not seeing at the moment, is why there are no arguments from a utilitarian perspective addressed. I wondered this, because in my experience thinking about the rationale behind the legal encouragement of marriage in welfare reform laws in the U.S., it seems that many of the arguments offered are of a
utilitarian type. As Brake notes, in the Personal Responsibility and Work Opportunity Reconciliation Act in the U.S., marriage is argued to promote the public interest by reducing dependence on public welfare, and it is claimed to be the basis for a “successful society” (6). Some of the specific arguments I’ve heard include claims that the interests of a social community are better promoted if persons are involved in social institutions wherein they take on obligations to support each other, because otherwise individuals may have to rely on the community for support. On this view, it could be said that being married is morally better than cohabitation because it promotes the interests of the group: the community can then hold an individual to socially and/or legally defined obligations to support his/her partner rather than having to step in with community resources to do so. I’m not sure that this argument necessarily works, but it and other utilitarian arguments are prevalent in the public debates over the moral value of marriage, and I’m wondering why Brake doesn’t address them in the paper. Perhaps it has to do with Brake’s focus on arguments that marriage is itself morally valuable, rather than being instrumentally valuable for the sake of something else.

The moral obligatoriness of marriage – the Kantian arguments

For the Kantian argument that marriage is morally obligatory, it seems that marriage as a public commitment and legal exchange of rights and obligations is necessary to ameliorate the otherwise morally problematic aspect of sex -- that without a marriage contract, sex involves “the use of a person as a means only” (10). Brake considers two arguments that marriage makes sex morally permissible: (a) that it acts as a “safety net” against the risks of sex, and (b) that it somehow “morally transforms sex” from an activity in which persons are used as mere means to ends, to one where this no longer occurs. Brake notes that one could argue that marriage transforms sex because the marriage vow “demonstrates respect” through a pledge “to look after another’s welfare outside the sexual context,” and thus “demonstrates concern for him as a being with his own needs” (13). On either of these two rationales (safety net for risks of sex or transforms the sexual act itself), marriage is morally obligatory in the sense
that sexual activity without it is morally wrong – thus, marriage would presumably not be morally obligatory for those who choose to forego all sexual activity.

The argument that marriage somehow transforms sexual activity into something morally permissible where it would otherwise not be seems a difficult one to make without reference to a religious faith that this transformation can be performed by the actions of a deity. That kind of rationale likely underlies many modern arguments for how sexual activity can suddenly take on a different moral status once a public commitment is made. But how might a secular argument to this effect work? Brake is right to point out that taking on the legal status of “spouse” is neither necessary nor sufficient to ensure that partners in an erotic relationship demonstrate respect for each other as persons rather than treating each other as mere things. As she argues, “[r]espect for the other must be internal to the agent,” and “there is no plausible argument that only marriage can create the psychological conditions necessary for respect” – nor even that it is sufficient to do so (15).

This seems clearly right to me (just b/c one signs a legal contract doesn’t mean one’s psychological states are automatically transformed, changing the maxims involved in an action). I began to wonder while reading this section of the paper just what Kant might be up to in suggesting that somehow a legal relationship could transform sexual activity into something where two persons no longer treat each other as mere means to ends. I decided to read a few passages in the Metaphysics of Morals and the Lectures on Ethics to see if I could get any more clarity. I did not have the time to really delve into what is going on in these texts, and I must admit that I am still unsure as to what Kant was trying to argue. But I think it’s got to be somewhat more complicated than that changing one’s legal status changes one’s psychological state. I therefore offer just a sketch of some of the details of his arguments in these texts, and throw it out to others more knowledgeable about Kant than I to help us figure out if he is trying to say more than this or not.

For Kant, there is a fundamental moral problem with sexual desire in that it is aroused and satisfied by the possession and use of another person as an object of one’s own enjoyment -- a use that
can take place entirely without concern for the other as a rational being. Kant discusses sexual activity and marriage under the rubric of rights having to do with possession and property in things, and he seems concerned about whether persons can be “possessed” without thereby being regarded as “things” themselves. For Kant, sexual desire seems to inevitably involve an appetite for possession of a person as a thing, and only through marriage can this possession be compatible with respect for persons as ends in themselves. Kant admits that sexual desire can be accompanied by love, concern, and respect, but he insists that “taken by itself and for itself, it is nothing more than appetite” for a part of a person (their sexual attributes) rather than respect for that person as a whole (Kant, *Lectures on Ethics*, p. 163). But for Kant, one cannot possess just a part of another person without possessing the whole (“because a human being is a unity” (*LE*, p. 166)), and one only has legitimate possession of another person as a whole under a contract that allows that other person possession over oneself as a whole as well. Thus, it seems that for Kant, possession of another person’s sexual attributes is legitimate if one also has possession of that person as a whole (because one cannot possess a part without possessing the whole), and such a possession of the whole of another person is only legitimate if it is equalized through reciprocal possession of oneself by them.

