UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

EDITH SCHLAIN WINDSOR, in her capacity as Executor of the estate of THEA CLARA SPYER Plaintiff, v. THE UNITED STATES OF AMERICA, Defendant.	**No. 1:10-cv-08435(BSJ)(JCF)**

EXPERT AFFIDAVIT OF NANCY F. COTT, Ph.D.

I, Nancy F. Cott, Ph.D., hereby depose and declare as follows:

I. BACKGROUND AND QUALIFICATIONS

1. I am presently the Jonathan Trumbull Professor of American History at Harvard University. I have been retained by Plaintiff's counsel in connection with the above-referenced litigation. I have actual knowledge of the matters stated in this Affidavit and could and would so testify if called as a witness.

2. My background, experience, and list of publications are summarized in my curriculum vitae, which is attached as Exhibit A to this Affidavit. In the past four years, I have submitted an expert report, been deposed as an expert or testified as an expert at trial in *Perry v. Schwarzenegger*, No. 09-2292 (N.D. Cal.), and *Commonwealth of Massachusetts v. U.S. Department of Health and Human Services*, No. 09-11156 (D. Mass.). I have also been retained as an expert by counsel for the plaintiffs in *Pedersen v. Office of Personnel Management*, No. 3:10-cv-01750-VLB (D. Conn.). I am rendering my expert services in this case on a pro bono basis, and am receiving reimbursement from counsel for plaintiff, Paul, Weiss, Rifkind, Wharton & Garrison, LLP, for any out-of-pocket costs associated with my rendering expert testimony.

3. In 1969, I received a master's degree in History of American Civilization from Brandeis University. In 1974, I received a Ph.D. degree in History of American Civilization

from Brandeis University. Since that time, I have researched and taught United States history. I taught for twenty-six years at Yale University, where I gained the highest honor of a Sterling Professorship, and in 2002 I joined the faculty at Harvard University.

4. I teach graduate students and undergraduates in the area of American social, cultural and political history, including history of marriage, the family, and gender roles. I also am the Pforzheimer Family Foundation Director of the Schlesinger Library on the History of Women in America, Radcliffe Institute for Advanced Study.

5. I have received multiple fellowships, honors and grants, from a John Simon Guggenheim Memorial Foundation Fellowship in 1985 and National Endowment for the Humanities Fellowship in 1993, to a Fulbright Lectureship in Japan in 2001 and election to the American Academy of Arts & Sciences in 2008.

6. I am the author or editor of eight published books, including *Public Vows: A History of Marriage and the Nation* (Harvard Univ. Press, 2000), the subject of which is marriage as a public institution in the United States. I also have published over twenty scholarly articles, including a number discussing the history of marriage in the United States. I have delivered scores of academic lectures and papers over the past thirty-five years on a variety of topics, including the history of marriage in the United States. I also have served on many advisory and editorial boards of academic journals.

7. I spent over a decade researching the history of marriage in the United States, especially its legal attributes, obligations, and social meaning, before and while writing my book *Public Vows: A History of Marriage and the Nation.* The claims and evidence in this Affidavit come principally from the research for that book and are more fully documented there and in an article based on that research, "Marriage and Women's Citizenship," which was published in *American Historical Review* in 1998. The numerous historical sources, legal cases, and government documents that I studied and analyzed while researching and writing the book, as well as the other scholars' work that I consulted, are cited in my published footnotes in the book and article. In addition, I have supplemented my past research with more recent reading and research on matters referenced in this Affidavit. In preparing to write this Affidavit, I reviewed *Public Vows*, "Marriage and Women's Citizenship," and certain of the sources cited therein, as well as the materials listed in the attached Exhibit B. I have also relied on my years of experience in this field, as set out in my curriculum vitae, and on the materials listed therein.

II. SUMMARY OF EXPERT OPINIONS

8. I have been asked for my expert opinion concerning the United States' history of regulating marriage, including both by state governments and the federal government. My conclusions are as follows:

- In the United States, marriage is a double-facing institution, both public and private. It is a public institution in that it is constituted by the state; its form and requirements are created by public authority, and it operates as systematic public sanction, bringing rights and benefits along with duties. At the same time, marriage signifies a freely-chosen relationship between two individuals and founds a private realm of individual liberty and familial intimacy.

