

# Marriage and its Limits

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## Abstract

Marriages come in a very wide variety: if the reports of anthropologists and historians are to be believed, an extraordinarily wide variety. This includes some of the more unusual forms, including marriage to the dead; to the gods; and even to plants. This does suggest that few proposed marriage relationships would require 'redefining marriage': but on the other hand, it makes giving a general theory of marriage challenging. So one issue we should face is how accepting we should be of the reports: to what extent reported 'marriages' really are marriages. This paper defends the view that almost all of these reported marriages are in fact marriages, and suggests some theoretical approaches that may be generous enough to account for this.

One interesting question about the nature of marriage is which human relationships do, or can, count as marriages. Or to ask a closely related question, what actual and possible cases fall under the category picked out by our word 'marriage'? This question has become of more practical importance lately, as contemporary liberal states grapple with the question of whether to expand the range of relationships that receive legal recognition as marriage, especially since critics of these expansionary moves often portray them as 'redefining marriage'. The case of marriage is also a useful one as a test case for illustrating how we might go about identifying or understanding social kinds more generally, especially those that appear to be found across a variety of cultures. Despite the narrow conception of marriage often exhibited in contemporary debates, anthropologists and historians have recognised a much wider range of relationships as marriages in other cultures and other times. I think there is much to learn about the limits of marriage by considering which relationships are counted as marriage by disciplinary experts looking at phenomena beyond contemporary Western paradigms.

One natural thought to have is that we should trust the expertise of social scientists working on marriage: if they have identified a practice in another culture or another time as marriage, we should think it is marriage as well. Or at least we should think this method gives us a good starting point: while we might want to enter into anthropological or historical debates ourselves about what is going on in other places and other times, a good default seems to me to be taking

the verdicts of these experts seriously. And there is a lot to learn by looking outside the Western paradigms many of us are most familiar with. For example, there are long traditions of marriages where 'consent' seems to be a matter for the bride's family rather than the bride, and even traditions where brides are abducted and sometimes lack any say in who they marry (officially at least): this suggests that there are marriages without the consent of both parties, contrary to what we might have thought is a necessary condition for marriage. There are also a variety of cases from other cultures and other times of polygamous marriages, same-sex marriages, temporary marriages, marriages between close relatives, and so on. For those not aware of these cases, they can be eye-opening about the different forms marriage can take. They also undermine restrictive theories of what forms marriage can take offered by some philosophers and political activists.

However, some apparent cases of marriage are so far beyond what we are familiar with that we might wonder whether they are marriages at all, despite being described that way by our experts. It turns out that anthropologists and historians have classified some very unusual relationships as marriage, including 'marriages' to the dead, to gods, to non-human animals, and to plants, among others. This raises the suspicion that my suggested method of largely deferring to anthropologists and historians can go too far; though it also raises the suspicion that we should be broad-minded enough to recognise these practices as parts of the social kind *marriage*, even if they are initially surprising or troubling. The focus of this paper will be to explore what is best to think about these especially unusual cases. My response to the cases, which I recommend to the reader, is to take the evidence largely at face value and to conclude that marriage can appear in many more forms than we might have thought initially. However, I am more interested in posing the problem than dogmatising about the best way to accommodate the evidence of unusual cases in an overall theory of marriage.

In relying on experts, you might think we should also consider their *theories* of what counts as a marriage and what does not. As it happens, historians rarely offer sustained theorising about what marriage is in general; and while there are many anthropological theories of marriage, there is little consensus about them, and many of them seem susceptible to counterexamples when a wide enough range of cases are brought into view. (Bell 1997 is an example of a paper that points out counter-examples to a range of anthropological theories of marriage which

characterise marriage as centrally involving legitimacy of children, using cases from the anthropological record.) A full investigation of the limits of marriage would require close engagement with these theories, but that would require at least a paper-length discussion of its own. So while it can be hazardous to evaluate cases while not explicitly discussing a theoretical framework, I will initially attempt to do that here, if only to get a sense of what the range of evidence is for subsequent theorising about marriage.

It is worth stressing that I am engaged here in part of a descriptive project: what relationships do, and what relationships can, count as marriages? A quite different endeavour would be answer normative questions about what marriage *should* be like, or what we *should allow* when formulating marriage legislation or policy. Realising that other cultures allow marriages between uncles and nieces, or between adults and pre-adolescent children, should not make us think that we should automatically allow such marriages as well. Indeed, I think there are good arguments *against* permitting such marriages. While answering the descriptive question might give us a better understanding of the social phenomenon, and so contribute to our thinking about the normative questions about marriage, it should not be confused with them. Nevertheless, the upshots of this investigation provide some useful material for thinking about marriage policy, and I will discuss some of these upshots in Section 8.

The aim of this paper is to make progress on answering the question of which relationships are marriages, though without presenting a specific theory of what it takes to be a marriage. Progress will instead be made by focusing on two subsidiary questions. The first is the question of whether it is strong evidence that a relationship is a marriage if anthropologists or historians reporting or describing that relationship count is as one: whether there is a case for deference to such reports, and if so how strong that case is. The second question is, if we do follow this method, and decide to take the dizzying range of relationships described by anthropologists and historians to be genuine marriages, what plausible theoretical approaches may be able to handle this diversity. Section 8 will discuss some practical and theoretical upshots from the kind of theory that is as generous about the phenomena as employing this approach suggests. I will suggest that we *should*, in the end, count a very wide variety of relationships in the anthropological and historical record as marriages. But I am as interested in thinking about the

right methods for approaching questions about the limits of the phenomenon of marriage as I am in the particular (partial) answers about how generous we should be in the cases we *prima facie* count as genuine ones.

Section 1 distinguishes some questions to make clear what the central targets of this paper are while Section 2 discusses exactly what sort of central role anthropology and history might be expected to play. Sections 3 and 4 discuss some of the wide range of relationships treated as marriage in the anthropological and historical literature, and in particular Section 4 discusses some so unlike the ones most of us normally encounter to suggest that deferring to anthropologists may take us too far. Sections 5 and 6 discuss the cases for and against deference to the discussions of particular cases found in the reports of anthropologists and historians, arguing that on balance we should be willing to countenance some very unfamiliar cases. Section 7 discusses some theoretical frameworks that seems suitable for accommodating the wide variety discussed in sections 3 and 4, while sections 8 and 9 brings out some practical and theoretical upshots of an expansive conception of the phenomenon of marriage.

## 1. Distinguishing Questions

This paper is about marriage and which relationships are marriages. If this paper were written forty years ago, it would probably focus instead on the *concept* of marriage. We could presuppose that my disposition to apply the expression, when considering a range of possible cases, would illuminate what I mean by 'marriage', and to the extent I was a competent user of the language, what the English expression 'marriage' meant. I do not doubt that I have a concept of marriage, and I expect competence with it does inform how I classify hypothetical cases. But I have an implicit *theory* that the concept of marriage figures in as well, and it probably also plays a significant role in my classification of hypothetical cases. Likewise with other competent users: their use of the expression does not just reflect their concept, but their theories of what marriage is as well.

When trying to work out which claims about marriage are correct, our concept of marriage likely constrains what answers we will accept: if you tell me that marriage is a kind of small mammal

found only in Iceland, I would be able to dismiss that suggestion out of hand, and probably just in virtue of whatever I needed to have the concept in the first place.<sup>1</sup> (Or I might assume you were saying something sensible but had changed the subject: maybe the noise 'marriage' in your mouth could also be a name for Icelandic mammals, for example.) But a significant part of what social scientists do when they investigate social phenomena such as marriage is not just consult their concepts, but to try to investigate a certain *social kind*. This is a kind that we could, in principle, be very wrong about: and given the diversity of opinion around the world about marriage, chances are some accounts of that social kind are badly wrong. On the face of it, marriages can be very different across time and across cultures, and anthropologists seem to think that it is a phenomenon worthy of sustained anthropological interest across cultures.<sup>2</sup>

My guess is that a lot of work to be done about the limits of marriage requires investigation of the phenomena rather than armchair conceptual analysis. Insofar as we go in for conceptual analysis, though, it should be remembered that it is a commonplace that marriages can be very different from ours, far away or long ago. It does not take much cosmopolitanism to become aware of the fact that people in far away places and other times have all sorts of different social institutions, and even the institutions that we share come in different varieties. The Ancient Romans had governments, elections, families, marriages, friendships, and so on: but all of these were different in various fascinating ways from our versions of those institutions and relationships. And the Ancient Romans are relatively similar to contemporary Western culture, compared to ways things were done in some other times and places! So it should be a commonplace that there can be differences in the marriages found far away and long ago from marriages around here today (wherever 'here' is).

