



# Institutional Genidentity

**ABSTRACT:** *An abbreviated history of marriage helps motivate the question of whether ancient Roman marriage and contemporary love marriage could qualify as stages of the same (token) institution despite carrying significantly different functions, deontological powers, and constitutive rules. Having raised the question of institutional identity over time, I proceed to answer the question by appealing to Kurt Lewin’s notion of genidentity. Lewin intends the notion of genidentity to track the spatiotemporal unfolding of different physical and biological processes, such as ontogenesis. I extend the notion of genidentity to the institutional sphere by identifying two ‘re-anchoring mechanisms’ that would describe the conditions under which institutions with different characteristics could nevertheless qualify as the same institution across time. First, formal institutions can be re-anchored by way of a self-amending secondary rule. Second, informal institutions can be re-anchored by leveraging the inherent indeterminacy of the exemplars that indexically define them. I then argue ancient Roman marriage and contemporary love marriage are genidentical in virtue of the actions of a (mostly) informal re-anchoring mechanism.*

**KEYWORDS:** social ontology, genidentity, identity over time, process ontology, marriage, anchoring

Following several momentous legal victories for same-sex marriage in Canada and Massachusetts, the founder of Focus on the Family, James Dobson, exclaimed, ‘Unless we act quickly, the family as it has been known for 5,000 years will be gone’ (2003: paragr. 19). The historian Stephanie Coontz found herself in the unusual position of not only agreeing with Dobson on this particular point, but accusing him of understatement: ‘In my view, marriage as we have known it for 5,000 years has already been overthrown. But it was heterosexuals, not gays and lesbians, who accomplished this revolution’ (2004: 977). As detailed in her 2006 monograph, Coontz argued that our contemporary conception of a love marriage had gradually displaced what she calls ‘*real* traditional marriage’ over the course of the past several centuries, and that love marriages differ from *real* traditional marriages in nearly every relevant respect.

While I relay some of the details of Coontz’s argument in what follows, this paper is principally concerned with the question of institutional identity over time that such a history raises. While neither Dobson nor Coontz address how two institutions at  $t_1$  and  $t_2$  can qualify as stages of the same institution, despite having entirely different functions, constitutive rules, and deontological power distributions, their word

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choice suggests this possibility: if marriage ‘as we have known it’ has been overthrown, what accounts for the possibility that the institution of marriage per se might continue to exist following this transformation?

Having unpacked the question of institutional identity over time vis-à-vis Coontz’s history of marriage in sections 1 and 2, I attempt to answer that question by appealing to Kurt Lewin’s (1890–1947) notion of genidentity (Lewin 1920, 1922), which is discussed in section 3. Lewin formulated the notion to explain how a blastula and hen might qualify as stages of the same organism, despite the fact that they share little by way of phenotypical properties. Lewin’s view is what we would describe as a process ontology (Dupré and Nicholson 2018), and the various genidentity relations he identifies track processes or ‘world lines’ that are the principal subject matters of the physical and biological sciences. David Hull’s (1978, 1986, 1994) evocation of Lewin’s notion of genidentity has led to a number of careful and important studies of the concept in the philosophy of biology (see Boniolo and Carrara 2004; Guay and Pradeu 2015; DiFrisco 2018; Griffiths and Stotz 2018; Nicholson 2018; Pradeu 2018; DiFrisco and Mossio 2020). However, the concept’s application to the institutional sphere has not been systematically pursued. The task of this paper involves identifying specific social processes that accommodate sufficiently continuous change in a way that preserves the intuition that ancient Roman marriage and contemporary love marriage are genidentical stages of the same institution despite their different characteristics. Doing this requires the identification of mechanisms by which an institution’s grounds can, in the words of Brian Epstein, be “anchored” and “re-anchored”, over and over again, while remaining the same property’ (2015: 65). I identify two re-anchoring mechanisms as they apply to formal and informal institutions respectively. In section 4, I argue that the genidentity of two stages of a *formal* institution can be secured through a self-amending amendment clause (Suber 1990: xi)—a secondary rule that can be used to change other rules, including itself. However, the history of Western marriage is not the history of a formal institution. Thus, in section 5, I identify an *informal* re-anchoring mechanism that exploits the ambiguity implicit in the exemplars used to characterize such institutions. In section 6, I address possible concerns that might be raised about the proposed account of institutional genidentity. I summarize my findings in the conclusion.

## 1. Western Marriage, an Abbreviated History

The grounds-specifying metaphysical profile of an institutional fact is described in terms of its functions, deontological powers, and constitutive rules. A function of money is to serve as a medium of exchange. I follow Francesco Guala in maintaining that the function(s) of an institution resolve cooperation and coordination problems and need not be appreciated by participants (2016: 171).<sup>1</sup>

<sup>1</sup> However, I do not agree that institutions are defined in terms of a propensity to realize functional effects. Otherwise, an institution at  $t_1$  and an institution at  $t_2$  could not be stages of the same genidentical token if they had different functions.

Deontological powers include the rights and obligations associated with an institutional status and typically promote the realization of the institution's function(s). Dollar bills give one the right to settle public and private debts up to the specified amount. Constitutive rules specify the conditions by which people, events, or things come to count as an instance of a given institutional fact—what might be called 'entry conditions'. Dollar bills must be printed by the US Bureau of Engraving and Printing. While I focus on entry conditions, the term 'constitutive rule' is Searle's (1969: 33–34; 1995: 28) and has been variously inflected by social ontologists (e.g., Hindriks 2009; Epstein 2015: 74–82; Ludwig 2017: 92–98). In this section, I follow Coontz in arguing that the functions, deontological powers, and constitutive rules associated with Western marriage can change in such a way as to be inconsistent across time. A related investigation is Thomas Brouwer's, who has argued that some of our institutions can be grounded in inconsistent ways at the same time (2022).

