

Adultery, Open Marriage, and Autonomy

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Open marriage is increasingly viewed as a legitimate option for those who wish to be married but don't wish to be constrained by the requirements of sexual fidelity. Not surprisingly, then, the open marriage possibility is invoked to rebut the claim that adultery is always immoral. Adultery, it is claimed, can be morally permissible in cases where those engaged in adulterous behavior are part of an open marriage. Let us call this the *open marriage argument*. If the open marriage argument works, then some forms of adultery are justified. Yet for the open marriage argument to work, the institution of open marriage *itself* must be justified. This point has received little attention in the philosophical literature, which is surprising, given that it is not hard to think of possible objections to open marriage. In this paper I argue that the most promising general justification of the *institution* of open marriage is not based on consequentialist or aretaic principles, but rather on the principle of respect for autonomy. Yet while this principle justifies the institution of open marriage in the most general sense, it does not justify every case of adultery involving an open marriage. Whether a *given* case of adultery is justified by the open marriage argument will depend on whether the open marriage in question satisfies several other moral desiderata. Hence, not every particular employment of the open marriage argument will work. If one wishes to determine which invocations of the argument work, and which do not, there is no option but to look at the particulars of the open marriage, its members, and those affected by it.

I begin the paper by discussing open marriage. Any attempt to use the open marriage argument to justify some forms of adultery requires the prior moral validation of open marriage itself. What normative reasons are there to consider open marriage *itself* a legitimate institution? If the institution lacks normative warrant, it cannot be used to argue that some forms of adultery are morally acceptable. The need to meet this challenge is underscored by the fact that it is not difficult to think of moral objections to the institution of open marriage.

The justification of open marriage can be approached from one of two directions. On the one hand, one might try to show that the *institution* of open marriage ought to be allowed. This approach does not look at the moral credentials of any particular open marriage but focuses instead on normative reasons for allowing the practice in general. On the other hand, one might take a more particulate approach and focus on the moral credentials of *individual* open marriages. Let us call the former a *general justification* and the latter *particular justifications*. I wish to argue that the institution of open marriage finds its most promising general justification in the principle of respect for autonomy, but that this justification can be negated if there is a preponderance of moral ills associated with a particular case of open marriage. If correct, this means that the open marriage argument sometimes justifies particular cases of adultery, but not always.

The general justification of open marriage is to be found in one of three sources: (1) Allowing open marriage will lead to more happiness than unhappiness. (2) Allowing open marriage is a virtuous act. Or (3) We should respect people's autonomous choices: if they want open marriage, we should not interfere. Source (1) is a classic utilitarian justification. Source (2) is an aretaic justification. The justification contained in source (3) is largely deontological in nature. I discuss each in turn and argue that source (3) is the most reasonable choice for the most promising *general* justification of the institution of open marriage.

Providing a general justification of open marriage by referencing the principle of respect for autonomy has important implications: it establishes basic moral respectability for open

marriage (allowing open marriage to resist summary dismissal on moral grounds) and it validates the possibility of defending some forms of adultery by employing the open marriage argument. Yet the validation provided by the principle of respect for autonomy is not so extensive as to cover each and every employment of the open marriage argument. In concrete cases it is necessary to see if the particular open marriage in question is justified to see if that particular employment of the open marriage argument works or not.

Particular moral justifications of open marriages will likely result in judgments of degree (more or less justified) rather than binary judgments (moral or not). In addition, it is likely that the level of moral justification of a marriage hangs on how the relationship scores in relation to multiple moral variables. Everyday moral judgment—what Bernard Gert terms ‘common morality’ (Gert 2005, 6–10)—employs and recognizes a plurality of grounds for moral judgment, including outcomes (consequentialism), duties, rights, character ideals (virtues), sympathetic motivation, and respect for autonomy, to name a few.

The upshot of these considerations is that although moral justification of particular open marriages is certainly possible, case studies are required in order to determine whether moral justification is present in any given case or not, and if so, to what extent. The bottom line for the adultery discussion is that in particular cases where justification is lacking, the open marriage argument cannot necessarily be used to justify the adultery in question. A more or less wicked couple in an open marriage who use their wider sexual license deliberately to break up families and sow discord could not justify their adultery by the open marriage argument; the fact that their marriage is open is not by itself sufficient to show that *their* adulterous actions are morally sanctioned. By contrast, a more or less benevolent couple in an open marriage who behave with respect for others could use the open marriage argument to establish the moral permissibility of *their* actions.