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<sup>1</sup> Williamson 2007 chapter 4 is sceptical that competent concept possession gives us very much epistemic leverage: we can be competent users of the English expression 'vixen', in the non-metaphorical sense, and yet not be in a position to know that all vixens are foxes, for example. But even Williamson might not want to endorse the extreme view that competent concept possession does not allow us to rule out *any* claims employing that concept. He *seems* to at least endorse the position that for any claim, one could be competent with the concepts employed in the claim and yet not be in a position to know it (or to rule it out): but his recipe for finding such cases involves identifying possible speakers who exhibit 'orthodoxy' with an expression (or concept) in other ways (Williamson 2007 p 120).

<sup>2</sup> To cite one among many examples, Fox's influential *Kinship and Marriage: An Anthropological Perspective* is a classic in the field, and as the title suggests marriage is one of the main targets of theorising in the work. (Fox 1967)

As mentioned above, I am interested here in a descriptive project: what sorts of relationships are marriages, and which possible relationships would be marriages.<sup>3</sup> It should be distinguished from two normative questions we might pursue instead. One is the question of what to mean by a word like 'marriage', either presupposing that it is feasible to change what meaning that word has (or a word that plays a similar enough role), or even what it would be good to mean if feasibility of linguistic change is not at issue. This project often goes by the name of 'conceptual ethics' or 'terminological ethics' or 'conceptual engineering' in the recent philosophical literature. (See e.g. Burgess and Plunkett 2013, Chalmers forthcoming.). The present project is not irrelevant to that normative question, and will be particularly relevant to the practical question of whether we should try to change how we use the word, since that depends somewhat on what the current meaning of the word happens to be! Still, it is worth distinguishing the question of what marriage is (and what our word 'marriage' picks out), from what our term *should* be.

The second kind of normative question is what kinds of marriages should 'we' have. One version of this is a prudential question: what sorts of marriage-like relationships are advisable or would be good options relative to the alternatives? Another version of this is a legal-cum-social question: what sorts of marriages should be legally allowed, or be legally recognised? A third kind is composed of moral questions: is it morally permissible, or required, to marry in some circumstances? What kinds of marriage are immoral, either generally speaking or in all cases? All of these normative questions are of course interesting (and Nolan 2015, for example, is a recent example of a paper about one of these normative questions), but they should not be confused with the descriptive question. To repeat the caveat made above, arguing that certain kinds of marriages exist, I am not thereby arguing that they are advisable; or should be allowed by our society; or are morally permissible.

## 2. Marriage, Anthropology and History

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<sup>3</sup> I should note that this is not just the descriptive project of determining which relationships some people *think* are marriages, or *call* marriages (correctly or incorrectly). While facts about what apparently competent speakers and participants describe as marriage are evidence for whether we have a marriage on our hands, it is of course possible for people to be mistaken about whether someone else is married, and to whom, and presumably even mistaken about whether they themselves are married. Thanks to an anonymous referee.

One place to look for a sense of the range of relationships that count as marriage is anthropology. Anthropologists have been studying marriage relationships across a wide range of human societies, both traditional societies and societies that have undergone great recent change, and many anthropologists have had an eye for the unusual cases that arise. Here is one suggestion for a guide to what sorts of relationships can be marriages: if a relationship described in the anthropological record is described as a marriage by the anthropologists who discuss it, it is a case of marriage.

Another place to look is to see how historians classify various relationships that are described in the historical record. Again historians, particularly historians of marriage (or kinship, or social historians more broadly), tell us of a range of marriage relationships that sometimes differ in significant ways from the marriages that are most familiar in the contemporary West. Again, given the wide investigation many historians, especially historians of marriage, have made of their target cultures in general and marriage in those cultures in particular, a natural suggestion is that if historians identify a relationship in the historical record as marriage, then it is.

These suggestions as they stand are too bald: whatever marriage is, it does not seem to be in the power of a rogue anthropologist to create marriages through mischievous publication.

Presumably even anthropologists can be mistaken about when marriages are in place, and if an anthropologist were to sneak 'All the World Are Married' into an anthropology journal it would be foolish to assume that we had stumbled on the fact that everyone is married to everyone else. A more sensible approach would be to take anthropological and historical reports as strong but defeasible considerations to guide us about which relationships count as marriage. And we should look at what evidence they draw upon when making their classifications as well: a surprising classification made on the basis of a lot of compelling evidence is to be taken more seriously than a surprising classification made on the basis of an apparent misunderstanding of what ceremonies and understandings were in place, or on the basis primarily of ambitious theorising. (Obviously it will not be uncontroversial what good evidence is, or what theorising is ambitious: I do not know a good approach to these issues that yields *uncontroversial* verdicts in all cases.)

Even this approach requires some defence. I will discuss some concerns about relying on the methods of these disciplines in Section 6, but for the time being it is worth pointing out that not taking the verdicts of experts seriously risks throwing away one of the most promising avenues of access the rest of us have to the phenomena. In relying on historians' and anthropologists' expertise I will primarily be relying on their judgements about *cases*: about which cases they call marriages, despite the differences between those cases and our own paradigm cases. There is also a significant body of *theory*, especially in anthropology, generalising about which human relationships are marriages and which are not (as well as generalisations about the social function of marriage, the historical forces operating on it, and so on). As I indicated above, a full treatment of marriage would need to engage with that theorising, especially since different theories yield different verdicts on some controversial cases. However, I will limit my focus to cases in this discussion, both for tractability, and because the range of cases is (more-or-less) the evidence against which different theories of marriage might be tested. Of course, a good enough theory might well give us grounds to go back and revisit initial judgements that are made about the phenomena: the traffic is not only one-way from evidence to theory, but a theory can inform our understanding of our evidence. Still, it seems worthwhile to look at the cases first, and then move to evaluating theories in the light of those cases. This paper is a contribution to the earlier task.

It is also worth stressing that relying on verdicts from anthropology and history only directly offers the materials for a *partial* answer to the question of which relationships are marriages. Plausibly, some marriages could occur that are not exactly like any relationship in the anthropological or historical record. (If we distinguish relationships finely enough, *no* marriage is exactly the same, in all respects, as any other.) So the fact that a relationship we might come across differs in some way from any we have already observed does not settle the question of whether it is a marriage. Information from anthropology and history could indirectly shed light on new cases by way of supporting generalisations at lower or higher levels of generality, of course, or giving us the materials for a deeper and more explanatory theory of marriage. But assembling cases is better suited to giving us scattered sufficient conditions for marriage than directly providing necessary conditions to extend to new unusual cases.

### 3. Some Forms of Variety

Anthropology and history tell us that there has been, and continues to be, great variation in marriages. It is well known that there have been polygamous marriages, both with one man having multiple wives at once (polygyny)<sup>4</sup>, and one woman having several husbands at once (polyandry), as among the Marquesas people of the Pacific, historically among the Toda of southern India, and the Nyinba, a Tibetan people in Nepal. (See e.g. Levine 1988 for an extended discussion of polyandry among the Nyinba.) Despite many people's impressions that it is a recent thing, there has been a long history of same-sex marriages: Eskridge 1993 has a useful roundup of dozens of cases across time and cultures.<sup>5</sup> There have been temporary marriages, that is, marriages to obtain for a period of time settled in advance. These include mu'tah/singheh marriages in Shi'ite Muslim traditions, and 'the inveterate practice of marriage for a term of years' among Celtic Scots until at least the seventeenth century. (*Statues and Band of Icolmkill* (1609)). There are even attested cases of temporary same-sex marriages (see e.g. Evans-Pritchard 1970).

There have been marriages that require no ceremony involving the bride and groom to initiate: in many Western cultures 'common law' marriage required no special ceremony. Until 2006, for example, 'marriage by cohabitation with habit and repute' marriages in Scotland required no more than that a man and woman live together and be believed by friends and relatives to be married (as well as more general eligibility, e.g. that neither was already married to someone else). Until 1940 in Scotland there was even a form of marriage (*per verba de future subsequente copula*) which could be contracted simply through a promise to get married in the future and

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<sup>4</sup> Ember et. al. 2007 go as far as to say that 'The vast majority of cultures known to anthropology allowed at least some men to have more than one wife simultaneously' (p 428). Society-wide monogamy may well be the exception rather than the norm.

<sup>5</sup> A few notes of caution: Eskridge 1993 casts a wide net, and classes as same-sex marriages a number of kinds cases we may want to distinguish. In particular, once we drop cis-normative assumptions that sex can be determined straightforwardly from biological markers, we might wonder if some of these cases are cases of trans men marrying women or trans women marrying men, or other cases of non-cis-gendered people in marriages. The other note of caution is that some of the cases discussed are much more speculative than others: but the relatively uncontroversial cases covered are more than enough to show that same sex marriage crops up in dozens of times and places before the present.

sexual intercourse subsequent to, and on the basis of, that promise: though in this case we might wonder whether this 'marriage' was a legal fiction to hold people to the duties of marriage after intercourse. (See Lind 2008 chapter 6 for discussion, especially of marriage by cohabitation and repute, including the controversy about whether Scottish law presumed consent to marry in cohabitation-with-repute cases.)

