The State of the Union
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Introduction

Marriage constitutes a surprisingly dense site in contemporary cultural logics. The fantasies about romance, commitment and relationships, proliferating across a range of media contexts (see Cadwallader and Heise in this issue), often obscure the way that marriage is used politically to discipline and administrate the population. Indeed, as Baird maps (this volume), the movement for same-sex marriage in Australia has turned from the analysis of marriage as a means for distributing material rights and responsibilities, toward the focus on feelings, commitment and love, perhaps best encapsulated in GetUp!’s video depiction of an undefined future of love, as discussed by Richardson-Seif (this volume). This turn towards the ‘beauty’ of love often situates critiques of marriage as killing others’ joy. As Sara Ahmed has pointed out, however, killjoyism remains important in challenging injustice, and this editorial seeks to do precisely that.

This editorial, then, seeks to offer a Foucauldian framework for understanding the contemporary significance of marriage, primarily within Australia, but with resonances for other contexts. In it, we explore the way that marriage continues to be used as a means of administering populations, enhancing some forms of life—through easy access to material rights—and denying, obscuring and making so difficult as to destroy other forms of life. The first section lays out Foucault’s theory of biopolitics, emphasising the role of marriage within it. The second section seeks to examine particular kinds of life—that is, particular kinds of people—which are routinely denied access to the material goods which are strictly limited to marriage. In this way, we seek to demonstrate not only that marriage is used as a key means of inequitably distributing material rights, but that it plays a role in carving away those forms of life that the state deems to be extraneous, problematic, morbid, deathly.

Marital Life: Biopower’s Stake in Marriage

Foucault (Society) sought to demonstrate the political shifts that occurred around the early 1800s which asserted power over life itself. Biopower—the power over life—was enabled through two intertwined functions. The first, which he called biopolitical, focused on the administration of the life of the population, seeking to strengthen and enhance it through techniques as wide-ranging as labour laws, public hygiene, and the regulation of heredity. The second, called anatomo-political, focused on the disciplining of individuals, primarily through knowledge and institutions from medicine and psychiatry to principles of taxation. This discipline was peculiarly effective partly because it deployed the notion of power as oppressing natural desires to produce those desires as the individual’s own, and liberation as the expression of those desires (Society 249-256).

As Foucault argued, circulation between these twinned elements of biopower was “the norm,” and a proliferation of knowledge and institutions engaging with questions of health and pathology, sexuality and race, and bodies and disciscility. This enabled what Foucault calls a “caesura” or “fragmentation” of the population into two, in the name of enhancing life. On the one hand was life, the “superace” (Society 61), those whose lives and well-being must be prioritised and nurtured. On the other hand were the “subrace,” (Society 61), those associated with death, who, according to Foucault, could be subject to “not... simply murder as such... but also every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection, and so on” (Society 256). This fragmentation of the population, then, which Foucault names racism (in a slightly misleading way, since he is talking about the structural fragmentation of a population in the way described above, which includes racism but also goes beyond it) enables the creation of techniques of biopower designed to enhance and support life as a general principle, rather than simply at an individual level.

Although this logic and language is most familiar from Nazism, Foucault argues that the fragmentation of the population enabled and informed a vast array of technologies for managing life which continue in a variety of contexts by sustaining some lives through the granting of rights and benefits, and undermining other lives through denying those rights and benefits. One of these technologies is marriage. Married couples—and sometimes those in marriage-like same-sex relationships—can access the benefits of the Attorney-General’s Department (depending on country): tax breaks, shared and thus cheaper living costs, cheaper insurance, cheaper or any access to health cover, recognition as “next-of-kin,” simplified immigration processes, cheaper inheritance, protection from investigation in criminal proceedings, enhanced social security, compensation in the case of the wrongful death of a partner and automatic or highly simplified access to parental-child relationship status. Importantly, these are not benefits arising from the needs of married couples per se (if they do not compensate for some form of pre-existing disadvantage). Rather, they are rights which smooth the way for those participating in easily-manageable coupledom, and discriminate against those who cannot or will not adhere to its requirements. It is used to administer populations through delimiting personal relationships between people, managing the distribution of social goods, the continuation of the population, and the disciplining of individuals through the creation of normative familial life. In this sense, marriage rights are designed for reproduction in two senses: in the sense of offspring, and in the continuing of normative and normalised individual ways of life, as Rose clearly argues:

The government of freedom, here, may be analysed in terms of the deployment of technologies of responsibilization. The home was to be transformed into a purified, cleansed, moralized domestic space. It was to undertake the moral training of its children. It was to domesticate and familiarize the dangerous passions of adults, tearing them away from public vice, the gin palace and the gambling hall, imposing a duty of responsibility to each other, to home, and to children, and a wish to better their own condition. The family, from then on, has a key role in strategies for government through freedom. It links public objectives for the good health and good order of the social body with the desire of individuals for personal health and well-being. A ‘private’ ethic of good health and morality can thus be articulated on a ‘public’ ethic of social order and public hygiene, yet without destroying the autonomy of the family—indeed, by promising to enhance it (75).

The biopolitical management of life, then, had and still has, a peculiar stake in the institution of marriage. This is partly about reproduction, as Rose demonstrates above, but this is not merely about the reproduction of biological offspring through managing who can bear children and where and when. It is also bound to the reproduction of styles of life and culture (see Costa, this volume).

In this context, the choice to get married, or even to simply be in a socially approved dyad (depending on the situation), cannot be disjoined from this biopolitical administration. Understanding these privileges as supporting, sustaining and approving only of very select forms of relationship does two things: first, it helps to ground a politics concerned with how these inequalities are sustained, and second, it makes clear what is frequently concealed by the romantic feeling, the fun, the fantasy, the drama and the consumerism—all coded as profoundly individual, and as manifesting the uniqueness of the individual couple—which remain so key to the representations of marriage.

As queer critique has shown for a long time, there are far more forms of kinship beyond the legally recognised and socially approved dyad, forms that proliferate both within and outside queer contexts, and these remain unrecognised (Butler; Warner; Foucault; Richardson-Seif; Beyond Marriage Working Group). It is not simply that these are being jettisoned from the queer imaginary as it is taken over by the “nicer, clean-cut boys-next-door who help make same-sex marriage palatable” (GetUp!; Cadwallader; Heise 2016), but that as a result of this abandonment, same-sex marriage has come to be constituted as the ‘last frontier’ to be overcome by queer communities. As a result, the material consequences of exclusion from marriage for the immense variety of queer (and not only queer!) relationships are obscured.

Perhaps unsurprisingly, those who are precluded from the apparent happiness of marriage (Ahmed 2004) because of who they are, or their styles of relating, are usually situated discursively as responsible for their own unhappiness. As Pendleton and Serisier demonstrate in their paper, a key example is the “immiserated queer,” whose rejection of discipline and a normative way of life in their “promiscuous under-world” apparently leads inevitably to unhappiness. As Lauren Berant puts it,

People are schooled to recognize as worthwhile only those desires that take shape within the institutions and narratives that bolster convention and traditions of propriety. They learn, further, to be afraid of the consequences when their desire attaches to too many objects or to objects deemed “bad”: whether they find themselves

Various forms of non-monogamy have proliferated in the West, especially, or perhaps simply more explicitly, over the past 50 or so years. Infidelity is a very course, more ways of relating which are not named here, particularly those associated with non-Western cultures. While our description, then, seeks to undo some them to demonstrate the variety of relationships and non-relationships which are deemed to lie outside the realm of the privilege form of union. There are, of various forms of relating can be difficult to recognise because they are rarely narrated or legitimated, as Berlant describes above. We would like to explore a range of