Hunter-gatherer communities used marriage to build alliances and share resources between foraging bands but also as a relatively informal way of organizing sexual companionship, child rearing, and the daily tasks of life (Coontz 2006: 44). However, as societies became more sedentary, populous, and divided by class, the institution of marriage was appropriated to consolidate power and resources by the political and social elite. In ancient Rome, lavish dowries and endogamy (marriage with close kin, as opposed to exogamy), along with the key distinction between 'legitimate' and 'illegitimate' children, came to characterize the marriage relation. Marriages were arranged, the sexual behavior of women was intensely regulated, divorce was difficult or impossible (particularly when initiated by women), and illegitimate children were prohibited from inheriting land, money, and titles. Coontz compares ancient marriage to a business merger or investment partnership, wherein the relation became the main vehicle by which leading families synchronically amassed political influence and material wealth and diachronically consolidated, via the inheritance rights of 'legitimate' children, those holdings (Coontz 2006: 65, 48).

For many Roman commoners, marriage remained a less formal arrangement, but one that was still oriented to practical purposes. While marriage between members of the propertied class was typically realized by way of private contracts, for the less privileged, marriage was a means by which the work of the household could be accomplished via a sexual division of labor (Coontz 2006: 66): 'Few individuals of modest means had either the inclination or the opportunity to seek a soul mate. What they really needed was a work partner' (Coontz 2006: 68). The difference between marriage and cohabitation was a matter of mutually expressed intent. As summarized by Quintilian (AD 35–95), 'There is no obstacle to a marriage being valid by reason of the will of those who come together, even though a contract has not been ratified' (Coontz 2006: 80).

Following the fall of the Roman Empire, and especially following the crowning of Charlemagne as Holy Roman emperor in AD 800, the sanctioning of marriage among social and political elites became increasingly assumed by the Catholic Church. However, it was not until the thirteenth century that the church took steps to regulate marriage between commoners. Whereas marriage previously only required

the declaration of mutual intent and consummation by sexual intercourse, the Fourth Lateran Council of AD 1215 sought to prohibit ‘clandestine marriage’ by requiring that every marriage included a dowry, posted banns, and a church ceremony (Coontz 2006: 106–7). However, these attempts to formalize the constitutive rules of marriage were not widely accepted until as late as the seventeenth century.

As far as deontological powers are concerned, marriage in the Middle Ages was a condition for a man’s holding certain offices and acting as a pledge for other people (which created obligations in others and was the basis for mutual aid). For a woman, marriage generally had the effect of restricting rather than expanding her legal standing as it reduced her and her earnings to her husband’s property (2006: 113–16); however, Coontz notes that remaining unmarried could be even more deontologically hazardous and that European widows had, in general, more inheritance rights as compared to comparable arrangements in other civilizations (2006: 131).

Despite the many local variations in the constitutive rules and deontological powers associated with marriage as the institution expressed itself in ancient Rome and in late medieval Europe, Coontz maintains that the traditional function of marrying for political and economic advantage and establishing clear lines of inheritance remained the norm until the eighteenth century (2006: 123). On her telling, a profound transformation in the purpose or point of marriage began with the Protestant Reformation, which explicitly targeted central features of this long-prevailing conception of marriage. While the Catholic Church prohibited the clergy from marrying and tolerated lay-marriage as a ‘second-best existence to celibacy’, Luther celebrated marriage as ‘a glorious estate’ (Coontz 2006: 132). And Catholic restrictions on the possibility of divorce were, of course, central to the English Reformation. Moreover, the distinctive ways in which late medieval marriage marked economic and legal independence placed unique conditions on what was to count as a suitable partnership. In addition to class standing, sixteenth- and seventeenth-century commentators began to stress the importance of character, mutual respect, and even romantic love when it came to the selection of a partner (Coontz 2006: 134). While parents still maintained the power to veto a prospective arrangement, love and intimacy became increasingly relevant factors in the determination of a marriage match.

On Coontz’s account, ‘by the end of the 1700s personal choice of partners had replaced arranged marriage as a social ideal, and individuals were encouraged to marry for love. For the first time in five thousand years, marriage came to be seen as a private relationship between two individuals rather than one link in a larger system of political and economic alliances’ (2006: 145–46). Correspondingly, the function of marriage began to shift in profound ways: rather than (just) a means by which political and economic alliances were cemented or a legal vehicle for the determination of inheritance rights by way of the distinction between legitimate and illegitimate children, marriage was measured by ‘how well a family met the emotional needs of its individual members’ (Coontz 2006: 146). As a result of these factors, divorces became more readily obtainable on grounds of ‘incompatibility’ even though it was not until the 1970s that the United States legalized no-fault divorce.

This abbreviated history of Western marriage is highly stylized, in the sense that it smoothes over tremendous nuance. For example, while Coontz sees the Protestant

Reformation as a key factor in the formation of the idea of a love marriage, other writers stress the influence of the medieval conception of courtly love. Coontz's history is also only a history of marriage in the West. Just as important, the depiction of contemporary love marriage as a relatively egalitarian arrangement has been sharply interrogated by, among others, Susan Okin, who claims that because our contemporary marriage practices still 'constitute the pivot of a societal system of gender that renders women vulnerable to dependency, exploitation, and abuse' (1989: 136), they require further reformation. However, while these difficulties must be acknowledged, the purposes of this paper are such that a stylized history of marriage is sufficient. What this history shows is that the institution of marriage is marked by profound changes in function, in the deontological powers that help realize this function, and in the constitutive rules that describe the entry conditions to marriage. These differences are what matter to the aims of this paper, and a more careful recounting of either marriage's history (e.g., a history that acknowledges the possibility of polygamy) or its many contemporary expressions (as noted by Michaele L. Ferguson, 'There is no "normal" family arrangement any longer' [2016: 699]) would, I think, only increase our appreciation of the difference between '*real* traditional marriage' and contemporary marriage.