In one standardly attested form of polygyny and polyandry in traditional societies, marriage is still between only two partners: it is just that one individual may be in multiple marriages. But group marriage, where a single marriage involves more than two people, is also attested in the anthropological record. The Nyinba (Levine 1988), for example, practice fraternal polyandry, so that a group of brothers are married to a single wife in the one relationship, to the point where new brothers coming of age automatically are part of the marriage without any new ceremony or agreement. (And in polygynous polyandry among the Nyinba, the brothers collectively are married to at least two women, collectively.) Early anthropologists, misled by kinship words and theories of what the most primitive form of marriage should have looked like, claimed to find marriages to classes of people in many societies. But more reliable cases of marriage to groups have been directly observed, mainly sororal polygyny or fraternal polyandry, though there are tricky issues of interpretation as to whether these are relationships of more than two people or just people in multiple two-person marriages. Even George Murdock, one of the most sceptical authors on group marriage, concedes that group marriage can be found among the Kaingang native peoples of Brazil (Murdock 1949 pp 24-25).

The Oneida community in New York State, from 1848 to 1881, held that all the men in the community were connected in a 'divine marriage' to all of the women, with sexual intercourse between many members of each sex (see e.g. Klaw 1994). This group's 'marriage' was not recognised by the legal authorities of the state, of course.

Marriages where partners do not live together and do not share child-rearing responsibilities are also attested. (Of course there are plenty of marriages where one or both partners do not *in fact* play any role in child-rearing: but some marriages in some societies seem to have the feature that responsibility for child-rearing is not even *expected*.) One of the most famous cases of this is

found among the Nayar, or Nair, of Kerala in India. The Nayar were a matrilineal and matrilocal society, with many of the young men away for extended periods. Women among the Nayar were married (in a relationship called *sambandham*) to up to a dozen men who would be present intermittently, and sole responsibility for raising the children produced by the union was taken by the women and the matrilocal *taravad* (family? tribe?) to which they belonged. Or so one picture has it. The Nayar have been a source of great controversy among anthropologists. Some do not hold that these relationships with multiple men count as marriages: Fox 1967 p 100-101, for example, calls the relevant men 'lovers' or temporary husbands', and says that calling the arrangement 'plural marriage' would be 'rather too much', while Bell 1997 p 251 describes the Nayar society as being 'without marriage'.<sup>6</sup>

Other anthropologists have seen the traditional relationship between Nayar women and their *sambandham* 'travelling husbands' as genuinely being marriage, including C.J. Fuller in his careful first-hand study of the Nayar of Central Kerala (Fuller 1976).<sup>7</sup> Fuller observed the Nayar after many of their traditional customs had broken down, and had to rely on being told how things used to be done by his Nayar informants to reconstruct traditional practices, which adds more uncertainty when trying to determine what the Nayar's earlier practices were. This is a case where we should be careful in coming to conclusions about the extent of marriage, given the disagreement among anthropologists themselves.

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<sup>6</sup> Another matrilineal society sometimes held up as an example of one where husbands are not expected to contribute to the upbringing of their wives' children is that of the Mosuo (/Na) in China. (One common theory about the Mosuo is that men are responsible for contributing to their sisters' children's upbringing rather than their wives' children.) Recent anthropological work suggests that genitors (the 'travelling husbands') do contribute substantially to bringing up their wives' children after all: see Mattison et. al. 2014, though they avoid the expression 'husband' for the genitors. This illustrates the need for caution when presented with surprising anthropological reports. Mattison et. al. point out themselves (p. 603) that their evidence cannot settle the question of how Musuo arranged their practices in historical times, pre-integration in the Chinese state, but they do point out that there is significant involvement by Mosuo fathers in the upbringing of their biological children even in traditional agricultural areas.

<sup>7</sup> Fuller follows Leach's contention (Leach 1961) that there is no 'universal, cross-cultural' definition of marriage, and that strictly speaking it is misguided to ask whether relations like these are marriages (Fuller p 104, discussing a different arrangement). Despite this theoretical stance, Fuller goes on to characterise the *sambandham* relationship in 'traditional' Nayar marriage systems as a kind of marriage (p 110), and outlines many respects in which it resembled more familiar marriage relationships elsewhere in India. He also points out that many other anthropologists have characterised it as marriage rather than merely the taking of lovers (p 109), though discusses the controversy among anthropologists about whether to count the relationships as marriage. I resist the temptation to go further into the details here.

Marriage without consummation, or the capacity for consummation, is often not specifically commented upon by anthropologists or historians, but the possibility of this is widespread in Western cultures. At most, lack of consummation is grounds for annulment in jurisdictions such as those in the UK or USA: that is to say, the marriage is *voidable* through legal proceedings, but remains in existence, even without consummation, unless the annulment procedure is followed.<sup>8</sup> In jurisdictions such as Australia, for marriages entered into after the *Family Law Act (Australia)* (1975), lack of consummation is not even grounds for legal annulment. While a range of Christian and non-Christian religious traditions still require consummation for religious recognition of marriage, secular marriages are also marriages, so cases like that of Australia are clear cases showing consummation is not required for all marriages. Some religious marriages lack consummation as well: some early Christian marriages involved one or both partners remaining virgins during their marriage, and entering into the marriage with that expectation.<sup>9</sup>

There have been many forms of marriage that are less well-regarded from a contemporary Western liberal viewpoint. Forced marriage, where one or both partners do not consent, is found widely in the anthropological record. (Sadly though predictably, these are more often cases where the wife does not, or need not, consent.) These fall into two main classes. One in which consent is required by someone else on the part of a spouse, such as a family member or guardian, but not by the spouse herself/himself. (Many cases of child marriage are in effect like this, though sometimes families control who a daughter or son may marry.) The other is when no consent on the part of one of the parties is required at all. So called 'marriage by abduction' cases are often in this latter category: brides can be kidnapped and married without their consent at all. In some of these cases it is suspected that the bride to be and the kidnapper have some sort of private understanding and the 'abduction' is to get around barriers put in place by the bride's family: but that is not plausible in all of the cases, and many involve rape. Marriage by abduction

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<sup>8</sup> As a matter of US Federal law, marriages not involving consummation can be valid for immigration and naturalisation purposes: *Matter of Peterson*, 12 I&N Dec. 663 (BIA 1968).

<sup>9</sup> The Catholic Church's official position with respect to consummation is a striking one: for a marriage to be valid, at the time of marriage the partners need to have the *capacity* to consummate the marriage, but need never in fact do so. (Can. 1084 s 1). One constraint on the Catholic approach to marriage is the doctrine that Mary remained 'ever virgin' even after her marriage to Joseph. If the marriage at the centre of the Holy Family did not include consummation, consummation could hardly be required by the Catholic Church for a legitimate marriage.

has formed over 90% of marriages in some parts of Ethiopia, according to UNICEF (UNICEF 2004).

Marriages where one of the parties is a child by contemporary standards, even a very young child, have been found in many cultures. Marriage to children occurs even in many Western countries, in particular the United States: until 2018 the minimum age permitted for girls to marry under New Hampshire law was 13, for example (New Hampshire Title XLIII RSA 457:4 before amendment), and it may well be 12 in Massachusetts (see Heyden 2007).

While most societies observe some form of incest prohibition that prevents certain marriages, some societies have recognised marriages between very close relatives. Marriage between first-cousins is not uncommon (it is legal without restrictions in 19 US states, for example, as well as in Canada and many other countries), and is even required, or held up as the ideal, by some endogamous marriage traditions. Marriage between uncles and nieces has a long history, including that of the Roman emperor Claudius to his niece, and frequent uncle-niece marriages among the Hapsburgs in the early modern period. (The unfortunate Charles II of Spain was the son of an uncle-niece marriage between Philip IV of Spain and Mariana of Austria.)

Brother-sister marriages frequently occurred in the ruling families of Pharaonic Egypt, including among the Hellenistic Pharaohs. Some historians have suggested that some of these marriages may have been only political and not consummated, at least in the Ptolemaic era (and this is plausible in the case of Cleopatra VII's marriage to her brother Ptolemy VII, for example), but some Pharaonic marriages brother-sister marriages do seem to have been closer. The Pharaoh Akhenaten was married to his sister, and DNA evidence suggests that his biological son Tutankhamun's birth-mother was Akhenaten's full sister, for example (Hawass et. al. 2010). Other historical examples of royal intermarriage include cases among the Hawaiian royalty and Inca royalty, among others. (Though for a sceptical take on the extent of brother-sister marriages among the royalty of the Hawaiians and Inca, see Bixler 1982.) Brother-sister marriages are not just an aberration of royalty, either: Hopkins 1980 makes a persuasive case that they were very common among the commoners of Roman Egypt, making up perhaps as many as 15 or 20

percent of marriages there. While that figure is not uncontroversial, generalising from the surviving census documents makes it clear that there must have been thousands of cases at least.