It does seem strange to argue that while possessing someone’s sexual attributes as a part of that person is morally problematic, this can be made morally permissible by contracting to legally possess that person in a wider sense. For Kant, the marriage contract not only gives two persons “lifelong possession of each other’s sexual attributes,” but also requires each to “surrender the whole of their person to the other with a complete right of disposal over it” (*MM* Sect. 24, *LE* p. 166).\(^1\) For Kant, through the marriage contract one “yields one’s person . . . in every respect, so that the other has complete rights over it”; but one also “obtain[s] the person of the other in return,” so as to “win

\(^1\) However, marriage as “a relation of equality of possession” is not really a full equality, since for Kant it is legitimate to allow the man mastery based on “the natural superiority of the husband to the wife in his capacity to promote the common interest of the household” – since he is naturally better at
If I am going to gain possession over another person, it should only be under the condition that they possess me in return, such that I have no more rights of possession over him/her than s/he also has over me. It is this idea of reciprocity and equalization that underlies Kant’s insistence on marriage as monogamous – if I surrender myself through sexual activity (which, remember, is a surrender of the whole of myself because I cannot surrender a part without surrendering the whole) to a person who does not also surrender himself to me fully, but surrenders part of himself to someone else, then he gets the whole of me and I get only part of him. For Kant, if I give myself wholly to a man, I “ought in consequence to be entitled to the whole man” in return (LE, 167).

Somehow in all this, it seems that for Kant, the voluntary, public act of surrendering oneself as a whole to another who does the same, transforms the nature of sexual activity such that it becomes morally permissible. Is it that the legal, reciprocal possession that marriage creates is necessary in order to change one’s psychological state, one’s maxims towards the other person, or is there something else going on here? Kant’s point is likely related to Rousseau’s notion of the social contract as “the total alienation of each associate, together with all his rights, to the entire community,” such that “in giving himself to all, each person gives himself to no one” (Rousseau, *Social Contract*, Book I Chpt. 6, Cress transl., Hackett). Perhaps for Kant the voluntary, public surrender of each person to the other through marriage institutes a kind of equality of status where no one has rights over another that that other does not also possess over oneself. But why is it not the case for Kant, then, that as Brake suggests, “[j]uridical equality is established simply by equal citizenship” (14)? Why is another juridical relationship between persons in an erotic relationship necessary to establish a kind of public equalization of status that legal citizenship, it seems, could also accomplish? I must admit that all I’ve been able to do in the past few days of thinking about this issue is raise these questions without coming up with

promoting this common interest, by allowing him to direct the household this promotes “unity and equality with respect to the *end*” (*MM* Sect. 26).
helpful answers. So, if anyone else but me is interested in trying to determine if there is something of value in Kant’s views of marriage, we could talk about this in discussion.

Marriage as (uniquely) promoting virtuous character and thus human flourishing (Scruton)

In the final section of the paper, Brake considers Roger Scruton’s Aristotelian arguments that marriage as a social institution “is necessary for the widespread development of certain virtues, in the sense that without marriage, these virtues will be rare” (16-17). According to Scruton, the *telos* of sexual desire is “erotic love,” and erotic love “is a component of human flourishing” (17). Marriage makes possible erotic love, it seems, by carving out a socially-protected “private realm” for it (19). I have not had a chance to read Scruton’s book, but I it sounds as if on this account erotic love requires a private space that excludes others, perhaps so that the lovers can be free to determine their lives together as they choose, as an individual might need a zone of privacy to determine his/her own life as s/he chooses – within, presumably, certain moral limits.

According to Brake, the most troubling aspect of this account is that it emphasizes the need to shield erotic love from the gaze and interference of others – as if whatever happens there is not subject to the moral demands of justice (21). This has certainly been the way marriage relationships have at times been viewed in the past, as feminists and others have pointed out; but it seems possible to argue that within certain negative limits of justice, erotic love relationships require a zone of privacy. The question, then, is whether marriage promotes such privacy or not. Social institutions that are defined as the same for all may not provide the flexibility to allow a couple to determine their life together as they choose – a point that Brake makes towards the end of the paper.

Further, Brake criticizes Scruton’s arguments by noting that “marriage is not *necessary* for erotic love” (one can certainly engage in such relationships without marriage), and it makes sense to “ask whether it even *promotes* it” (23). I suppose I’d need to get a better handle on just what Scruton means by “erotic love” to comment on this. I don’t know enough about the idea of sexual desire as
“interpersonal intentionality,” and how erotic love is supposed to be the telos of such desire, to be able to say if it makes sense for him to argue that marriage could promote erotic love. Certainly it’s highly questionable to argue that marriage promotes continued sexual desire over a lifetime in the sense of a kind of physical drive or lust, but Scruton’s notion of erotic love as the telos of a sexual desire that is “interpersonal intentionality” may refer to something different than this. Perhaps Elizabeth can explain further his view on the relationships between sexual desires, erotic love, and marriage.

In her discussion of both the Kantian and Scruton’s Aristotelian accounts of the moral value of marriage, the issue is raised as to whether or not entering into a particular social and/or legal institution can change an individual’s psychological states or character traits: can being a “spouse” alter the way one treats one’s partner, or develop dispositions in one that make possible erotic love? Brake raises a further argument at the end of the paper, that she addresses in a longer version – that perhaps marriage is needed to develop “the kinds of virtues one needs to live in a long-term relationship with another person: altruism, trust, and commitment” (26). It seems that taking on a the social or legal status of “spouse” for oneself could promote habits that could develop into virtuous character traits; but, as I imagine Brake goes on to argue in the longer version of her paper, I can’t seek that marriage is necessary to promote such virtues of character.

Are there other situations where entry into a social institution is said to be morally required in order to make certain relationships and/or actions permissible? If so, are there parallels to the marriage/sexual activity situation? I offer these as possible questions for discussion, as I haven’t yet had time to think them through….