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The Current Controversy in Kinship

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Abstract: Two major positions have emerged in the debate about the nature of kinship. One argues that kinship can only be analysed from the framework of the biological necessities of human reproduction. The other argues that this position is nothing more than ethnocentric view of kinship derived from European culture and that only a broader cultural approach can provide a meaningful analysis of kinship. In this approach it is necessary to analyse kinship around the world from a perspective derived from within each different culture. Recent developments have pointed out the inadequacies of both of these positions and call for a new approach to kinship. This article suggests one possible approach that goes beyond the debate between biology and culture. It based upon the complementarity of human social behaviour.

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I would like to begin with a quote from a 1960 article in the journal, *Philosophy of Science*, in which Ernest Gellner began a debate about the nature of kinship. Gellner wrote:

Suppose an anthropologist observes, in a society he is investigating, a certain kind of recurring relationship between pairs of individuals or of groups. (It may be a relationship of authority, or a symmetrical one of, say, mutual aid, or of avoidance, or whatnot.) Suppose the autochthonous term for the relationship is *blip*. The crucial question now is: Under what conditions will the anthropologist's treatment of the *blip*-relationship fall under the rubric of kinship structure? It will be so subsumed if the anthropologist believes that the *blip*-relationship overlaps, in a predominant number of cases, with *some* physical kinship relationship. [Gellner 1960: 187; Italics in original work]

That the anthropological study of kinship ultimately rests upon the biological foundation of human reproduction is not a novel idea. Since the modern study of kinship began in the middle of the 19th century there has been an intimate connection between kinship and biological processes. This relationship continues to be expressed today. A number of anthropologists (e.g., Fox, Goodenough, Holy, Scheffler) have agreed with Gellner that the processes of reproduction, birth, and nurturance, in one form or another provide the essential foundation of kinship. Furthermore, the biological processes often are taken to represent human nature and are seen to provide the necessary constant for systematic cross-cultural comparison. Culture, by comparison, is to be considered an epiphenomenon. It is useful for describing particular systems of kinship and describing human behavioural variety, but it is dependent upon human nature (defined in biological terms) and cannot serve as the framework for comparison. Comparative analysis is the foundation of science. In kinship, for Gellner, et al., this hinges on biology.

On the other side of the debate in the *Philosophy of Science* were John Barnes and Rodney Needham. They countered Gellner's position by arguing that kinship was primarily a matter of culture. It was the interpretation of the processes of reproduction and not

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simply the processes in themselves that constituted kinship. This position would then be expressed by David Schneider in one of the most influential publications concerning kinship since Morgan's *Ancient Society* in 1877. In his *A Critique of the Study of Kinship* (1984), Schneider [1987] argued that the biological framework – held out to be the natural foundation for the analysis of family and marriage relationships around the world – is, actually, an ethnocentric construct. It is a cultural construct based upon Eurocentric notions of reproduction and is not shared by other peoples around the world. The Trobrianders, for example [see Montague 2001], construe their fundamental social relationships without reference to biological processes. Malinowski had long ago pointed out that the male was not a part of the process and Montague makes it clear that the entire system of fundamental social relationships is construed upon cultural factors. People become relatives with rights and responsibilities that can be catalogued as a system of family and marriage relationships without reference to birth and reproduction. Thus, culture, not biology is to be considered to be the 'real' foundation of kinship. This led Schneider to conclude that the proper study of basic social relationships lies in eliciting individual cultural meanings and that kinship, as a field based upon natural physical processes, does not exist.

Schneider's critique was welcomed by those who saw the opportunity to free kinship from the bounds of biology. Feminist anthropologists applauded Schneider [Collier and Yanagisako 1987a] and began deconstructing the notion of gender. Gays and lesbians championed the notion that biology does not set a standard for everybody in their constructions of non-traditional families [Weston 1991]. By the end of the twentieth century, the debate about the nature of kinship had moved out of the academic world into the realm of the courts, politics, and the public discourse. This was partially due to the growing public demand for equal rights in homosexual marriage but another important factor was the spreading use of the new reproductive technologies (NRTs).