One feature all of the above marriages have in common is that they are socially sanctioned: anthropologists report these practices precisely because they seem possible within, or characteristic of, a given social order. Likewise many of the unusual marriage practices reported by historians appear to be sanctioned by social custom, even if controversial. Sometimes previously forbidden marriages have become allowed through changes to laws: one famous case is the Roman Emperor Claudius changing the law to allow marriages between uncles and nieces, to permit his own marriage to his niece Agrippina. So far, then, I have not discussed any cases that would fall foul of an 'institutional' theory of marriage, according to which the genuine marriages in a society are those sanctioned by the law or social customs in which they occur, or even of the principle that cultural or legal recognition is a *necessary* condition for a relationship of marriage to be in place. This might be useful to keep in mind if you are tempted to have the reaction that if we agree the various cases above are marriage, then people in *our* culture or society should be treated as married if they engage in them. Allowing that, given the right cultural conditions, marriages can occur without the consent of one of the parties, or between an adult and a very small child, does not imply that people are allowed to marry in that way in our society, either legally or constitutively, given practices and laws against that behaviour.<sup>10</sup> Whether such an institutional constraint should be part of a theory of marriage will be discussed below in Section 7.

#### **4. Where are the Limits?**

In many of the cases discussed in the previous section, it is natural to think anthropologists and historians have shown us that there are marriages that vary widely from the normal cases encountered e.g. in the USA or Western Europe. However, there are some other cases described as 'marriage' by anthropologists and historians that I, at least, was initially hesitant to count as marriages, even when they are described that way by competent authorities. An interesting

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<sup>10</sup> The exact relationship between institutions and marriage might be tricky to articulate. Some concerns about simple-minded institutional theories of marriage are raised in Nolan 2015.

question is whether these show that the anthropological method I have suggested for deciding what counts as a marriage is deficient or just wrong, or rather whether the method needs to be supplemented to get a more accurate picture of the boundaries of marriage. Alternatively, it may just be that we should be prepared to broaden our understanding of marriage to include even these cases.

I will set aside here various sorts of marriages that are attested to only by hostile or unreliable witnesses. People have a tendency to attribute extravagant practices to exotic others that are not always backed up by reliable evidence. Perhaps the most famous case of this is the apparent fact that *other* groups are accused of cannibalism more often than groups will self-identify as eating human flesh. But there seems to be a little of this going on in descriptions of others' marriage practices too. To take just three historical European examples, Julius Caesar reports that the Britons had a practice of holding wives in common between fathers and sons (Caesar V.15); Gerald of Wales appears to attribute a practice to kings in one part of Ireland of marrying and inseminating horses (Gerald, ch XXV); and John Mandeville claims that there is an island of India where men marry 'their own daughters, their sisters, and their female relatives' (Mandeville [1366]/2005, p 176). But we shall have many cases to be going on with without having to decide whether reports like these are correct.

The first kind of case I would like to mention where we might initially be reluctant to identify marriages as genuine is the phenomenon of marriage to dead people. The Nuer of South Sudan held, and apparently sometimes still hold, marriages between living women and dead men. Children of the married woman are considered children of the dead man, allowing his line to continue. Often a living brother or other close relative of the husband serves as genitor, and indeed the stand-in for the dead man may not even be a genitor. Evans-Pritchard 1951 pp 104-112 is the classic discussion of this, and includes more unusual examples, including cases of a dead woman being married to a living woman (p 112).

One culture more like that of many readers where marriage to the dead occurs is in contemporary France. Where a couple can be shown to have intended to marry before the death of one partner, a legal procedure can be followed to enable the living partner to marry the dead partner (Article

171 of the *Code Civil*).<sup>11</sup> One motive for this is to legitimate children born in the relationship, but sometimes these marriages have been permitted without children being involved.

An especially puzzling form of marriage to the dead is the practice of some Chinese groups who hold ghost marriages, in which *both* partners of the alleged marriage are already dead. (See Topley 1955 for examples among Singaporean Chinese.) Reported motives vary: part of the motivation seems to be that having a son or daughter die without marrying means that the parents have failed in their duty to him or her, and another part is the belief that dead unmarried daughters return to haunt their parents and their familial home. (In some traditions dead unmarried sons also can cause supernatural trouble.) To deal with these problems, parents arrange for their dead daughter to marry an unmarried dead man: the parents of the dead woman organise the marriage with the parents of the dead son, and a suitable 'marriage' ceremony is carried out. Once the dead man and woman are married, the daughter will supposedly stop haunting her parents. Another motive mentioned by Topley is the custom that younger brothers cannot marry until their older brothers do: when an older brother dies unwed, a ghost marriage ceremony for him is a way to allow the younger brother to marry without breaching custom.

Both forms of marriage with the dead lack a range of features we might want to associate with marriage. There is no direct consent on the part of the dead person, only the consent of family members. If the belief that the dead person is still around in incorporeal form is false, then one or both of the 'marriage' partners do not *exist* at the time of the marriage. The partners do not live together, cannot share responsibility for children born during the marriage, the marriage is not sexually consummated, and so on.

One practice that is attested to in many places in the historical and anthropological record is 'divine marriage', where a human being purports to marry a god. Some of these cases are unexceptional—when someone who is in fact a capable human adult is considered a god, and that person marries, the person marrying them purports to marry a god: but such cases are also

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<sup>11</sup> 'Le Président de la République peut, pour des motifs graves, autoriser la célébration du mariage si l'un des futurs époux est décédé après l'accomplissement de formalités officielles marquant sans équivoque son consentement.' (Article 171, *Code Civil*)

familiar ones of human beings marrying. (Before 1945 marrying the Emperor of Japan had this character, for example.) More puzzling are cases where human beings purport to marry gods *without* thereby marrying a human being. 'Sacred marriages' have a long history: Sumerian sacred marriages between a human being and a deity, usually a king and a female fertility deity such as Inanna, may have occurred as early as the third millennium BC. Much is controversial about what these sacred marriages entailed, but perhaps the most common theory is that the king, perhaps playing the role of Dumuzi, Inanna's consort, went through an annual ceremony of marriage and sexual intercourse with Inanna's high priestess, standing in for Inanna herself. (See Lapinkivi 2008 for a recent summary of the controversy.) This ceremony did not result in the king being married to the priestess, however: the king continued to be married to the queen. At least this seems to have been the situation in Ur, and similar rituals seem to have been performed more than a thousand years after eclipse of the Sumerian kings by kings in other Mesopotamian civilisations, including Assyria and Babylon. This interpretation, on which the king of a city marries the goddess Inanna, is not uncontroversial, but if it is the correct interpretation of how Sumerians and later Mesopotamians interpreted the rite, it serves as a case where a human was taken to have married a goddess. One important piece of evidence for these divine marriages is that the kings frequently describe themselves as spouse of Inanna or other goddesses. (See Cooper 1993 p 83-84 for some examples.)

A more recent case of divine marriage was the practice of the Kikuyu people of Kenya of marrying women to the snake god of their river.<sup>12</sup> According to our source, the young women married to the snake god Ngai would have intercourse with 'medicine-men' in the person of the god, and children conceived in the ritual would be considered children of the god. A marriage that produces children that are treated as having a divine father seems to go considerably beyond the merely symbolic.

A third, contemporary, form of marriage to divinities occurs, or is said to occur, in Hindu *devadasi* rituals. This custom was made illegal across India in 1988, but continues in some areas

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<sup>12</sup> This is reported in Frazer 1914 pp 67-68, quoting a manuscript of Alfred Claud Hollis, an anthropologist and administrator in British-controlled Eastern Africa in the early twentieth century. Frazer also reports (pp 65-66), with references, other cases from Western Africa of supposed marriages to python-gods and other gods, though what is going on in those cases is less clear, it seems to me.

despite government and social pressure, perhaps in a debased form. There are a great variety of these rituals, but they all involve women being dedicated to deities or temples. Some of these dedications are not considered marriages, but some are called marriages. Devadasis in these relationships were often badly treated, sometimes treated as 'slaves of the god' and expected to engage in temple prostitution. These associations with abuse and sexual exploitation were among the main reasons the practice was made illegal, though the practice was found in many forms, and at some points devadasi of some temples had high social status, and not all of them were involved in temple prostitution. (See Srinivasan 1985 for a controversial discussion of some of the complexities about the role of devadasis in Tamil Nadu in the mid-twentieth century, though the full story of devadasi roles across India would be enormously more complex.)