## 2. Social Inconsistency Over Time

To summarize section 1, core features of an institutional status are specified by constitutive rules, deontic powers, and/or functions, and there does not appear to be a common property that would qualify ancient Roman marriage and modern marriage as stages of the same token institution while excluding neighboring social relations, such as mere cohabitation or a business partnership. They have different constitutive rules. Where ancient Romans count as being married if they cohabit or, in some cases, satisfy the terms of a private contract, modern marriage requires, among other conditions, a declaration in the presence of a state-authorized officiant. Marriage has also come to impart more egalitarian deontological or normative powers to those who fall under the status. For example, the status of *wife* is no longer cast as an instance of the property relation. And such marriages have different functions. While contemporary marriages include default presuppositions regarding inheritance, that living trusts can override these presupposition shows that such functions are neither necessary nor sufficient for marriage. And, as Coontz carefully documents, while some ancient marriages may have in fact promoted the personal goals of love, intimacy, and self-fulfillment, such aspirations would only characterize the point or function of modern marriage (these were not, until relatively recently, accepted grounds for divorce).

I will argue that the institutional genidentity relation shows how ancient Roman marriage and contemporary love marriage can qualify as two stages of Western marriage, which is the relevant token of the institutional type, *marriage* (Guala 2016: xx–xxi), despite these differences in functions, deontological powers, and constitutive rules. This contrasts with the view that Roman marriage and

contemporary love marriage are distinct institutional tokens of the institutional types, *Western marriage* and, more generally, *marriage*.

Perhaps it might be granted that while there is no common thread that would connect ancient Roman marriage and modern marriage as stages of the token institution, Western marriage, perhaps these various temporally overlapping properties jointly constitute Western marriage as, in a Wittgensteinian mode, a rope is constituted by a number of fibers without there having to be a single fiber that goes through the rope's entire length (Wittgenstein 2009: sec. 67).

The problem with this suggestion lies not in its being false, but in its being unilluminating. Exactly how should we unpack the rope metaphor in the social sphere? Which social processes, exactly, does the idea of 'overlapping fibers' correspond to? In this paper, I argue that Lewin's notion of genidentity—as underwritten by the formal and informal re-anchoring mechanisms described below—can be used to vindicate the Wittgensteinian thought that two institutions can be stages of the same institution over time even when they are not connected by a common thread or property.

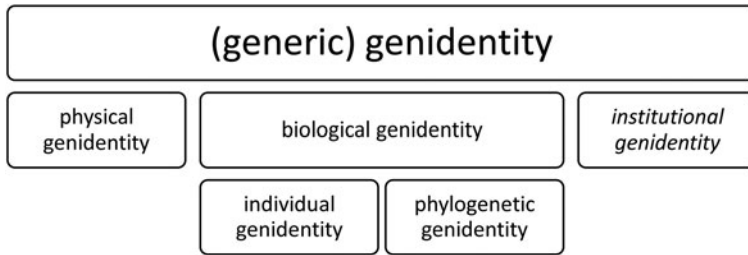
The task of this paper is to formulate a genidentity relation that can make sense of how an institution at  $t_1$  and an institution at  $t_2$  can qualify as stages of the same institutional token despite not sharing key properties. However, I advance this thesis in a pluralistic spirit; that is, I am not aiming to simply displace a sense of 'sameness' that is pegged to a resemblance relation. Thus, we might say of Roman and contemporary marriage that there is a sense in which they are the same (by genidentity) and a sense in which they are different (by resemblance). The identity conditions of both types would seem simultaneously available, and appropriate relative to different epistemic projects. I briefly return to this thought in section 6.

I introduce Lewin's notion of genidentity in the next section. In sections 4 and 5, I extend the notion of genidentity by identifying two mechanisms by which an institution at  $t_1$  and an institution at  $t_2$  can qualify as stages of the same institution despite not sharing key properties. In section 4, I consider a so-called 're-anchoring mechanism' that supports the genidentity relation as it applies to *formal* institutions. In section 5, I describe a 're-anchoring mechanism' that would produce the required continuity in *informal* institutions, including the institution of Western marriage.

### 3. Lewin's Notion of Genidentity

'Genidentity' was coined by Kurt Lewin to describe the relationship between the stages or 'momentary states that appear as the dependent components of processes (*Vorgänge*) that form "natural units"' (Lewin 1922: 8; see also 1920: 10–11, 14). The genidentical states of such a process stand in a relation of existential ascendancy or, more literally, existential being-such-as-to-have-come-forth-from (*existentielles Auseinanderhervorgegangenseins*) (Lewin 1920: 20; 1922: 62).<sup>2</sup>

<sup>2</sup> 'Existential ascendancy' is Barry Smith and Kevin Mulligan's translation of Lewin's notion (1982: 70). To be clear, genidentical relations do not carry any teleological implications.