In 1978, the first 'test-tube' baby was born and an entire industry of reproduction was born. This brought new possibilities to fundamental social relationships and forced reconsideration of the ideas about basic human interactions. The use of gene transference, *in vitro* fertilisation, embryo transfer, gamete intrafallopian transfer, surrogacy, sperm banks, and frozen embryos have changed the 'nature' of reproduction. These technologies make it easy to separate sex from reproduction, allow a woman to conceive without intercourse, and permit a man to be genetically related to the child of a woman with whom he has had no physical contact. The NRTs also make it possible for children born from the same woman to have no genetic relationship to each other, for a child to have three biological mothers, and for a child to be born decades after the death of its (genetic) parents. All of this has raised the question, 'What is natural?' in kinship.

This is no longer an easy question to answer. If one woman has the DNA from the nucleus of her egg placed into the egg of a second woman from whom the nucleus has been removed, a third woman has the fertilised egg implanted in her womb, and a fourth adopts the child at birth, which of these is the 'natural mother'? Perhaps, all four can be considered the mother of the child. Then what are the social and legal responsibilities for each? These questions are difficult to answer because our traditional views of reproduction that served us so well before no longer apply. This has been made acutely clear particularly in the legislative and judicial system in the U. S.

Judges, juries, and legislators in the U. S. are being faced with increasing numbers of court cases in which the nature and obligations of kinship have come into question. Estimates now suggest that over 75,000 women a year are being artificially inseminated with donor semen and the practice has raised a number of interesting legal issues. In one highly publicised U.S. case, for example, a husband and wife agreed to use the husband's sperm and a surrogate woman to give birth to a child who would then be adopted by the wife. The couple searched for and found a woman whom they accepted as the surrogate. She signed a contract relinquishing all rights to the child once it was born and agreed to payment for her participation. The surrogate was then inseminated under clinical supervision. After giving birth, however, she decided to keep the child. She argued that as the biological mother she had legal rights that superseded her contractual agreements to relinquish the child. It was left to the courts to decide whether a biological parent can claim legal rights to a child after ceding them in a surrogacy contract. The court was forced to query whether motherhood, defined in terms of biological relationships, has precedence over the rights of legal contract [Fox 1993: 53-125]. The lower court rendered its verdict and gave the child to the adoptive parent on the basis that this was in the best interests of the child. It recognised the legitimacy of the contract. The State Supreme Court, however, found otherwise. It invalidated the contract, voided the adoption, and restored the surrogate as the mother of the child [ibid.: 115]. We can wonder what the impact would have been upon this case if the married woman had contributed the egg for the surrogacy.

In another case [Harrison 1995] a lesbian couple raised a child born to one of the women (Thomas S. v. Robin Y. 599 N.Y.S.2d 377 (Fam. 1993)). The biological mother had become pregnant via a gay donor who agreed not to seek "parental rights or obligations," while claiming the right to "make himself known to the child, Ry, if she asked questions about his identity" (188). Originally, the donor lived by the agreement. He visited the child occasionally at the discretion of the women and did not partake in any parental responsibilities. By the time Ry reached age ten, however, the man determined that he wished to play a greater role in parenting. When the women resisted this, he began paternity and visitation proceedings. What are his parental rights? Are they different from those of the biological parent of a child deserted at birth?

In the case of this child, the lesbian parents obviously do not conform to the idealised traditional Western family – the male-female dyad with their biologically related children – and the usual mother-daughter relationship required some redefining. Ry called both women 'mommy' [ibid.: 186]. Should the biological mother's partner be considered a co-mother and should both women be entitled to the rights of traditional parents?

In another case, a judge gave a biological parent custodial rights in spite of a long period of absence and virtually no contact between the parent and the child. Sarah, a young girl, was abandoned by her biological mother and housed by foster parents. Five years later, Sarah's biological mother returned demanding custody of the child. Although the foster parents tried to adopt Sarah, the court turned over custody "to the stranger who was her 'natural' mother" [Coontz 1992: 143].