Racism makes it possible to establish a relationship between my life and the death of the other that is not a military or warlike relationship of confrontation, but a biological-type relationship: 'The more inferior species die out, the more abnormal individuals are eliminated, the fewer degenerates will be in the species as a whole, and the more I—as species rather than individual—can live, the stronger I will be, the more vigorous I will be, I will be able to proliferate.' The fact that the other dies not mean simply that I live in the sense that his death guarantees my safety; the death of the other, the death of the bad race, of the inferior race (or the degenerate, or the abnormal) is something that will make life in general healthier; healthier and purer: (Society 255)

The means that this caesura that identifies those people who should be excluded, for example from accessing marriage, appears (through authorised forms of knowledge like science, and psychiatry and psychology) to fall along the lines of natural differences used to recognise particular identities. The history of knowledge about homosexuality, and the continuing though-discredited attempts to find "gay genes" or "gay brains," reveal that the exclusion of gay and lesbian people from marriage has been parsed through the naturalisation of the superiority of heterosexuality and the deeming of homosexuality as a biological, if "unnatural," difference. Other differences parsed in this way are, as will be demonstrated in this section, function to preclude racialised others, and people described as trans*, disabled, asexual and intersexed.

In many ways, our contemporary negotiations with race and marriage are leftovers from colonialism. In colonial contexts, as Ann Laura Stoler articulates, the regulation of sexual and domestic relationships, especially through the granting and withholding of marriage, enabled racial hierarchies to be produced and sustained. Marriage is central to the facilitation of the colonisers through only permitting a certain groups of people access to marriage, usually on the basis of familial heritage, provided techniques for managing a resistant colonised population. This history continues in contemporary Australian neocolonialism. Aboriginal forms of union, which differ from marriage and can involve more than two partners, have been and in many cases continue to be, precluded from recognition and access to social goods like social security (Australian Law Reform Commission).

 Immigration is one of the most explicit sites of the exclusion of certain people from the population. Even partnership visas require the announcement of "Arab backround," and the evidencing of "exclusivity" in relationships. The reaction against polygamy in Australia is thoroughly shaped by racialised discourse, often Islamophobic, and invisibilising Aboriginal kinship arrangements:

Everyone should be on notice that the law in Australia is that marriage is between a man and a woman to the exclusion of others... It’s based on the culture of our community and polygamous relationships are entirely inconsistent with that culture and indeed with the law. (Robert Mcclelland, cited in "Minister Warns Muslim Polygamists")

Indeed, the anxiety about the Muslim population in Australia is expressed in a range of other ways, but predominantly in relation to marriage and reproduction, demonstrating the role of marriage in the racist regulation of the population. The claim that there is a population crisis created by aging Baby Boomers rarely if ever makes reference to the frequently very low numbers of refugees accepted into Australia (United Nations High Commission for Refugees). The coexistence in Australian politics, and in the person of marriage advocate, MP Kevin Andrews, of calls for an increase in reproduction (Andrews) alongside anxieties about the growth in the Muslim population in Australia ("Growth of Muslim Population a Problem: MP.").

Intersex people, who have experienced "a disorder of sexual development," often struggle for recognition within the limited terms of "one man and one woman" permitted to marry (Organisation Intersex International Australia Annullment). This is a problem that would not go away with many of the proposed amendments to the marriage act in the name of "marriage equality" (Organisation Intersex International Australia Senate). The introduction of new passport requirements may also create difficulties for intersex people who change their legal designation to "X," given that this may make it impossible for them to be considered either a "man" or "woman" for purposes of accessing marriage.

Trans* people have also been excluded from the institution of marriage, in different ways at different times. Historically, heterosexual trans* folk faced invasive illegal questioning in court. Among other private matters, how "successful" genital modification surgeries were, through a comparison with cissexual genitalia, was considered important for the diagnosis of the condition ("intersex" or "transgender" was also used in these cases). The process of determining the sex of an individual (Sharpe 92). For some trans* folk, a choice must be made between accessing marriage and altering their legal sex, meaning that some aspect of their lives is considered a legitimate question for the law, demonstrating that the capacity to have heterosexual sex (understood as penis-in-vagina) was an implicit requirement of marriage (Sharpe 92).