**Figure 1.** Subvarieties of generic genidentity, including the proposed account of institutional genidentity.

Lewin's 1920 dissertation and 1922 book are exercises in the comparative sciences, which are subdivided according to how their subject matters express relations of existential ascendancy. Physics and chemistry describe the temporal paths of physically genidentical processes, such as those that constitute the lives of particular atoms or chemical elements. Biological genidentity relations, including those that describe developmental processes, are to be distinguished from their physical counterparts: 'The physical genidentity sequences flowing forwards from an egg lead to the widest variety of possible formations, and if any kind of physical genidentity relation obtains between the egg and the hen, then there belongs to the adult hen at most formations which are physically genidentical with a fraction of the egg' (Lewin 1922: 56).<sup>3</sup>

Here, Lewin is making the familiar point that the physical and chemical constitution of the hen is constantly being turned over by metabolic events so that the spatiotemporal trajectory of the atomic constituents of the blastula will not tend to correspond with the spatiotemporal trajectory of the developing hen. In the biological sciences, Lewin identifies different genidentity relations including individual genidentity (*Individualgenidentität*) and phylogenetic genidentity (*Stammgenidentität*). *Individual genidentity* characterizes the developmental or ontogenetic processes that constitute the life-course of a particular organism, as when an egg becomes a hen. *Phylogenetic genidentity* attempts to specify the persistence conditions of lineages at various levels, starting with a speciation event.

Lewin's various conceptions of genidentity, represented in figure 1, are related by abstraction, so that a generic conception of genidentity as a relation of existential ascendancy is arrived at by way of Lockean selective attention (Ayers 1981) to features shared by the more concrete biological and physical causal processes. A principal task of this paper is to introduce an additional subvariety of the genidentity relation—'institutional genidentity'—that describes the spatiotemporal trajectory of relatively continuous institutional processes.

Because the genidentity relation tracks progressively unfolding manifolds, the relation is thought to presuppose a process ontology rather than a substance ontology (Dupré and Nicholson 2018). Lewin says that each stage of, for

<sup>3</sup> This translation is Smith and Mulligan's, as found in their 'Pieces of a Theory' (1982: 72). I have translated the remaining quotations of Lewin's with the generous assistance of Anna Strasser.

example, a star at  $t_1$  and at  $t_2$ , is ‘defined by its role as being at the beginning or end of certain processes’ (Lewin 1920: 14).

Why does Lewin think that the genidentity relation runs against the grain of a substance ontology? Because the genidentical relata of different stages of a process are not necessarily qualitatively similar: two stages can be genidentical even when they do not share similar properties (Lewin 1922: 12). As Christopher Austin articulates the concern in the context of the individual genidentity relation, because ‘the continued existence of organisms doesn’t depend upon their remaining *the same* from moment to moment, but upon their continually successive *differentiation*’ (2020: 13), their identity over time would not seem to entail a substantial bearer of essential properties. Rather, genidentical stages of a concrete particular are processually realized over time (Austin does not ultimately endorse this view).

Nevertheless, while genidentity relations across multiple stages cannot be reduced to resemblance relations, there are certain conditions under which a resemblance relation is *epistemically* relevant to the identification of a genidentity relation. More generally, genidentical processes can be more or less cyclical and ‘orderly’ (Simons 2018: 55). The genidentical stages of disorderly, unruly processes, such as the turbulent unfolding of an explosion (Simons 2007: 177), do not support an inference from similarity to genidentity. However, relentlessly repetitive and orderly processes, such as the complex and cyclical process of gluon or photon exchange that constitute subatomic, atomic, and chemical processes (Simons 2007: 177), can more capably sustain an inference from a similarity relation to a genidentity relation, for example, when we conclude that an atom  $Y$  at  $t_2$  is genidentical with an atom  $X$  at  $t_1$  because  $Y$  and  $X$  have the same atomic numbers.

The focus of this paper is on a class of processes that is neither relentlessly cyclical (e.g., atomic processes) nor profoundly disorderly (e.g., an explosion). Institutional processes, like developmental and phylogenetic processes, might, following Cornelius Castoriadis, be called ‘productive’ (1998: 112) processes insofar as they are neither simply repetitive nor chaotic but carry the endogenous capacity to transform themselves incrementally over time. That is, productive processes do not simply repeat themselves in a bluntly cyclical fashion but incrementally unfold and individuate themselves in a way that might be compared to a spiral (Hanna and Maiese 2009: 318–21; Rust 2021b). The productive, self-transformative capacity of (many of) our institutions is what the formal and informal re-anchoring mechanisms described in sections 4 and 5 attempt to explain. I return to the idea of productive, self-transforming processes in section 6.

#### 4. Institutional Genidentity I: Re-anchoring Formal Institutions

While Lewin restricts his discussion to the genidentity relations found in the chemical and biological spheres, in the next two sections I discuss how the relation expresses itself in the institutional sphere. In particular, I identify two mechanisms that would causally connect an institution  $X$  at  $t_1$  with an institution  $Y$  at  $t_2$  in such a way that we would be inclined to describe  $X$  and  $Y$  as stages of the same institution even if they carried different rules, powers, and functions. In this section I discuss the genidentity



relation as it expresses itself in *formal* institutions, which are governed by explicit rules and include games and modern constitutional democracies as focal members. I argue that formal institutional genidentity is underwritten by self-amending secondary rules. In the next section I consider how the relation expresses itself in *informal*, exemplarized institutions.

Searle famously compares the principles that describe the grounding conditions of an institutional fact to the rules of chess or football: these rules ‘are almost tautological in character, for what the “rule” seems to offer is part of a definition of’ the game (Searle 1969: 34). He later says, ‘if you don’t follow at least a large subset of the rules, you are not playing chess’ (Searle 1995: 28). It would seem, then, that a necessary condition for a game *X* at *t*<sub>1</sub> and a game *Y* at *t*<sub>2</sub> to qualify as the same game is that their rules must stand in a resemblance relation. However, Searle adds the qualifier (‘at least a large subset of the rules’) to accommodate the intuition that two games could qualify as chess, before and after castling was introduced in the fourteenth century. While Searle treats the possibility of ludic revision as an inconvenient but defeasible obstacle to a resemblance account of institutional identity over time, I shall argue that such revisions gesture to the possibility of a more radical account of what diachronically binds (many) of our institutions, cashed out in terms of the genidentity relation.