The court in Sarah's case decided that the biological tie is the natural and primary tie between parent and child. In New York, the State Court of Appeals agreed with this interpretation and denied visitation rights to a previous lesbian partner of a woman with a child upon the basis of the absence of biological ties. But not all judges agree and courts have not decided cases in this way. Some courts in the United States have recognised a

lesbian partner as a parent. In a custody dispute in New Mexico, for example, the court recognised certain parental relationships between a child and the female partner of the biological mother [Harrison 1995: 184]. In this case, two women had shared parental responsibilities and the court decided that this gave the partner rights to continue her relationship with the child even after the women were no longer together.

Similar legal issues have arisen in households of gay men with children. When two men share in parenting of a child and each provide childcare and support are both to be considered the father of the child? And, in regard to the interpersonal relationships in this family, will each be addressed as 'daddy'? Increasing numbers of gay men are adopting children, sometimes contracting with women to bear children by insemination with their own sperm, then adopting and raising the offspring with male partners. In this mirror image of the lesbian couple, the child has two male parents. In terminological systems of different cultures around the world we know that people address the biological female parent and several other women by the same term and, likewise, her husband and several other males by the same term. People may begin to move towards that practice in the West. Obviously, anthropology and, in particular, kinship can provide important models for exploring these new family arrangements.

The households established by gay and lesbian couples have raised questions not only about the nature of parentage, but about the nature of marriage as well. When individuals in a same-sex couple set up a household, adopt or bear children, raise the children, and share all domestic responsibilities, should they be given the same rights as a heterosexual married couple? Should they be granted the right to make life-or-death medical decisions, claim inheritance, share pensions and medical benefits, and provide a defence against sexual abuse? The Hawaii Supreme Court ruled in 1993 that homosexuals had been unconstitutionally denied marriage licenses. The cases that brought the ruling were returned to lower court for trial and had not been resolved when California legislators in 1996 (fearful that Hawaii was about to legalise same-sex marriages) advanced a bill to deny recognition in California to those marriages performed in other states.

The debate about the nature of basic social relationships has also appeared in another area of kinship. In open adoptions, the adopting parents know the biological parents of the child. It is thus possible for both sets of parents to interact on a close, if not daily, basis and for both sets of parents to have a continuing relationship with the child. In the resulting kinship configuration, the child has two sets of parents and the parents have a family relationship with each other. Modell [1994] has referred to this set of relationships as the 'blended family' [ibid.: 236]. Since the passage of the first modern law of adoption by Massachusetts in 1851, the primary model that emerged in the courts attempted to make adoption a jural replication of the family based upon biology. By breaking the ties with the biological parents and creating ties with the adoptive parents, the family of the adopted child was to be 'as if' it were a biological unit. Open adoption challenges this model and "demands creativity about the rules of being related and the meanings of 'mother,' 'father,' and 'kin'" [ibid.: 56]. In the blended family members have had to redefine what it means to be a parent and to define the nature of the kinship relationships between parents.

The increased use of sperm banks has also raised issues in kinship. There is now an increased probability that individuals who are, unknowingly, half-siblings will meet and mate. This problem arises particularly because of a tendency for different women to se-

lect the same physical characteristics at a sperm bank and, consequently, the sex cells of a single male for insemination. The anonymity of donors, a standard practice in sperm banks, results in a number of half-siblings who are not aware of their genetic relationship. Should the children be informed about their heritage? If not, what does one do about the possibility of their meeting and mating? Do the laws governing marriage procedures need to be changed? What about the laws concerning incest? Furthermore, what about the man who donated to a sperm bank and has decided to contact his offspring? Should he have the legal right to do so? Similarly, what rights does a woman donor have? What about the children? Should they have the legal right to know their genetic parents? Do they have any inheritance rights? In Sweden, the child at age eighteen has a legal right to know who the semen donor was but the donor has no rights of legal paternity in the child [Strathern 1992: 25].

Today, in the U.S. more than thirty states have passed laws guaranteeing sperm donors independence from the claims of their genetic offspring. In contrast, few states have passed any comparable laws for egg donation [Hoffman 1996: A7]. This is in spite of the fact that there are numerous known cases of *in vitro* fertilisation in which an embryo has been introduced into a woman who is not the genetic mother [Shanley 1993: 625]. In both cases, however, many questions have been left unanswered about the nature of the relationships among the individuals involved and about the legal implications of these relationships. Fears abound among recipients that a donor could turn up one day and claim a child while donors fear that a child conceived with their sperm or egg may end up “knocking on their door in 18 years, looking for financial or emotional succour” [Hoffman 1996: A7].