The growth in the Muslim population in Australia ("Growth of Muslim Population a Problem: MP.") demonstrates the xenophobia and racism often obscured by the use of marriage in regularising part of the population.

Yet those recognised explicitly as of another race are not the only ones whose place in the population is carefully delimited by this racialised "fragmentation" of the population. Other forms of naturalised difference are regulated in this way. People with disabilities have their participation in relationships, sex, marriage and reproduction limited in a variety of ways. Women with disabilities, especially intellectual disabilities, are frequently subject to sterilisation (Women with Disabilities Australia). Many people are disabled in accessing contraceptives, sex, and even marriage, demonstrating that full rights rely on able-bodiedness (McRuer; Wilkerson; Shakespeare; Fjerg). This is also reflected in the continued exclusion of people with disabilities from migration to Australia, even in the context of marriage, enabled by the exclusion of immigration laws from the Disability Discrimination Act (Panichi).

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formalised marriages and de facto relationships, especially during break-ups (Hewitt). This means that the party outside the legitimated marriage (the "other woman", as the figure is heteronormatively known) and their children are protected in the event of a break-up. This brings an even more interesting dynamic to the biopolitical administration of relationships, because it favours deceit and the betrayal of the official requirements of marriage over negotiated, agreed and more-or-less formalised non-monogamous relationships.

The variety of non-monogamous relationships is expansive (Harlaworn, Lin, and Klesse; Klesse; Albury; Heckert; Barker and Langridge; Barker). Some fall into the following categories:

- **Commitment to very limited notions of union.** This is a technology of biopower that enables the discriminatory distribution of rights and benefits in ways that sustain only particular kinds of people in particular kinds of relationships, those which function to reproduce a stable population and thus a stable, unified, normalised State. The extraordinary investment in marriage, then, as displayed across various forms of media, and in the "Marriage Equality" movement in Australia, helps to maintain the idea that this institution is primarily about love and romance, and not about the racist fragmentation of the population, and the denial of basic life-supporting rights and benefits to those who do not adhere to a variety of norms.

- **Normalised State.** But the variety and number of people, identities, races and relationship styles who are excluded from the benefits attached to marriage, whether through an inability to or a deliberate deconstruction, also demonsitrates the extraordinary regressive nature of the Australian Marriage Equality movement, for all of its claims to be "working for equal rights for all Australians." The claim that "marriage is about love and commitment, not about your partner's gender," becomes, in this context, a fantasy, one which feeds into the anatamopolitical disciplining of desire, and covers over the biopolitical use of marriage to discriminate against some people, and against some ways of relating. As this editorial demonstrates, and the rest of this issue will go on to explore, love and care and intimacy (see Potts, this volume), which sustain so many lives, the lack of institutional recognition of those involved in these varying forms of relationships in many ways is what enables them to happen at all, since the conditions placed on non-married relationships are traditionally not willing to accept, or even to pretend to accept in order to access material benefits—especially in the provision of medical care and the payment of hospital bills (which, given the benefits of marriage, extend far beyond bereavement and into heavily practical, material matters).

- **The account of marriage provided here has sought to put the frequent appeals to emotion, romance and the prettiness (or otherwise!) of weddings to one side, to examine the role that marriage plays in the contemporary State. It is a technology of biopower that enables the discriminatory distribution of rights and benefits in ways that sustain only particular kinds of people in particular kinds of relationships, those which function to reproduce a stable population and thus a stable, unified, normalised State.**

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State of the Union follows Louise and Tom who meet in a pub immediately before their weekly marital therapy session. Each episode pieces together how their lives were, what drew them together, and what has started to pull them apart. Creator