

## Class Discussion 9.18.07: Marriage in Social and Legal History (Cott and Hartog)

Nancy Cott -- social historian and feminist. Sees marriage as mini-monarchies, people were so spread out in the states so marriage was their own little government (with the head of the household as 'king'). Instead of telling a story, Cott seems to be telling readers about the different aspects of marriage (contracts, public/private, property, etc.). No chronology in text.

Hendrik Hartog -- lawyer, unhappy with the system of marriage as it currently stands, deconstructs how marriage came to be the way it is today.

Is marriage propaganda used to entice people to marry?

- Encourages people to marry by suggesting marriage creates better citizens, marriage does create people who benefit society (stimulates population growth, encourages 'licit' sexual choices, etc.)

Slaves' lack of rights to marry

- Slave marriage denied to keep slaves dependent and deny them power in society.
  - Cott says slaves couldn't marry because they couldn't consent, it would make them free if they could marry. Stresses the personhood of marriage.
  - Hartog says a slave can't have a household because he has little legal power to protect that household. Stresses the object hood of marriage (i.e. who owns what)
- Idea of marriage in the 1400's is about property. Slaves cannot marry because they are property, so they do not have contractual power.

States' Marriage Laws

- All the different states have different laws when it comes to marriage and divorce, so people would travel to the states that benefited them legally.

Eligibility for same-sex civil union:

1. one member must be resident of commonwealth of MA, the couple must swear they will be living in MA
2. Consanguinity laws (no marriage between cousins, etc.)
3. Cannot marry if the marriage wouldn't be legally binding in your own state of residence. (some states recognize MA civil unions, some don't)

Transgender rules concerning marriage—states have different laws, some states issue new birth certificates upon sex-reassignment, which affects ability to marry depending on the sex of their partner.

Views of marriage:

- Cott makes marriage desirable throughout her text (makes it seem like an attractive option), even though this is not a typical feminist standpoint. This seems like a 21<sup>st</sup> century view of marriage imposed upon the history of marriage.
- Hartog's view of marriage as property reflects a more typical feminist viewpoint. Feminists tend to see marriage as property.

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- Defense of marriage—desire to revive marriage as an institution of true love, soul mates, “tradition” etc. (i.e. less of a business-like view with contracts, rights, etc.)

Marriage as a status and a public institution, not just a contract between individuals (Cott 101).

- Is marriage desirable mainly because of the status it grants to people? The government gets to regulate social standing (according to Cott), so the government grants status to people via marriage.

Private vs. public in marriage

- In the past, Puritan Americans would label themselves as married (even if an actual marriage had not taken place). So the public-ness of marriage now rests upon its un-negotiability (since common law marriage is no longer accepted socially).
- Cott and Godbeer both agree that there is not much privacy among the puritans. Semi-autonomy through privacy—as a couple, you have the right to privacy, which means you can decide as a couple what sexual acts you want to participate in, etc.
- Private health insurance, importance of people to keep it private (against socialized health care), why is it tied to marriage? This goes along with the fluctuation of marriage between private and public spheres. Are the two tied together because of a notion of privacy? Marriage is inherently public, even with a move towards privacy. It will always be public because it’s a public institution.
- Companionate marriage—move towards privacy because of this? The two are definitely related, companions work out the terms of the marriage on their own in private.

Femme covert: female covered over by the personhood of her husband—can’t own anything in her own name (including her body and labor) so she has always already consented to sex (therefore spousal rape is justified). Also, her wages are paid directly to her husband, she can only speak in court if she is speaking on behalf of someone lower than her—either a non-white person or a child; can’t speak in court for herself. \*\*No voice in her own personhood or property.

Femme sol: single female who could own property, have a passport, speak in court, etc.

Marital labels designed as part of the feudal property system. Part of the enticement of marriage is that it made you practically aristocratic (Married male was referred to as a baron).

Important Cases

- *Griswold v. Connecticut* (1965)—allows for privacy in marital bedroom—depends on the privacy of the bedroom; the couple can decide whether or not to use birth control within their private bedroom (Cott 198).
- *Eisenstadt v. Baird*—no discrimination based on marital status, therefore *Griswold v. Connecticut* applies to individuals as well, so individuals have the right to make choices about reproduction (i.e. allowed individuals to use birth control).

- Roe v. Wade evolves out of these two previous cases.

### Inequalities in the marriage system

- Hierarchies based on old system of feudalism, justified by “God’s” word, colonialist viewpoint of gender and race hierarchies. Religion factors into this as well (biblical texts support a dependent role for the wife).
- This is why its so surprising that marriage is so enduring, because it is all about “structured inequality”. This model for marriage (as structured inequality) is less and less persuasive; perhaps this is why marriage continues to endure. People tend not to see the “dirty laundry” of marriage’s past
- Resignification of marriage as agency? (I.e. if we change the way we think about marriage to see it more in terms of rights and benefits, does this help ‘sell’ it as an institution?)

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