If chess is a paradigmatic example of a closed or finite game, where ‘by knowing what the rules are . . . we know what the game is’, consider the possibility of an open or infinite game (Carse 1986: 9; see also Suits 1978: ch. 12; Innis 2001). Where closed or finite games are, following Searle, defined by their grounds-specifying rules, open or infinite games can survive profound changes in rules (and objectives) even over the course of a single instance of play. Carse describes ‘the most critical distinction between finite and infinite play: *The rules of an infinite game must change in the course of play*’ (Carse 1986: 9). Setting aside his soteriological tone, Carse draws our attention to the fact that open or infinite games, like modern legal constitutions (Hart 2012), contain secondary rules, which have other rules as their object and which govern the process of enactment, amendment, and repeal. Many games, such as *Uno* and *Twilight Imperium*, contain modest provisions for rule change. However, *Nomic*, a game created by the philosopher Peter Suber, has a built-in mechanism for changing *any* of the game’s rules, including the rules that govern rule-change (1990: 386, rule 115). Even if over the course of play each rule of *Nomic*’s ‘Initial Set’ of 28 rules (*X*) were replaced with, say, a set of 50 different rules (*Y*; including a change in the game’s winning condition and a change in the amendment procedure by self-amendment), given that every move in the game was made in accordance with the rules that were then in effect, I am not tempted to say that the players finished a different game than they started.<sup>4</sup>

Suber invented *Nomic* to illustrate vividly the self-amending possibilities inherent in modern legal systems: ‘While self-amendment appears to be an esoteric feature of

<sup>4</sup> There may be a special class of *Nomic* amendments that would be genidentity-undermining instead of genidentity-maintaining if the amendment is such that the change renders the activity something other than a game.

law, capturing it in a game creates a remarkably complete microcosm of a functional legal system' (Suber 1990: 357). Thus, the dynamics of *Nomic* give us reason to think that two political constitutions  $X$  at  $t_1$  and  $Y$  at  $t_2$  qualify as stages of the same legal order even if an amendment procedure was used to amend every one of the original rules, including the amendment procedure itself.

The games (or legal orders)  $X$  and  $Y$  qualify as stages of the same game (or legal order) because  $X$  and  $Y$  are bound by a sufficiently continuous dynamics of change (Guay and Pradeu 2015: 338). This is because  $Y$  is, in this case, the result of a rule-governed, reflexive amendment process.  $X$  and  $Y$  do not resemble each other but are processually connected, and so they are institutionally genidentical in the sense that they are stages of an institutional token that stand in a relation of existential ascendancy (Lewin 1920: 20, 1922: 62).

The question about how the grounds of *Nomic* might be changed is a part of what Epstein generally calls the 'anchoring project'. Given that the grounds of a social fact—the constitutive rules, deontological powers, and purposes—could have been otherwise, anchors are mechanisms by which the grounding conditions are 'glued' or 'put in place' (Epstein 2015: 81). Whereas Searle claims that collective intentionality is the only anchoring mechanism, Epstein contends that such mechanisms are 'radically heterogeneous' and may include 'a mix of historical tokens, miscellaneous features of the environment, legal enactments, community beliefs and practices, and more' (2016: 216). One subproject within the anchoring project is the construction of a taxonomy of different 'anchoring schemas' by way of which the grounds of social facts might come to be put in place (Epstein 2014). For example, while legal facts are anchored by way of explicit enactment (among other relevant conditions), informal statuses might be anchored, in a Humean mode, in our conventions or, as argued below, in our shared exemplars. Another subproject within the anchoring project involves explaining how a given social property—such as being the game *Nomic*—can be "re-anchored", over and over again, while remaining the same property' (Epstein 2015: 65). The task of the present paper engages both of these subprojects within the overall anchoring project: in this section and in the next, I describe two re-anchoring mechanisms that would supplement the anchoring schemas that would 'put in place' the grounds of our formal and informal institutions, respectively.

*Nomic* illustrates how a wide-scope amendment clause in the system of rules that characterizes a formal institution can be used to re-anchor an entirely new set of constitutive rules while remaining the same game. In other words, the game illustrates how two stages of the game can remain genidentical despite being characterized by entirely different rules. However, because *Nomic* is supposed to model a self-amending constitution, it can only tell us how re-anchoring is possible for highly legalistic anchoring schemas. By contrast, our abbreviated history of Western marriage implies the possibility of nonlegalistic and informal re-anchoring. Thus, the call to explain how ancient Roman marriage and modern marriage are stages of the same institution is tantamount to a call to explain not just how formal institutions might be re-anchored but how informal institutions can be re-anchored (and so qualify as genidentical).

## 5. Institutional Genidentity II: Re-anchoring Informal Institutions

In section 4, I illustrated the relation of institutional genidentity by discussing the case of *Nomic*, which is a game that includes a secondary rule for changing any of the rules of play, including the secondary rule itself (self-amendment). However, even if one grants that *Nomic* and self-amending legal orders constitute relatively transparent and compelling examples of an institutional genidentity relation, an explicit self-amending process does not explain how Roman marriage and modern love marriage are temporal parts or stages of the same institution because the institution did not, for the most part, evolve via the application of explicitly enacted secondary rules. If the stages of the largely informal (token) institution of Western marriage are to qualify as genidentical, an additional re-anchoring mechanism must be described.