What we can see from the above situations is that we are living in a new world in which the relationships between parents and children and husbands and wives are in a state of flux. The NRTs and new family arrangements have produced situations with unclear legal rights and responsibilities for the people involved and the courts in the U.S. are now desperately searching for what is ‘natural’ to determine the legal priorities. One path this search is taking is the attempt to establish that the nature of kinship is biological, giving priority to genetics or gestation in framing law. But this is misguided. As Marilyn Strathern [1992] has cogently pointed out, what is natural in kinship has become indeterminate. The relationship between biology and culture has become so entangled that the conventional approaches exemplified in the debate initiated by Gellner in the 1960s no longer apply. We should no longer argue about whether it is culture or biology that is the basic nature for kinship. What we must face now, as Strathern [1992] and others have pointed out, is that kinship deals with both. But how?

I view the situation today in kinship as one similar to one that confronted physics at the beginning of the last century. Before the beginning of the 20th century, the study of the interrelationships between physical objects had been based upon a Newtonian absolute spatial framework. The development of new technologies around the end of the previous century, however, produced results that challenged this conception of space and led to the development of a relativistic space-time framework. At the end of the 20th century, new technologies have produced results that challenge the old theoretical models of kinship and call for new frameworks for understanding the fundamental interrelations between humans. I believe that kinship must also move to a relativistic framework. It is time to leave the notion of an absolute framework of human nature defined by biology and develop a relativistic, biological-cultural framework.

David Schneider paved the way towards the creation of a relativistic framework for kinship by his critique of kinship. He made clear the ethnocentric bias of the biological framework of previous kinship analyses. This was an important step towards a new framework for the 21st century. But he offered no relativistic alternative. His position of cultural relativism is not relativistic. It is what Latour [1993] has called 'absolute relativism' and I have referred to as 'localcentric' [Ottenheimer 2001] or 'monistic' [Ottenheimer 1995]. In his critique of the biological basis in previous kinship analyses, Schneider proposed a cultural approach. In this approach, the investigator derives the concepts for the examination of social relationships from the symbols in which the relationships are imbedded. That is, one derives the principles of kinship from the ethnographic data of the culture under investigation rather than assuming a definition of kinship derived from the culture of the investigator. At first glance this appears to be a relativistic antidote to an absolutistic, ethnocentric European biological approach. But, under close examination, it is not. It turns out to be simply a substitute of one form of ethnocentrism for another. Schneider's approach is not relativistic. It is not relativistic because it calls for only one, true framework for analysing a set of data.

When someone chooses to analyse social behaviour in terms derived from the culture under analysis, as Schneider suggests doing, one doesn't avoid ethnocentrism, one simply changes its location. The kinship analyst using the local culture's terms and framework in an investigation of social relationships is being localcentric rather than Eurocentric. The investigation, furthermore, if restricted to viewing the social data from the one perspective, is simply utilising another form of absolutism. The analyst is being constrained to the one 'true' way for analysing the data, only it is from within rather than from without the culture being analysed. If the claim is that there is only one true way to look at a culture, whether it is from within or without the culture, the approach is ethnocentric and absolutistic, not relativistic. The only change that has occurred in Schneider's approach to kinship is in shifting the focus of the analysis from being Eurocentric to being localcentric.

The distinction I am drawing between a relativistic and an absolutistic approach to data may be made clearer by reference to a widely known distinction in anthropology that has been made between the concepts: etic and emic. The words, invented in 1954 by Kenneth Pike [1967], were derived from the words phonetic and phonemic utilised in linguistics. In investigating a language, the linguist can utilise the external framework of points of articulation of the vocal tract to discriminate and describe the sounds of the language. Such a procedure is known as articulatory phonetics. The linguist can then use an internal framework to discover how the sounds are grouped to change meaning within the language. This procedure is known as phonemic analysis. This analysis requires an internal viewpoint. It necessitates knowing what meanings are assigned to the collection of sounds utilised by speakers of the language. No amount of investigation from the external viewpoint will provide this information. Pike extended the linguistic phonetic and phonemic approaches for more general purposes and coined the terms 'etic' and 'emic.' These were meant to represent the external and internal viewpoints, respectively, in an investigation of human behaviour. While Pike points out that "etic criteria may often be considered absolute" [Berry 1990: 85], there is no doubt that he saw one being derived from the culture of the investigator while the other is related to the internal characteristics of the system under investigation. For Pike, both "...are of value; neither is more important than the other" [ibid.: 86]. Furthermore, like stereoscopic vision, the two different