The traditional role of devadasis, as well as their contemporary status, are contested issues in Indian history and politics, and I am not trying to suggest that every woman who found herself in this role was considered the wife of a god, nor do I wish to take a stand on the desirability of the institution, either in its historical context or in post-independence India. The widespread use of the language of marriage and the similarity between devadasi consecration and other wedding rituals, including the tying of the thali which is a central part of many marriage rituals in Tamil Nadu, suggest that the devadasis discussed by Srinivasan at least had a claim to be considered married to the god of the temple they were associated with.

These are not the only supernatural marriages attested in the anthropological and historical record: marriages to spirits and gods are widespread. A particularly striking case is provided by the traditional practices of the Baule people of the Ivory Coast. *Everyone* among the Baule was considered to have a husband or wife in the spirit world. Reports differ on the exact connection between these spirit husbands and wives and their earthly partners: this may be because of mistakes in transmission, or due to varying understandings among the Baule themselves. Vogel 1973 pp 24-25 offers one interpretation of the role of these spirit spouses.

A number of customs apparently involving marrying people to plants have been reported by anthropologists.<sup>13</sup> Perhaps the most prominent kind of case is the 'tree marriage' practiced (rarely) in some Hindu traditions, by both men and women. Simoons 1998 rounds up a number of cases, with references. Tree marriages have a range of motives: sometimes to avoid unlucky foretold fates for future wives or husbands; or to avoid the stigma of widowhood or having never married; or for fertility. One use of the tree marriage ritual that is particularly interesting is to evade marriage taboos. In some villages, widows can only be married to widowers. A never-married man wishing to marry a widow, however, can contract a marriage to a tree: and once the tree is chopped down, he is free to marry his intended. Simoons also mentions marriage ceremonies held between sacred trees<sup>14</sup>, and between trees and gods (Simoons 1998 p 65).

Finally, there are alleged marriages to inanimate objects. Some of these are relatively familiar to Western audiences: Venice's Doge went through an annual ceremony of marrying the sea (including tossing a gold ring into the Adriatic), a ceremony suggested and blessed by Pope Alexander III, and which survives as a similar marriage ceremony performed by the Mayor of Venice.<sup>15</sup> Perhaps this was never intended to be a literal marriage. A reported custom of the Algonquin of north-eastern North America, borrowed by the Huron in the seventeenth century, was to marry some girls to fishing nets each season to help ensure a good catch. (See the discussion and quotes of reports by Jesuit missionaries, especially Jean de Brébeuf, to this effect in Gray 1914 pp 883-4). There are some Hindu traditions of people marrying pots, statues, or even swords. And so on.<sup>16</sup>

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<sup>13</sup> There are also many reports in the anthropological and historical record of marriage to non-human animals. These are harder than some other cases to assess for various reasons, including the puzzle of untangling when they are meant to be marriage to the animal itself and not proxy-marriage to a spirit or god associated with the animal. So I leave out discussion of them here, because of space considerations.

<sup>14</sup> A recent New York Times article reports on a traditional practice of marrying trees to other trees in Accettura, Italy: <<https://www.nytimes.com/2018/10/09/lens/tree-wedding-italy-town.html>>.

<sup>15</sup> The wording of the ceremony, 'Desponsamus te, mare, in signum veri perpetuique domini' suggests that it was Venice, rather than the Doge, which married the sea. Cities marrying seas would, if anything, be an even more exotic case of marriage. Likewise with a rash of twentieth-century ceremonies purporting to marry the nation of Poland to the sea. I suspect these are best interpreted as not being intended to be genuine marriages.

<sup>16</sup> There is a dizzying array of contemporary relationships that some participants have called marriages, including marriage to the Berlin Wall, marriage between real people and anime characters, and marriage to oneself, or sologamy. While these are also useful cases to think about when developing a theory of marriage, they have not

In some of these cases, most obviously the 'marriages' to non-living objects but also marriages to animals, gods, and so on, we might wonder whether there is only a 'symbolic' marriage rather than a genuine one. Most of these marriages involve symbolism, of course: but so do almost any marriages, including almost all wedding services in the West. For these supposed marriages to be *merely* symbolic something more is needed. One obvious thing to appeal to is the intentions of the participants: the 'marriages' we see in movies are usually not real because the actors have no intention of getting married, even though they are saying and doing the usual symbolic things. It is hard to recover the intentions of e.g. Sumerian kings, or even the Huron of seventeenth century North America. But so far as I can tell, many of the participants mentioned in the practices above saw themselves as genuinely undergoing marriages: the ceremonies closely resembled the other marriage ceremonies of these cultures; sometimes there was consummation of some sort or other; sometimes there was exclusivity to a greater or lesser extent; and they participated in communal understandings where the same word for marriage was used for their status and for relationships we more easily recognise as marriages; and reports to third parties were that the individuals involved were married. Of course it is often difficult to tell exactly what happened and how it is interpreted by the participants: but we should not jump too quickly to the conclusion that rituals had *only* a symbolic significance for participants.<sup>17</sup>

## 5. Anthropology and Expertise

I have claimed above that when anthropologists or historians classify a human relationship as marriage, that gives us significant, though defeasible, reason to suppose that the relationship is indeed one of marriage. It is now time to examine that methodological assumption in some more

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been widely counted as marriages by anthropologists or historians yet, so shed less light on whether it is good practice to defer to verdicts from anthropologists or historians.

<sup>17</sup> I do not want to take a stand here on whether there *must* be a non-symbolic upshot of a genuine marriage ceremony. If there does have to be, it would be hard to identify what that might be, given the very wide range of expectations and consequences of marriages. But in many cases starting a marriage creates or sustains substantial expectations between partners about sexual behaviour, cohabitation, economic responsibilities, and so on; and it creates or sustains expectations among a wider social group about how the married people will behave. And at least some of those sorts of expectations, or analogues of them, are present in many of the more exotic cases discussed in this section.

detail. The first reason we should take these experts seriously is somewhat flatfooted: they are the ones with relevant *expertise*. They have engaged in close study of the relevant social institutions, through fieldwork or engagement with illuminating reports, and have engaged with other experts in discussing and critiquing their views. Trusting anthropologists and historians to tell us what marriage is like in other places and times is relevantly like trusting civil engineers to build bridges that stay up.

Taking non-philosophers seriously about their area of expertise, and starting from an assumption that their methods are a good way to answer the questions they engage with, is sometimes called 'methodological naturalism' in philosophy. Of course, it should not tip over into credulity, and the verdicts of experts can be usefully challenged not only by other disciplinary experts but by people looking at the same evidence from outside the relevant disciplines. Still, some deference to the views of experts is often the right place to start.

There is a second reason to take these cases seriously. The *participants* in these practices appear to consider them to be genuinely marriages: or at least, they classify them as being the same sort of thing as relationships they know of that we also count as marriages. It might be worth being more cautious here, since many of the participants in these practices do not know the English word 'marriage', and might, for all we have said so far, be operating with a different set of social concepts, so it is up for grabs whether they judge any relationship to be *marriage* rather than employing whatever their concept is. At any rate, suppose for now that they do classify these relationships as marriages: I will return to the question of whether this is how we should understand them in Section 6. We have some reason to defer to the people in the cultures of other times and other places. They know more of the details of what happens in their society than we do, and the participants in these practices know what it is like from the inside to take part in them. (The live, human participants, at any rate.) If *they* think it is a marriage, and they experience it that way, and report it that way, then they are often in a relatively good position to know. Insofar as anthropologists and historians tell *us* this is how marriage is, by receiving and interpreting reports from participants in these relationships and other people in the participants' culture, our historians and anthropologists are employing evidence that deserves respect from us.

In fact, this first-hand evidence, or near-hand evidence at any rate, is one of the things that makes me inclined to prefer information about specific cases over theoretical inferences drawn by our experts. When an anthropologist offers a theory of marriage that rules out cases reported by anthropologists from the field, my initial inclination is to be suspicious of the theory. Partly because coming up with adequate general theories of social phenomena is a difficult task, so we might expect that it is easy for these generalisations to go wrong, but also because the participants in social relations 'on the ground', and the fieldworkers who observe these relationships and question their participants, are often in a better position to know how marriage works in *their* culture or in *their* experience. I am not saying that we could never be in a position to be confident that participants and reporters have got things wrong: human beings are fallible, and they can be fallible about when marriages have occurred, presumably. But the participants are likely to be in a good position to tell who married whom.

## **6. Objections to Taking Lessons from Anthropologists and Historians**

Sceptics might naturally suspect I have been too credulous: that we can respect anthropological and historical expertise without concluding that we get much evidence from them directly about which of the cases of alleged marriage discussed above are genuine marriages. One reason to reject the lessons of these cases would be a local one: someone could have specific reasons to think an anthropologist or historian has misread the evidence, or drawn too speculative a conclusion from the evidence they do have. Even if we set some of the cases discussed above aside for reasons like that, we will likely still have a very wide range of relationships that seem to count as marriages in some times and places.