How, then, is re-anchoring possible for social facts whose grounds are put in place by informal anchoring schemas? In what follows I discuss how informal institutions are anchored in exemplars (5.1), how exemplarized institutions imply a degree of ontological indeterminacy (5.2), and how such indeterminacy can be exploited by an informal re-anchoring procedure to underwrite an informal institutional genidentity relation (5.3). I conclude this section by gesturing to the ways Western marriage changed via this informal re-anchoring mechanism (5.4).

### 5.1 Informal Institutions as Exemplarized Institutions

Recall that Epstein intriguingly begins his heterogeneous list of anchoring schemas with a reference to ‘historical tokens’ (2016: 216). As I interpret him, Epstein here is pointing to the possibility that the grounds of many of our social facts are anchored in a community’s shared and (often) long-held *exemplars*. Where legal enactment attempts to *say* what the grounds of a given social fact are by appeal to rules, shared exemplars work by *showing* what an idealized instance of a social fact looks like (Burman 2022; Brännmark 2018).

Some of these exemplars might be morally inflected. Linda Zagzebski, whose work on moral exemplars inspired much of what follows (Zagzebski 2017; 2010; see also Olberding 2011; Lehrer 2011; Rust 2021a), tells the story of Leopold Socha, who repeatedly risked his life attending to a group of Jewish persons hiding in the sewers of the Polish city of Lvov during WWII (Zagzebski 2017: 70–72). However, I have in mind a broader class that includes not just negative moral exemplars (Olberding 2011: 40), such as Hitler, but exemplars that are morally neutral or ambiguous. Instances of the latter might include how Susan Sontag came to represent a cultural critic or how Princess Diana exemplifies what it is to be an icon (Herwitz 2012). Additionally, a community’s exemplars need not be limited to statuses as applied to persons. For example, when a 2015 arrest raised the question of whether Bitcoin was money, a poorly written statutory definition of money drove a Florida court to compare exemplars: are Bitcoins more like U.S. dollars or baseball cards (Ovalle 2016)?

## 5.2 Informal, Exemplarized Institutions Are Ontologically Indeterminate

Because exemplars are concretely realized social paradigms, exemplarized kinds are fuzzy kinds (Khalidi 2013: 65–69). For example, Daniel Herwitz compellingly argues that Princess Diana, Jackie Kennedy, and Marilyn Monroe each exemplify the icon because they are each televised objects of a special kind of public ambivalence—our ‘double interest in the glow and the pain is the source of the icon aesthetic’ (2012: 30). But each of these figures share other features that are less obviously icon-constituting. They are each, for example, biological females. While Herwitz claims that the status happened to be exemplified originally by women, this changed with JFK and Elvis, who also would seem to have publicly carried the melodramatic, glow-pain aesthetic (2012: 21).

More generally, exemplarized kinds would seem to be fuzzy because they make it possible for us to identify focal (or typical) members without necessarily being in a position to identify which features qualify them as members. As Amy Olberding puts it, in identifying focal members of an exemplarized category, ‘we begin *without* fixed criteria or concepts, employing direct reference, *pointing to* what we mean as it features in our experience’ (Olberding 2008: 626). Thus, social kinds that are characterized only by reference to an exemplar would seem to imply some indeterminacy about the entry or instantiation conditions by which someone would qualify as an instance of the exemplarized status.

This said, the claim that there is ontological vagueness is contentious because words, rather than objects or kinds, would seem to be the only sort of thing that could be ambiguous or vague (Russell 1923; Dummett 1975; cf. Khalidi 2013: 65–69). However, if social kinds are partially constituted by our representations, then they could arguably inherit the indeterminacy that characterizes some of those representations. Accordingly, there may be no fact of the matter as to whether Bitcoin is money in advance of a judge’s ruling or whether an icon can be male, prior to the status’s exemplification in JFK or Elvis.

## 5.3 Informal Re-anchoring By Way of Indeterminacy

If a community’s exemplars can anchor an informal status (icon, cultural critic, money) and if exemplarized social kinds necessarily carry a degree of ontological indeterminacy, then we have the ingredients to explain a process of informal institutional re-anchoring that does not depend on the deployment of an explicit (self-)amendment procedure.

Let us assume that Herwitz is correct and that Marilyn Monroe, Jackie Kennedy, and Princess Diana are exemplars of the social kind, *icon*, in virtue of their melodramatic affect ( $P_1$ ). They are also biological females ( $P_2$ ). Assume also that in the 1950s the relationship between  $P_1$  and  $P_2$  was culturally underexplored, buried under a set of assumptions about who is capable of exhibiting  $P_1$ , and/or not sufficiently challenged by vivid counterexamples. The question of whether  $P_2$ , which happened to be shared by the status’s key exemplars, was an essential feature of the status simply did not arise.

Consider, then, what happened when Elvis came not only to occupy the status, but came to exemplarize the role in new ways. To the melodramatic ‘glow and pain’ aesthetic ( $P_1$ ) that characterized the status’s original female exemplars, Elvis not only prompted a subtraction of the biological sex component ( $P_2$ ), but added what Herwitz vividly (and perhaps hyperbolically) describes as an ‘electrified physiognomy that hit from the belt and reverberated in the voice, a love of celebrity that was out of control and a gradual decomposition into drugs, isolation, a retinue of personal servants, physicians, and bad family relations’ ( $P_3$ ; 2012: 21).

Finally, we could imagine a future in which the status of an icon comes to be principally associated with those, like Elvis, who exemplify a tragic, electrified physiognomy ( $P_3$ ), whether or not they also carry a melodramatic affect ( $P_1$ ); perhaps, even, their indifference to the tragedy becomes salient. If this bare possibility seems impossible, consider the felt implausibility of the suggestion that a biological male could be an icon prior to its exemplification in Elvis.

