

**ON THE LAWS AND CUSTOMS  
RELATING TO MARRIAGE:  
BEING A PAPER READ BEFORE  
THE DIALECTICAL SOCIETY**

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On the Laws and Customs Relating to Marriage: Being a Paper Read Before the Dialectical Society by Richard Harte

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BY  
RICHARD HARTE.

WITH AN APPENDIX.

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1870.

*compare the fables: - A man may kill his wife, - Chap. 5111-0-9 - see also, fables, p. 211  
see also, fables, p. 211 - Chap. on the law, for the position, relation of woman to  
the law.*

## P R E F A C E .

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I PUBLISH the following paper exactly as it was read before the Dialectical Society, because it does not profess to be anything more than "a paper."

I have added an appendix, touching upon points which the course taken by the debate which followed the reading of this paper shows that it is not sufficiently explicit for a due comprehension of the theory of marriage sketched therein.

I publish the whole with my name, because the paper has already been quasi-publicly read by myself, which circumstance makes it hopeless to preserve the anonymous; and because by taking openly the responsibility of uttering the opinions contained in my paper, I hope to shield the Dialectical Society from unfair attacks and unjust accusations, such as some persons and some public journals have already shown themselves not ashamed of bringing against a society which was formed for the purpose of free discussion, which as a whole is not responsible for the opinions of its individual mem-

bers, and which contains representatives of every shade of political, social, and religious opinion. I trust that a sincere desire for the eliciting of truth may not be considered a common attribute so clearly distinguishing the members of the Dialectical Society from the rest of mankind, that any one will hold them responsible as a class for the formation or publication of opinions uttered before them as a body, by so humble a member as

RICHARD HARTE.

## LAWS AND CUSTOMS RELATING TO MARRIAGE.

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MR. CHAIRMAN, LADIES, and GENTLEMEN,

THE subject I have rather rashly undertaken to introduce this evening is one which, the more it is considered, the more intricate and extensive it appears. I feel very strongly how impossible it is for me to do it justice in a short paper like the present; nor can I hope to accomplish more to-night than to trace out, with a light hand, the field over which the subject extends, to make a rough estimate of the evidence most easily adduced, and briefly to state the conclusions to which that evidence seems to point.

In addition to the difficulties which always attend the investigation of complex social phenomena, the subject of marriage has one feature which renders its serious and satisfactory discussion a task more than usually arduous. Although all are willing to allow that the *consequences* of marriage are of national importance and are among the most momentous of political and social phenomena, still the *causes* of marriage are of a nature so essentially private and domestic that



it is extremely distasteful to each to take part in any investigation of the subject; nay more—it is absolutely repugnant to many that any investigation at all should take place. I cannot, indeed, avoid the conclusion that, owing to the many prejudices and vested interests that bear upon marriage, any one who *does* attempt an analysis of the laws and customs relating to that institution, such as will lead to some theory of marriage—that is to say, to some explanation of our practice in the matter—must be prepared for intentional misinterpretation and unmerited obloquy, similar to what, a few years ago, he would have encountered in the fields of religious or political discussion. I therefore beg of you to enter upon the consideration of our subject, as I shall endeavour to do myself, in deep seriousness, with the fearlessness of a clear conscience, and imbued with a spirit of reverence, not for the follies and iniquities with which this institution is incrustated, but for nature, and for that in human nature which makes, or ought to make, marriage a healthy and a holy thing.

It is necessary, for clearness of thought, to have some definite conception of the meaning of the terms we use. For this purpose dictionary definitions are useless, for the object of a lexographer is merely to secure the appropriate application of words. According to a Turkish dictionary, marriage would mean a polygamous union of the sexes; according to an English dictionary, a monogamous union; according to a Tibetan dictionary, a polyandrous union. Dictionaries, in fact, do no

more than point out the denotation of names, leaving out of sight their connotation, to settle which is the function of a true definition; and all we learn from them is that the term *marriage* denotes, in every country, the union of the sexes which is recognized by law and custom.

If we seek for a definition of marriage in works on moral philosophy, we find differences in the statements made regarding it almost as great as the difference between the words used to express the name in the languages in which those works are written. Each moralist portrays a certain form of union, to which, and to which only, he considers the name to be applicable. But, since the moralist uses the term marriage as a mark of the fact that the peculiar form of union which he advocates is in accordance with customs and with laws human and divine, it is evident that he merely *describes* what the dictionary *denotes*, and does not help us to fix the connotation of the name.

True definitions are not to be found either in dictionaries nor in works on moral philosophy, because definitions are not of *words* or of *things*, but of *names*. It is easy, however, to deduce from these two sources a definition of marriage which will serve at least to point out the scope of our inquiry, which, Mr. Mill tells us, is all that can be expected from a definition framed at the commencement of any investigation. The dictionaries tell us that marriage is the union of the sexes allowed by law; the moralists, that it is the

union which is pleasing to God. Now laws are made with a view to the maintenance of order and justice; and men's views of God's wishes are reflections of their own ideas and aspirations. We may therefore define marriage as: THAT UNION OF THE SEXES WHICH IS MOST IN ACCORDANCE WITH THE MORAL AND PHYSICAL NECESSITIES OF HUMAN BEINGS, AND WHICH HARMONIZES BEST WITH THEIR OTHER RELATIONS IN LIFE.

I have dwelt at some length upon this definition of marriage, because it is of the greatest importance in discussing this subject to distinguish clearly between the *thing marriage* itself, and the laws and customs which regulate it. Were this distinction better attended to, much needless dispute and bitterness might be avoided. I may instance the hatred and vituperation incurred by those who propose what they call the *abolition of marriage*—a perfect impossibility on the face of it; for there must always be some form of union more true to our nature and more fitted for our civilization than any other: to discover which form—that is to *reform* marriage—is the utmost that the most radical iconoclast can hope to accomplish. I may also instance the cruel social outlawry incurred by those whose union possesses all the attributes of a true marriage, but who, for reasons of their own, have not gone through the formalities prescribed by the customs of their particular country for those in their position. It is not the ceremonial that makes the marriage in any