No doubt there are various kinds of reasons someone might have for being generally sceptical about the findings of a given field of research. Let me discuss two that allow that the theorists may have been doing well by their own standards, but still give us information that tells us little about marriage directly. The first is that anthropologists and historians are only using *analogous* language in their reports, and are only claiming that these relationships are *in some respects* like marriage, rather than claiming that the relationships are marriages. The second strategy is a cousin of the first: it is to claim that when we are told about 'marriage' in these times and places,

'marriage' is being used as a term of art, a technical term, or a piece of jargon. We thus cannot read off very much about marriage *per se* from the reports about 'marriage', in this technical sense.

One piece of evidence that people, including anthropologists, use marriage talk analogically might be the case of animal-animal marriage. It is common to describe pair-bonds between largely monogamous animals as 'marriages', at least outside scientific settings. Consider in particular the case of pair-bonded great apes such as gibbons: species of gibbon that mate for life could easily be described as 'married', once we use the expression non-literally. Birds that mate long term in one-one pair bonds are often described as being married.<sup>18</sup> If we do not think that e.g. swans are literally married, perhaps the practice of describing various human relationships as 'marriage' does not always indicate that the participants and those who discuss them think they are married?

No doubt it is possible to use talk of marriage analogically: and maybe some people do when discussing these cases, particularly when they concern distant cultures. One case I happen to think is a matter of metaphor or analogy is describing Christian nuns as 'brides of Christ': the official position of the major churches is that nuns are not literally married. (Though how individual nuns might interpret their relationships with Jesus is another matter.) But I doubt that what could be going on in most of the cases discussed could be mere analogy. There is rarely anything in prefatory remarks by anthropologists or historians to give any hint that they are talking non-literally. They compare marriages in other cultures, times and places with marriages in our culture, talking as if they are varieties of the same social kind. We do not treat them as using mere metaphor when talking about parents or employees or kings or people in other relationships: why suppose there is any analogy at work when they talk of husbands or wives or weddings?

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<sup>18</sup> Just one example: 'If the marriage doesn't result in raising young, the pair may 'divorce', remarry and try again', from <<http://www.birdsandblooms.com/birding/birding-basics/birds-mate-life/>>.

There is also the fact that unusual customs occur in societies not too culturally distant from the English-speaking West. A range of cases above have come from places like Scotland, Australia, France or the United States. I would be very surprised, to put it mildly, if talk of 'marriage', as it occurs in legally recognised ways in those societies, is only analogical in Western discussions in English.<sup>19</sup> So *even if* we could somehow carve out a range of only analogical uses of the expression, we still have a wide range of cases to account for. The wide variety also makes it less plausible that we would be under pressure to use language analogically when talking about less familiar societies: if posthumous marriage is *marriage* in France, why would we feel any pressure to call posthumous marriage only *analogically marriage* among the Nuer?

Someone who, for independent reasons, has decided that various putative forms of marriage discussed above are not genuine marriages, might well claim that the relationships discussed are only analogous to marriage. That remains to be determined by the best account of what is going on. What I mean to stress here is just that the reports themselves and the descriptions of cases we find do not show any evidence of employing analogy, as opposed to literal reporting. Taking the evidence at face value requires recognising an extraordinarily rich variety of marriages, many lacking features we may have initially thought were central. Interpreting the reports as if the reporters only meant to be describing what goes on using analogy saves a restrictive theory at too great a cost of plausibility about what the evidence is. Better, I think, for the restrictionist to say that the reports contain errors of interpretation, and to explain why the reports are wrong rather than to reinterpret the reports to say something true, but alien to the apparent communicative intentions of the reporters.

Another interpretative option for this material is to take 'marriage' in the mouths of the anthropologists to be a piece of *jargon*. According to this line of thought, anthropologists have found it useful to group together a range of relationships, including paradigm marriage relationships from Western societies, and for want of a word have called these relationships 'marriages': but we should no more assume that this means even that anthropological theory

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<sup>19</sup> In case it is not clear from the text, I am not assuming all my readers are from Western backgrounds. Hopefully those readers from other backgrounds are already sympathetic to the idea that we should beware of Western parochialism in discussions of the forms marriage can take!

treats them as marriages than we should assume quarks are literally coloured because physicists talk of 'quark colour'. This suggestion also faces several objections, as well as the analogues of the objections just given to the analogy suggestion. Anthropologists do not introduce discussions of marriage and kinship by saying they are not talking about what we usually talk about: indeed, they are ready to use examples drawn from our own societies of kinship relations and marriage relations, and presumably when they say my brother or my cousin is one of my kin, or that William and Kate are married, they are not using terms like 'kin' or 'marriage' only as jargon. It is even more implausible that historians use an expression like 'marriage' as jargon when describing e.g. the Western European middle ages, or ancient Assyria. Many of the words historians use when describing the past are our ordinary expressions, whether they are talking about priests or warriors or crops or marketplaces. If there was a departure from this practice when discussing 'marriages', you would expect this to be explicitly marked. But we do not find historians introducing 'marriage' as a term of art with a meaning different from its ordinary use: instead they just start using the language of marriage and expect non-specialists to know what they are talking about.

Even if some theorists see what they are doing as using a specialised set of terms that are not the ordinary ones, a lot of the evidence that they rely on when telling us how 'marriage' works in other times and places supports the idea that the relationships in question appear to be marriages and not just marriages-in-some-technical-sense. Participants often use the same expression for these unusual arrangements as they do for arrangements in their societies we would not hesitate to call marriages. The ceremonies and expectations for these arrangements are often similar, in easy-to-recognise ways, to the ceremonies and expectations they have for marriages that we find more familiar. Reports of these relationships from travellers and journalists and others unlikely to be using professional jargon call these relationships marriages. So while I do not think anthropologists and historians are retreating to jargon when they call these relationships marriage, even if they were then the cases still have an interesting case to be in our evidence base for what forms marriage can take across cultures, past and present.

## 7. Options for Theoretical Frameworks

An account that treated all of the cases discussed as being literal marriages, or even most of them, might have to be more generous than the accounts of marriage offered by many anthropologists or philosophers. This might be the right response: after all, it is often true that theories which do not fit the evidence must give way to theories which do. While my focus is not on theories of marriage here, a reader might reasonably be curious about whether there are *any* approaches that could be as generous about marriage as this full range of cases suggest. After all, if there were no sensible way to understand marriage that fit the full range of cases, we would have a strong theoretical motivation to look for a way to exclude some. I think it is worth sketching a few options for how to take marriage to be a genuine social phenomenon, but one capable of such a wide variety of manifestations.

One influential thought among social anthropologists is that there is no way to come up with a cross-culturally valid theory of marriage. One example of this view is the influential discussion in Needham 2013 p 7: he suggests that there is little unity in this area and that the word 'marriage' is 'of no real use at all in analysis' (Needham 2013 p 8). He follows Leach 1961 in holding that 'all universal definitions of marriage are in vain' (cited on Needham p 6). Wittgenstein on games and family resemblance is also sometimes appealed to by those suspicious of a cross-culturally valid account of marriage. This is not to say that cross-cultural comparisons of marriage practices are impossible or pointless: rather that any such comparison will have to be 'contextual' and relatively specific. If there is no adequate general theory of marriage possible, then naturally it should not be a concern if the data is not congenial to such a general theory. But this particularism about marriage is not our only option.

One approach that is potentially very broad is an institutional one: something is a legitimate marriage if, and only if, the relevant law or quasi-legal social custom approves of it as one. On a pure version of this institutionalism, you could pass the right law tomorrow and make everyone married to their staplers. Less pure versions of institutionalism might give institutional recognition a central role while requiring something else as well, if compulsory stapler-marriage

seems less like a bad idea than an impossibility. Perhaps institutional recognition serves to select among some otherwise fairly broad range of relationships that are potential marriages, constituting the selected relationships as the genuine marriages in a society. This could still allow for the great variety exhibited in Section 3, while not letting absolutely anything go.

One feature of institutionalism is that it would rule out many relationships that participants themselves see as marriages, but which their legal institutions and broader society do not. Of course, we might also want to take into account institutions besides formal legal systems, since traditional societies plausibly had marriage before they had formal legal institutions, and minority cultures and religions in many societies today may have marriage practices at variance with the law of the land. Even with this caveat, institutionalists might think it is an advantage to be able to clearly rule out many of the more recent strange cases as *bona fide* marriages. Though a critic of institutionalism, insofar as she is able to motivate the idea that some of those relationships are indeed genuine, might instead see this is a challenge to institutionalism. However exactly institutionalism is spelled out, the wide variety of laws and customs surrounding marriage give a lot of room for marriages to vary widely in different institutional settings.