approaches provide distinct images of the data that together provide a greater dimensionality to the overall picture than either can provide by itself [Pike 1967: 41]. Pike thus saw the external and internal approaches to analysing human behaviour in relativistic terms. Each represented a particular perspective and each has value for interpreting or describing data. One of them is made into an absolute frame of reference when it is ascribed with a greater ontological status than the other and considered the one true way of analysing or describing data.

Analytical concepts in kinship can equally be derived from the culture under investigation or from the culture of the investigator. The former are, in Pike's terms, emic concepts while those derived from the analyst's cultural heritage are etic concepts. Etic concepts have been used for cross-cultural comparisons while the emic concepts have been restricted to the investigation of the culture under analysis. The former have been granted a scientific or even an absolutistic status by some anthropologists as if they were objective, culture-free concepts. Schneider evidently recognised that ultimately what is involved is two emic sets of concepts. He knew that the notion of an objective, culture-free analysis is an illusion and recognised that what are called etic concepts are nothing more than the notions from the external analyst's culture. Thus, what is involved are the emic concepts of the people of the culture under investigation and the emic concepts of the investigator. But, instead of treating the two in a relativistic manner, he denigrated the etic approach in kinship and conferred upon the internal viewpoint the greater ontological status; making it the one true approach. This is the critical point at which Schneider's critique of kinship fails. It fails because it does not provide a relativistic alternative to the Eurocentric, absolutistic work he so strongly decried. If anthropological analysis is to succeed in producing significant statements about kinship, or any aspect of human behaviour, the anthropologist must stop thinking in terms of one 'true' framework, whether it be Eurocentric or localcentric. I hope we can move beyond the ultimately unproductive argument over whether it is the culture of the investigator or the culture under investigation that has the 'truth'.

The problem with cultural relativism as a framework for the study of kinship may be made more apparent by returning again to the world of linguistic phenomena. Important contributions to the study of language have been made through the utilisation of articulatory phonetics. In this approach to language, sounds made by humans are investigated by reference to the physical makeup of the vocal tract. The sound /p/, for example, is described as the brief stopping of air pushed up from the lungs by pressing the lips together. This approach can readily be seen to be derived from European culture and, like the biological models for studying kinship, be considered to be Eurocentric. Suppose now that an ethnographer discovers a group of people who describe human speech to be the result of small, invisible spirits located in the vocal tract of each person. This provides us with a different, non-Eurocentric view of language. Do we now declare phonetics to be a vacuous concept without analytical utility since it is derived from a Eurocentric view of the way sounds are created by humans? Isn't that what David Schneider has asked us to do in the case of kinship? That articulatory phonetics has been developed within a particular culture should not mean that it has no analytical utility. Nor does the fact that this framework for analysing human speech has been developed within a particular culture confine it to an investigation of only the language of that culture. Nor does its source make it incapable of describing universal characteristics of language. We can recognise that it is both a framework developed within a cultural tradition and a

framework that can provide useful insights into the characteristics of language across cultures. It, as Pike recognised, provides a means for describing universal characteristics of language while neither being an absolute framework nor one which pretends to describe some absolute reality. Likewise, the study of kinship from a Eurocentric perspective can provide a means for analysing behaviour across cultures. It need not be abandoned because the analytical framework is derived from a particular cultural tradition.

