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Marriage and the Nation

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Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2002).

Nancy F. Cott is a distinguished historian, holding the Jonathan Trumbull Professorship of American History at Harvard University. She is also a strong proponent of gay marriage. The main theme of *Public Vows: A History of Marriage and the Nation* is that arguments from “tradition,” which insist that marriage is confined to a man and a woman, cannot stand against the argument from history – a history of change over time. She marshals an impressive array of historical data to show that change, in accordance with the equality principle at the heart of the American constitution, inevitably leads to recognizing equal rights to civil marriage of gay persons.

Professor Cott gave a virtual summary of her book as testimony in the suit *Perry vs. Schwarzenegger* in the US District Court of Northern California, which challenged Proposition 8. In her testimony and her book, she sets out to show that from the beginning of the settlement of North America by English colonists, legislators determined that marriage was a “civil thing,” because it dealt with matters of property. Even though most colonists held to the ideal of Christian monogamy, colonial legislators rejected religious authority over marriage. The State recognized marriages performed in a religious setting but no legality was conferred apart from the state. It was the state that set the terms of marriage, including who has a right to marry.

Chapter 1, entitled “An Archaeology of American Monogamy,” sums up Christian monogamy as resulting from “learned knowledge that deemed monogamy a God-given but also a civilized practice, a natural right that stemmed from a subterranean basis in natural law” (p. 9). This is the extent to which she accords any value to the Judeo-Christian “tradition” on marriage, which was worked out not just in a few centuries but millennia. Cott dismisses the salience of this view among the colonists, regarding it as the result of mere common sense. She cites

Clifford Geertz's definition of common sense as "what the mind filled with presuppositions concludes." Cott further states that lifelong monogamous marriage is a minority view and practice among world cultures. (She might also note, but fails to, that no culture has ever endorsed gay marriage.)

There is, however, one element of Christian marriage which she acknowledges as crucial to her argument for same sex marriage: mutual consent. She deftly shows how closely tied were views on mutual consent between husband and wife and consent at the heart of a democratic polity. Regardless of whether Christians in the US lived their marital consent in a covenantal way, it was the contractual consent advocated by John Locke and other Enlightenment theorists that most deeply influenced the American revolutionaries. In subsequent chapters Cott shows how this worked to the detriment of Christian marriage. Nevertheless the emphasis on consent had an important bearing on the abolition of slavery and the restoration of the right of free slaves to marry – even if the achievement of these goals also required a dedication to the Christian vision of equality in the image of God.

A large part of the remainder of *Public Vows* details, on the one hand, the institution of laws both to criminalize interracial marriage and later to abrogate them. Cott observes that the "English colonies stand out as the first secular authorities to nullify and criminalize intermarriage on the basis of race or color designations" (p. 41). On the other hand, she details, in the name of increasing voluntary consent, the loosening of the marriage bond to give greater access to divorce and alternate sexual lifestyles such as co-habitation. "Monogamy had been the dividing line between sexual morality and immorality in the law for hundreds of years" (p. 196). In the mid 20th century, "liberty, privacy, consent, and freedom" became the hallmarks of marriage. These developments were greatly accelerated by the Supreme Court decisions expanding access to contraception and abortion. As the court stated in *Eisenstadt vs. Baird*, "The marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional make-up" (p. 199).

Cott addresses another important theme in the history of modern marriage: the increasing independence of women from what is called "coverture," by which the wife is seen as mainly an appendage of her husband and not a subject in her own right able to hold property in her name. The final chapter, "Marriage Revisited and Revised," shows how women endorsed the contractual nature of marriage as a way of restructuring it to get rid of the inequalities built into "coverture." Again *Eisenstadt vs. Baird* was pivotal. According to its equal-protection-under-the-law argument, "the law of marriage no longer gave bodily possession of the wife to her husband" (p. 211). At this point Cott speaks of a particular model of marriage as finally "disestablished."

This model, in fact, ignores altogether the body of both husband and wife. In Christian marriage, the man and woman together pledge total, mutual exclusive consent to each other. This mutual surrender includes the gift and acceptance of fertility and those acts per se ordered to procreation. Only if the woman is accepted in the fullness of her personhood as woman, and the man as man, can a true equality exist, leading to communion. The false autonomy seized in contraceptive acts, which may initially flow from an act of consent colored by self-interest, actually results in the woman becoming an object of pleasure rather than a gift in the relationship. When the reality of the gendered body is ignored, potentially any relationship of self-interested pleasure can be justified.

With marriage shorn of its traditional covenantal content, why, Cott asks, does its appeal still persist? In her view, "The resiliency of belief in legal marriage as the destination of a love

match and as a safe haven begs for explanation, even when hyperbole about love seems to demand none” (p. 225). It is in this social clinging to the superiority of legal marriage over comparable relationships, and the privileged status accorded it by government, that Cott sees the basis for calls to legalize same-sex “marriage”. Even though she states (with approval) that procreation never entered the legal definition of marriage, she might ask if the gendered body does not, indeed, play a fundamental role in the ordinary man and woman’s view of marriage, and might be preferable to a radically dualist restructuring of marriage today.

Through her meticulous scholarship – whether one agrees with her views or not – in *Public Vows: A History of Marriage and the Nation* Nancy Cott has provided an invaluable resource for anyone wishing to learn about the development of marriage law in the United States.