A more worrying challenge for institutionalists comes from apparent marriages that have most of the standard features *except* institutional recognition. Various racist governments have purported to restrict or ban marriages within their jurisdiction between people of different races. (Famously, many states in the American South attempted to outlaw interracial marriages, though this was eventually declared unconstitutional in *Loving v Virginia*. But since *Loving* relied on the American Constitution's 14th amendment, presumably those states successfully made it illegal before the American Civil War.) Take a case of an interracial couple who go through a ceremony of marriage, live as husband and wife, etc. in such a racist state. Some would think that couple successfully married despite the lack of institutional recognition. In recent years, in a wide range of countries, same-sex couples purported to marry each other in ceremonies that were not recognised by the legal systems of the countries in which they did so. It is not obvious that those couples were not married, even though they were not treated as married by their legal systems. I

doubt cases like these would worry most institutionalists, though they may worry those not already convinced.<sup>20</sup>

A different approach that may accommodate a wide variety of marriage relationships would be a limited form of functionalism. Marriage, like other institutions, could be primarily created and sustained by performing one or more of a central range of functions, and we could use an institution's relationship to those functions to identify it as marriage. These might include formalising relations of kinship; providing a framework for determining responsibility for children and legitimation of children; restricting sexual access to women or men; and so on. However, allowing this does not require that we have a theory of marriage according to which there is *only* a marriage when these features are present. Compare a theory of what it is for there to be an army. The purpose of an army would likely be to engage in organised armed conflict, or perhaps to give its leaders the power to do so. That does not mean there cannot be peacetime armies, and some countries may have armies that are not fit for purpose even during a time of conflict. Likewise, even if we determined the main functions of marriage in a society included assigning responsibility for children or restricting sexual access to marriage partners, that would not make it impossible for a society to have childless marriages or marriages where one or both partners engaged in sex with people other than their spouses.

Once a social institution is in place, participants may engage in it for all sorts of reasons, some having little to do with the central purposes or functions of that institution. Someone might be in the army to acquire social status, or to have a subsidised college education, or to pursue a musical career; and a state might use its army as a jobs program, or a punishment regime for conscripts, or to build public infrastructure for civilian use. The particular ways people interact with an army need not all serve the central purpose or function of an army (if there are any). Likewise, once there is an institution of marriage in a culture, that institution can presumably be

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<sup>20</sup> One referee suggests that the question of what 'legal marriages' there are and what 'socially recognised marriages' there are are just different questions, each to be answered on their own terms. While I think the answers to the questions interact, one could of course be some form of institutionalist about legal marriages while taking a different approach to socially recognised marriages. (I would also not want to insist that all marriages fall into *either* category. *Prima facie* there could be marriages that were both illegal and secret, for example. Even if a theorist wants to reject the *prima facie* possibility of marriages that are neither legal nor socially recognised, on reflection, it would require argument.)

put to many uses, including ones that are far removed from the central purposes or functions of marriage. (Again, assuming that some adequate functional story can be told for marriage.)

Nevertheless, a functional story could provide some unity to the phenomenon of marriage while still allowing for a very wide variety of its forms. I find it hard to see how functionalism on its own could pick out the relationships identified as marriage by our cultural surveys: for any short list of functions you pick, we can find a society where marriage appears to lack those functions, or to perform them to only a limited degree. The ingenuity of functionalists comes in offering non-obvious answers about function that capture the phenomena. The functionalist also faces a problem of individuating institutions, so that we can group less functional instances in with more functional ones. Perhaps a suitably impressive functionalist story can address these challenges, even given the enormous variety of marriages: if so, such a functionalist account of marriage would be a very serious contender for the correct theory of marriage.

A final kind of theory we might be tempted to for social and institutional kinds is some sort of causal-historical account. Often institutions change a great deal: the 'parliaments' of the kings of England in the twelfth century have little in common with the 'parliament' of the contemporary UK: but one reason to think that the UK parliament today is the same institution as e.g. the parliament of Edward I, while the parliament of France today is not the same institution, is that the right kind of causal links hold between Edward's parliament and the UK parliament, but they do not hold between Edward I's parliament and France's today. (In particular, there are close causal connections between hundreds of successive stages that go from Edward's parliament to the contemporary UK parliament, but there is no good analogue in the case of Edward's parliament and the contemporary French one.)

A broadly causal-historical account is most plausible in the case of particular social institutions such as the English/British parliament or the Holy Roman Empire: but we could try a similar proposal for general social institutions such as marriage. Marriage is *prima facie* a much less plausible case for this treatment because of its status as a cultural universal, or near universal, and the lack of close causal connections between e.g. marriage among the Mayans and marriage among the Kievan Rus. But we could speculate that cultural universals like marriage all trace

back to common ancestors on the African savannah: and if there is such a common ancestor, we could count as a marriage custom any custom that descended, in the right kind of way, from those ancestral arrangements.

Anthropologists of an earlier era were keen to trace the 'development' of marriage, and other social institutions, from their 'primitive roots'. That approach is deservedly out of favour today: it presupposed a hierarchy from 'primitive' to 'advanced' social arrangements that had little to be said for it beyond cultural chauvinism, and it resulted in a lot of speculation about as-yet-undiscovered 'primitive forms' that were not independently verified. So a causal-historical picture of marriage would be well-advised to avoid those features. Even without these trappings, I expect a causal-historical account of what unifies institutions of marriage would be hard to make plausible: it seems to be no part of our method of working out what marriage among the Omaha is, for example, to try to work out which of their institutions is derived from paleolithic neo-marriage. Still, whatever the limitations of a causal-historical account, making room for a very wide variety of marriage practices would not be a problem. All of the real-life phenomena described seem to have their origins in practices more readily recognisable as paradigm marriages. So while much would need to be said by a causal-historical account of marriage about *which* institutional descendants of earlier marriages themselves counted as marriage, we can locate practices such as marriage to plants as deriving from less controversial marriage practices.

Using a causal-historical criterion to do some of the work in drawing the distinction between marriage and other relationships might still be useful, even if such a criterion cannot do all the work by itself. If a relationship or ritual grows out of one that we easily recognise as marriage, that can sometimes be a reason to count it as having a claim to marriage, even if we fall back on another story about why we were right to identify the earlier relationship as one of marriage. We would not want to take this too far, of course: all sorts of arrangements have marriage in their causal and historical antecedents, without themselves being marriages. To take one extreme case, every divorce has a marriage in its history, and the institution of divorce seems derivative of the one of marriage in many ways (no marriages, no divorces!), but it would be bizarre to treat divorce as a kind of marriage, or individual divorces as marriages of an unusual kind. Still, a suitably chosen blend of e.g. a functional and a causal-historical account might be useful for

counting relevant cases as marriages even when they do not serve the relevant function or functions (whatever they are identified as being).

Perhaps nothing like the current models for giving a theory of the institution of marriage will be successful, or perhaps, as Needham suggests, there is nothing general to say here at all. But the dizzying variety of marriage customs does not conclusively show that there is no theory to be had of the commonalities among all marriages, and by the same token the aspiration to give a general theory should not make us too quick to discard data that do not seem to fit with simple general pictures.

## **8. What Would The Upshots of a Wide Understanding of Marriage Be?**

Questions about which relationships are genuine marriage are somewhat politically contested at the moment, so it is reasonable to wonder what the upshots would be if we accepted theories of the bounds of marriage that were wider or narrower than usual. I should stress that one upshot should *not* be that every relationship that counts as a marriage should be recognised and protected by law. Indeed, my own view is that putative marriages that involve a lack of consent, centrally involve sexual violence, or involve the sexual abuse of children, should not only be not supported by the state, but actively suppressed. And this is so even if these relationships count as falling in the extension of the term 'marriage'.

A second consequence is that the wide variety of arrangements that count as marriage suggests that modifying which relationships the state recognises is not a matter of 'redefining marriage'. A common argument against the recognition of same-sex marriage was (and is) the complaint that its proponents seek to 'redefine marriage'. Sometimes this might just be the complaint that advocates of same-sex recognition want to change how marriage operates in their society, but sometimes it is the complaint that those proponents want something impossible, since it goes against the meaning of the word 'marriage': same-sex marriage, according to this line of thought, is like a square circle, a contradiction in terms. Noticing that marriage is the kind of relationship that can, and does, hold between same-sex couples undercuts this argument, and removes the suggestion that proponents of changes to our marriage laws or customs must be trying to replace

marriage with something else. Mercier 2007 also pushes back against the idea that it is somehow analytically false that same-sex marriage is marriage, (citing an unpublished affidavit by Robert Stainton reportedly arguing that it is analytically true that there is no same-sex marriage), and Mercier 2007 p 11 points out that anthropologists have reported same-sex marriage in a variety of cultures using the expression 'marriage', as evidence that the meaning of the expression 'marriage' does not rule out such an arrangement.