The localcentric approach of Schneider is different from a Eurocentric approach to kinship in two major ways: (1) There is no assumption about biological relationships being the basis of the social world, and (2) there is no claim that the local framework has universal applicability. In fact, in regard to the second point, it is just the opposite. The claims are that the concepts of social behaviour are a cultural matter and that the cultural framework of the people from the society under investigation is the only appropriate one for the data. These differences, however, are of little consequence in regard to the major issue of this essay. The significant point for the argument over whether the approach is relativistic or not is that if the approach claims to be the one 'true' framework for analysis of the data it is not a relativistic approach. Whether the 'true' framework is localcentric or Eurocentric, cultural or biological, internal or external, does not matter. If either framework is claimed to be the only appropriate one, it is not relativistic. In Schneider's attempt to provide an alternative to the Eurocentric analyses of kinship, the conceptions, categories, and values of analysis have simply been shifted from one culture to another. We are still told the one, proper way of analysing the data. Thus, in spite of appearing so from its name, cultural relativism is not relativistic.

Not being relativistic is, in itself, no reason for criticising cultural relativism. But, lacking this characteristic, it fails to provide an important component of any attempt to make any scientific use of the data derived from cultural analysis. It lacks generalisability. If we are limited to the examination of each culture in the terms of its own categories and values, how is one to compare the categories derived from different cultures? How does one construct a framework with universal application for analysing kinship? To achieve the level of generalisation necessary for an adequate analysis of human social relationships, comparison of the different categories or units derived from the particular culture is required. In other words, once investigators have uncovered the categories or units from various cultures, what categories or units does one use to compare these? Obviously, units of comparison will have to be selected from some particular culture and applied to others. Thus, the problem of ethnocentric bias reappears at higher levels of analysis, and cultural relativism is unable to solve it. It provides no mechanism for comparing data cross-culturally. If the Eurocentric concept of kinship is meaningless because it does not provide the local interpretation of social relationships, the localcentric conception of social relationships is powerless because it is restricted to a singular cultural perspective regarding social relationships. If the Eurocentric conception of kinship is vacuous, the cultural relativistic conception is impotent.

To construct a productive framework that avoids the limitations of both absolutistic approaches of biology and cultural relativity, I have turned to a relativistic model based on the notion of the complementarity of light. It was the philosopher-physicist Niels Bohr who had first noticed similarities between contemporary physics and kinship. He recognised that understanding the interaction of subatomic particles and the comprehension of the fundamental relationships of human behaviour require relativistic frameworks. In both

cases, objectivity is not possible and uncertainty exists due to the intimate interaction between the observer and the observed. He also noticed a complementarity in both physics and kinship. Both the interactions among subatomic particles and the social interrelationships of humans demonstrate a duality that emerges in the interplay between data and the investigator. Quantum physicists recognise complementarity in the nature of light. Light manifests two distinct natures under different experimental conditions. Sometimes it acts as if it is made up of particles, and sometimes it acts as if it were made up of electromagnetic waves. Bohr recognised that the seemingly contradictory behaviours are the result of the dual nature of light emerging in different experiments. The experiment or framework one utilises in examining the nature of light will partially determine what the results will be. The different results are equally 'true'. The fundamental nature of light is considered to be both particle-like and wave-like. In a similar way, kinship reveals a complementarity in the nature of social relationships [Bohr 1938]. Like investigations into the nature of light, social research involves an intimate interaction between the investigation of the observer and the phenomena observed. Human nature must be considered to consist of an intimate interaction between biological and cultural aspects of life and frameworks utilised in the investigation of human social relationships reveal this distinct dualistic nature of life. We do the complexity of human behaviour an injustice and hinder the possibility of our understanding it if we assume, as we have in the past, that either one or the other represents the true nature of kinship.

What are the implications of this? The judges trying to determine the legal responsibilities of the various parties involved in a birth through the new reproductive technologies can no longer rely on any deductions based simply upon one culture's judgement about human nature. The world of the 21st century requires legislation derived from an understanding of kinship principles. This can only be achieved through comparative analysis of the different systems of marriage and filiation around the world and the recognition of the intimate relationship between biology and culture.

In conclusion, I would like to point out that, any significant statements about human behaviour in the 21st century requires a new understanding of the primary elements and relationships of human social behaviour. Kinship, as the study of these elements and relationships, must move beyond the absolutistic frameworks of the past and turn to a relativistic perspective. I have suggested one such framework. It will have immediate and important effects in the world well beyond the current controversy in kinship.

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