Thus, as illustrated in figure 2, the indeterminacy implicit in informal, exemplarized statuses can be exploited to realize the sufficiently continuous dynamics of change that characterizes the genidentity relation. Informal re-anchorage might be compared to a game of telephone: while each stage might resemble (without being exactly similar to) the previous stage, the resemblance relation may not obtain across multiple such stages.

#### 5.4 The History of Western Marriage as an Informal Re-anchoring Process

In this section, I have outlined an informal re-anchoring process that, like an explicit re-anchoring procedure founded on the possibility of a formal amendment mechanism, describes a sufficiently continuous dynamics of social change but that, unlike an explicit re-anchoring procedure, works outside the confines of a legalistic anchoring schema. What remains is to apply this account of informal institutional genidentity to the case of Western marriage.

The abbreviated history of marriage showed that the institutional token of marriage in the West exhibited tremendous variation or inconsistency in terms of functions, constitutive rules, and deontological powers. As discussed above, ancient Roman marriage was entered into for the purposes of expanding political influence and intergenerationally channeling land and wealth or else, for commoners, to meet the demands of household production. The constitutive rules or entry conditions for ancient Roman marriage included either a private contract

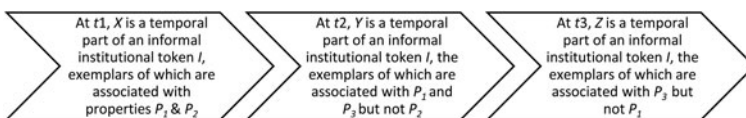


Figure 2. How the indeterminacy implicit in informal, exemplarized statuses can give rise to the sufficiently continuous dynamics of change that characterize the genidentity relation.

or the mutual expression of intent. Ancient Rome was a patriarchy in the strict sense, so that the deontological powers carried by the marriage relation required that a woman and her property were under the ‘hand’ (*manus*) of her husband, who himself remained under control of the oldest living patriarch. By contrast, modern marriages are typically sought for the purposes of companionship and self-fulfillment, the constitutive rules for entry are determined by the state, and the attendant rights and obligations are relatively egalitarian.

If modern marriage is genidentical with ancient Roman marriage, despite being associated with different functions, constitutive rules, and deontological powers, what are the re-anchoring mechanisms that would render ancient Roman marriage and modern marriage as stages of a single, continuous token institution, Western marriage? As discussed, relevant anchoring schemas include but are not limited to legal mechanisms, where the grounding properties of a status are systematically replaced via an explicit amendment process. However, most of the changes to our shared understanding of marriage were driven by piecemeal modifications to the West’s informal *exemplars* of marriage.

Consider Chaucer’s ‘Wife of Bath’s Tale’, as found in *The Canterbury Tales*. Before telling her story, the wife of Bath boldly targets many traditional double standards codified in the traditional institution of marriage (Coontz 2006: 120). Her story depicts a reconfiguration of the institution of marriage as being founded on a principle of mutual ‘sovereignty’. Just as remarkably, the story invites the reader to consider how a queen-led legal system might codify the exemplar of marriage depicted in the text: the tale represents a ‘deviation from legal practice, since medieval courts had exclusively male judges, [insofar as] the king gives power to the queen to act as judge’ (Lipton 2019: 340). Accordingly, Emma Lipton writes, the ‘tale imagines the legal system as hospitable to female authority and as an instrument of potential change’ (2019: 340). The tale not only attempts to informally re-anchor the institution of marriage by way of an exemplar that would more equitably redistribute the deontological powers associated with the status, but also provides an exemplar of a legal system that would formally re-anchor what was, in the very telling of the story, informally re-anchored. It is, in other words, a tale that tells the story about the relationship between storytelling and the law as complementary re-anchoring schemas.

In this way, the history of the institution of marriage in the West is intimately related to the history of the exemplars of marriage as found in story, song, and etiquette books (the wife of Bath convinces her fifth husband to burn an etiquette book called ‘Wicked Wives’). Because this is an article about the possibility of how an institution can remain the same through change and not a history of marriage per se, I can only gesture to the kind of exemplars that made the informal re-anchoring of the marriage status possible: Mark Antony and Cleopatra, Dante’s depiction of Beatrice in *Commedia*, Chaucer’s ‘The Wife of Bath’s Tale’, Martin Luther’s marriage to the former nun Katharina von Bora, Henry VIII, Schiller’s *Kabale und Liebe*, Fichte’s (1794) and Wollstonecraft’s (1792) respective accounts of marriage as a voluntary union of equals, ‘Boston marriages’ (James 1921), *Loving v. Virginia*, the blended family depicted in *The Brady Bunch*, Ellen DeGeneres and Portia de Rossi’s 2008 wedding, and countless

other cultural artifacts exemplarize or otherwise express ways of being married that depart from ‘*real* traditional marriage’, which was primarily ‘an economic and political transaction’ (Coontz 2006: 5–7). In general, but not inevitably, informal re-anchoring via a gradual substitution of the properties associated with relevant exemplars precedes formal re-anchoring via amendments to a legally recognized status.

In this way, if *X* is ‘*real* traditional marriage’ and *Y* is modern, love-based marriage, *X* and *Y* are genidentical because they are linked by formal and especially informal re-anchoring mechanisms that would animate a progressively unfolding institutional process.