Similarly, arguments that the 'essence of marriage' rule out various arrangements will fail if it turns out that there are in fact marriages of the sort supposedly ruled out by marriage's nature. Girgis et al 2010 argue for what they call a 'conjugal' account of marriage and against what they call a 'revisionary' account of marriage, where part of the 'revisionary' account of marriage is that it can happen, in principle, between people of the same sex, whereas their 'conjugal' account of marriage rules out same-sex marriages. They argue that attention to the question of what marriage *is* puts us in a position to see that so-called same-sex marriages are not what they call 'real marriages'. (See pp 247-252, especially p 252.) Allowing that marriage can occur between same-sex partners is not at all revisionary of *marriage* per se once we pay attention to the full range of actually occurring cases, or even the full range that occurred before e.g. 1950, or whenever it was that marriages occurred before 'revisionists' started muddying the waters. There is no need to revise the concept or phenomenon of marriage to permit e.g. same sex marriage, since there were genuine same sex marriages all along.

Another consequence of some theoretical interest concerns a broader philosophical lesson about a currently popular movement in philosophy: 'conceptual engineering' that seeks to replace less-than-ideal concepts, inside and outside philosophy, with ones better suited for our various projects. Marriage is repeatedly brought up as a case where these revisionary projects may have a role to play. (See e.g. Cappelen 2018 pp 137-146; Chalmers forthcoming, Sawyer forthcoming, Pearson 2017, though Pearson prefers the ideology of 'explication'. The example also occurs frequently in as-yet-unpublished conference papers on this topic.) One line of thought is that it might well turn out that the use of the word 'marriage' as of, e.g. 1980 in the United States, might make it true as a matter of meaning that only opposite-sex couples can be married. If it did, we might want to shift the meaning of the word (or replace it with a word with a similar function),

and to employ a slightly different concept, with the social and political goal of ensuring same-sex couples who wish to do so that they can be treated by society in the ways society treats married people. (Including not stigmatising them with a different expression that might have connotations of a second-class status.) Herman Cappelen adopts a slightly different tack: he thinks we could use what he calls 'conceptual engineering' to change *marriage* itself, and not just our word or concept 'marriage'. (Cappelen 2018 chapter 12).

To be fair, those interested in normative or ameliorative projects about what language and concepts to use rarely take a stand on exactly what 'marriage' does mean, but rather point out that *if* it had a restricted use then proponents of same-sex marriage may wish to advocate for conceptual revision or something similar. Nevertheless, the discussion above should make very plausible that this is not a very good example to use, since the actual meaning of the expression applies to same-sex marriages and much else besides. There is no need to try to work out what we might do should we find ourselves in the predicament of having a less-flexible-than-ideal concept or piece of terminology on our hands, in this case at least. Better to look at cases, if there are any, where our terminology or concepts do get in the way of appreciating live options.

A few interesting projects in the vicinity of conceptual engineering discussions do remain even if we concede that 'marriage' picked out an institution with a wide potential for variation all along. Some people seem to think that, by definition, marriage must work in some very restrictive way or other: and so the question of how best to engage with people with that view of the word or concept remains an important and interesting one. This paper can be seen, in part, as a contribution to that project! It may also be that in a particular conversation, different sides might be making *presuppositions* that make straightforward dispute difficult by obscuring areas of agreement and disagreement: Pearson 2017 focuses on this challenge to fruitful discussion about marriage, and I take it that challenge remains even if one side or the other happens to be making correct presuppositions.

This points to a more general suggestion about so-called conceptual engineering. While a single case is more of an anecdote than data, I suspect that many of the concepts we rely on when thinking about our moral, social and political situations lack non-trivial, easily stated, necessary

and sufficient conditions. They will also lack very tight constraints in their applications given just by the nature of the concept: there will be relatively few interesting 'conceptual truths' associated with them to restrict our theorising. Often the problem will be people with false *theories* (i.e. that same-sex marriage would somehow be radically different from opposite-sex marriage) rather than less than ideal concepts (e.g. a concept of 'marriage' that yields as a conceptual truth that marriage can only be between a man and a woman). I suspect that in the realm of social theory, at least, calls for conceptual change or conceptual amelioration should be replaced with calls for changing people's theories about the phenomena. Which would be less exciting for many philosophers, especially of language or mind, but more in line with how concepts and social phenomena are in fact working.

This perspective on the nature of marriage has two interesting policy implications, though perhaps neither is very revolutionary. One is that the state should be suitably sensitive to cultural differences when formulating marriage law, to not unfairly discriminate against those from cultural backgrounds different from those of the majority. This is not the same as recognising all marriages or giving equal benefits to all forms of marriage. Marriage is very important to many people and access to marriage is arguably a basic human right (see Article 16 of the United Nation's *Universal Declaration of Human Rights*, for example). Still, a state might well be acting correctly if it refuses to recognise marriages to young children or marriages entered into without the consent of both parties (to take two kinds of cases where it seems particularly plausible that such marriages would be contrary to public policy).

The second practical suggestion is that when a state is considering whether to expand the range of relationships it recognises as marriages and on which it confers any benefits it reserves for marriage, legislators need not worry very much whether they are 'redefining marriage', or making a factual mistake of classifying some non-marriage relations as marriage. Marriage has been a very flexible institution, across cultures and across times, and any politically feasible extension of the relationships the state is willing to recognise as marriage is unlikely to get close to the grey areas between marriage relationships and non-marriage relationships. There may be other good reasons for not extending the recognised class of relationships in various ways, but concern about it involving some sort of factual error about the essence of marriage is not among them.

## 9. Conclusion

A very wide range of human relationships seem to count as marriages, at least when they receive the appropriate sort of legal or social recognition from the societies around them. If they are genuinely marriages, then any account we give of marriage will have to be very flexible, and if an account is hazarded of the function of marriage, it had better be an account that can allow for many forms of marriage that do not perform that function very closely. Even those suspicious of a general account of marriage across all cultures might do well to keep in mind variation in marriage practices in cultures that seem closely related. For example, Wedgwood 1999 offers an account of the 'essential features of modern Western marriage' (p 228), since he thinks the 'astounding array' of marital practices anthropologists inform us about may preclude an interesting account of marriage in general. But there is great variety even among Western practices: marriage to the dead is allowed in some circumstances in France; there is no requirement for consummation or capacity for consummation in Australia; marriage can be to young children in some states of the USA; marriage could be imposed on a couple on the basis of a promise to be married later in Scotland until 1940. And that is not to mention marriage practices in immigrant communities, indigenous communities and other minority groups in the 'West': even if these are somehow excluded for principled reasons, it will be a challenge to come up with an account of Western marriage that applies to the full variety.<sup>21</sup>

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<sup>21</sup> Wedgwood's own account has two components: a requirement for legal recognition, required mutual legal obligations; and a requirement that the relationship conform to the 'essential social meaning' of marriage, which for Wedgwood is a general expectation that the relationship will involve '(1) sexual intimacy; (2) domestic and economic cooperation; and (3) a voluntary mutual commitment to sustaining this relationship' (p 229). The *expectation* rather than the reality is crucial for avoiding immediate problems with e.g. couples who are married but separated, and Wedgwood refines his account of the expectations in ways that I will not go into here. But even aside to challenges that could be made to the requirement of legal recognition and obligations, it is hard to see how e.g. French marriage to already dead spouses gives rise to any expectation of sexual intimacy, domestic cooperation, or voluntary mutual commitments to sustaining the relationship, at least of any ongoing nature. Wedgwood 2015's discussion of his account suggests a reading of his claim so that it is not that each Western marriage is generally expected to involve (1)-(3), but only that it is generally expected that typically Western marriages will involve (1)-(3) (pp 32-33). That would deal with the case, and any other case that could be classified as unusual, at the cost of saying very little about the social relationships, or expectations of social relationships, that *must* be involved in each marriage for it to be genuinely a marriage.

Marriage, while interesting in its own right, is also illuminating as a case study. Many social phenomena are found in a range of forms across different cultures and across history. Attempts to theorise about them, whether to offer accounts of what they are, or what their function is, need to be sensitive to the wide range of actual and potential variation these institutions can display.

While I have indicated some theoretical lines of approach that can give us a general story about marriage while allowing for the many forms it can take, the challenge of coming up with a general theoretical account of the institution of marriage remains. Philosophers may be able to contribute to that project, though most of the best work done in this area has been by anthropologists. That project may, in the end, rule that some apparent cases of marriage are not genuinely marriages. But the evidence base for this project should include the full variety of relationships that are apparently marriages, and it should make room for the fact that marriages can serve many different central purposes on different occasions.<sup>22</sup>

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