## 6. Questions

In this section I briefly address some questions that might arise about the proposed account. First, is informal re-anchoring sufficiently akin to the formal self-amendment process described in section 4? Formal and informal re-anchoring mechanisms generate sufficiently continuous dynamics of institutional change in different ways. Whereas formal re-anchoring mechanisms depend on the following of an explicitly enacted amendment rule, informal mechanisms exploit the ambiguities inherent in the exemplars that indexically define the institution. However, in both cases the changes can be described as resulting from *within* the institution (at least in part): both the self-amending rules and the status-defining exemplars—both of which are endogenous parts of the institution under consideration—are ‘productive’ in the sense that they engender and constrain institutional change from within. Thus, in both cases, the re-anchoring process that characterizes the genidentity relation might be characterized as a *self*-anchoring process.

Second, there may be some concern that informal institutional genidentity would be too pervasive to be informative. Are there conditions by which an institution at  $t_1$  would fail to qualify as genidentical with an institution at  $t_2$ ?

An internal coup d’état, such as Henry IV’s usurpation, can be compatible with the genidentity of an office and/or state even if the usurper acquires power outside the scope of what is legally permissible if the resulting office holder is otherwise sufficiently akin to previous exemplars. By contrast, an external coup d’état tends to undermine the required continuity. Louis the Lion qualifies only as a ‘pretender’ to the English throne, despite his year-long military grip on England and his having been publicly proclaimed king at St. Paul’s Cathedral. The same point could be made with a fictional history of marriage. Imagine that when the Visigoths sacked Rome, they forcibly and abruptly replaced Roman marriage with something that happens to resemble modern love marriage. These two institutions would not qualify as genidentical because they do not exhibit sufficiently continuous dynamics of change grounded in the proposed formal and informal re-anchoring mechanisms. Moreover, because ‘genidentity’ marks a relation of processual continuity, even two institutions that are extremely similar could not qualify as genidentical if their grounds developed independently (convergent evolution in the social sphere).

In this way, there are clear cases in which the genidentity relation obtains and fails to obtain even if there is a (wide) swath of cases in which the question as to whether institutions *X* and *Y* are genidentical is, in Derek Parfit's terms, 'empty' (1986: 214).

Third, in section 2 I noted that the proposal is pluralistic in the sense that genidentity is not intended to displace a conception of 'sameness' grounded in a resemblance relation. However, much more needs to be said about the relation between the epistemic projects supported by these different conceptions of sameness. Here, I note that an analogous tension exists between cladistic and phenetic approaches to biological classification and suggest these discussions might serve as a starting point in trying to understand the merits of exclusionary strategies (Hennig 1966) and pluralistic/synthetic strategies (Mayr 1969; Hull 1970) to understanding their relations. My working assumption is that investigations into the different senses in which institutions *X* and *Y* would or would not qualify as 'the same' would be mutually informative.

On a related note, and on the assumption that there is a reasonably tight analogy between cladistic approaches to classification and the proposed account of institutional genidentity, if we follow Willi Hennig's 'deviation rule' (1966: 57–58, 207), which holds that a stem species ceases to exist if it splits into two daughter species, it would follow that ancient Roman marriage could not be the same institution as contemporary love marriage if, say, medieval marriage precipitated another daughter institution. While this is a concern that needs to be more carefully addressed in another forum, it is worth mentioning that the deviation rule is among the more controversial features of Hennig's phylogenetic systematics (Mayr 1982: 229; Hull 1979: 425–27). If it is granted that *X* and *Y* are phylogenetically or institutionally genidentical, it is unclear why the mere introduction of a branching event during intermediate stages should change this determination.

Fourth and finally, this account of institutional genidentity also raises the question of how the respective processes that ground, for example, institutional, individual, and phylogenetic genidentity relations compare. How, we might ask, is a self-amending legislative process like and unlike an autopoietic process, for example? And while this is a question about which, say, the sociologist Niklas Luhmann would have a great deal to say (1996, 2008), it is also a question that can be deferred.

## 7. Conclusion

I have argued for a conception of institutional identity over time that is founded not on qualitative similarity, but on a process-presupposing notion of genidentity, unpacked in the social sphere in terms of formal and informal re-anchoring mechanisms. In the physical and biological spheres, one can trace the spatiotemporal trajectory of the relatively orderly processes that constitute atoms and chemical elements (physical genidentity), unicellular lifecycles and the ontogenies of multicellular organisms (individual genidentity), and clades (phylogenetic genidentity). Some such processes are relentlessly cyclical, and so the fact that a process-stage at  $t_1$  is qualitatively similar to a process-stage at  $t_2$  is



a reason for thinking that the stages are genidentical temporal parts of the same concrete process. But other processes, such as phylogenetic processes and many social processes, are *productive* in the sense that they unfold in ways that are not always marked by qualitative similarity over time. Productive processes are self-transforming and, occasionally, self-forgetting in the sense that they contain scaffolding that, like Wittgenstein's ladder, is kicked away upon ascent. Thus, while our institutions might be synchronically characterized in terms of a set of grounds, formal and informal re-anchoring mechanisms can lead to the continually successive differentiation and transposition of those grounds over time. As we have seen, though our conception of an icon is anchored in a history of use and even if the first icons happened to be women, the indeterminacy inherent in exemplarization requires only that the status is continuous with its history (which is weaker than being fated by that history). Along these lines and against those who insist that marriage is, by definition, a relation between a man and a woman, we should stress the way in which stages of many institutions are bound by relations of genidentity. Indeed, insofar as the point of marriage is no longer dominated by a sexual division of labor and the synchronic (interfamilial) and diachronic (intergenerational) consolidation of political and material resources, but increasingly focused on the private virtues of love, companionship, and self-fulfillment, it is the restriction of this marriage relation to heterosexual couples that is in fact arbitrary and inconsistent.

This paper has attempted to extend Lewin's notion of genidentity to the social sphere. In doing so, it invites us to think of social ontology as a social process ontology, the objects of which are the kinds of entities that are essentially characterized in terms of their history.

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