- The institution of marriage in the United States is a particular, not a universal form of the institution, and it has been defined and controlled at the state level, historically, in accord with premises established by the U.S. Constitution. Marriage has been shaped by legislators and judges in the various states to adjust to changing needs from the founding of the nation until today.

- States' variance today on validating marriage for couples of the same sex resembles and is parallel to the history of states' divergences with respect to many other dimensions of marriage validity.

- States have varied from one another in defining the basic elements of marriage, including whether or not ceremonies are required for validation, how spousal roles shall be defined and enforced, what other 'race' may marry a 'white' person, how marriage may be dissolved, and other issues.

- Heated controversy often surrounded changes to the features of marriage on which state laws diverged in the past. The controversies today focusing on marriage between couples of the same sex, and state variance on the matter, resemble these past disagreements.

- Despite the extent and frequency of states' variation in definitions of marriage, prior to 1996 the federal government never stipulated a uniform definition of

marriage for purposes of federal law, and instead relied upon states' determinations.

- In defining marriage for all federal purposes, the Defense of Marriage Act represents a substantial deviation from all the prior history of federal-state relations in marriage regulation.

III. BASIS AND REASONS FOR OPINIONS

A. Exclusive State Power over Marriage Rules and Transformation of Status Upon Marriage

9. Before the American Revolution, colonial legislatures (rather than Great Britain's Parliament) set the terms of colonists' marriages. When the United States declared its independence, each state set up marriage laws and regulations among its very first founding legislation. These laws were often very detailed, indicating each state's wish to define the institution for its citizens and thus to create public order and social benefit through the vehicle of marriage.

10. During the framing of the U.S. Constitution in 1787, the topic of marriage was not raised in the process of defining the powers of the federal government. The Constitution's silence on marriage rules conceded states' sovereignty over the area. States had exclusive power over marriage rules as a central part of the individual states' "police power"—meaning their responsibility (subject to the requirements and protections of the federal Constitution) for the health, safety and welfare of their populations.

11. Marriage in the United States has always been governed by civil rather than religious authorities. Whether a marriage is recognized or not by a religion does not dictate its legality or validity. Religious authorities have been authorized to act as deputies of the civil authorities in performing marriage ceremonies, but not to determine the qualifications for entering or leaving a legally valid marriage.

12. Marriage in all of the United States has always been a consent-based, voluntary choice of the partners that embodies both a contract and a status. Although marriage must be based upon mutual consent, it cannot be modified or ended thereby. The state prescribes the obligations as well as rights of marriage in its dual role as a party to and guarantor of the couple's bond. For couples who follow the marriage regulations prescribed by the state, their

wedding formally and legally transforms their status, giving each of them a new legal standing and a distinctive set of obligations and rights pertaining to them as married persons.

B. Purposes of Marriage

13. Societies in various times and places have defined marriage in different ways. Marriage is an institution of human culture and thus can vary as much as human cultures vary. What is seen as legitimate marriage in a given society may be, for instance, polygamous or monogamous, matrifocal or patrifocal, patrilineal or matrilineal, lifelong or temporary, open or closed to concubinage, divorce-prone or divorce-averse, and so on.

14. In the United States, the institution of marriage is a public/private hybrid. It is public both in the sense that a couple makes vows publicly before a witness, and in that the state makes certain vows to the couple about the protection and support of their relationship in granting them a marriage license. By its very definition it is a public institution that the state has authorized and uses to regulate the population and the public and to dispense benefits. At the same time, marriage is the exercise of an individual liberty and the foundation of the private familial realm.

15. Marriage in the United States has served numerous complementary purposes and functions, among which the relative salience has changed over time. No one outside a particular couple can describe their private, subjective experience of "being married," since this may vary as much as individuals vary. Historians can, however, document how the institution of marriage has functioned, changed and been defined by law. Among the purposes that marriage and its regulation by civil authorities have served over this country's history are: to create stable households; to create public order and economic benefit; to legitimate children; to assign providers to care for dependents (including the very young, the very old, and the disabled) and thus limit the public's liability to care for the vulnerable; to facilitate property ownership and inheritance; to shape the "people," or to compose the body politic; and to facilitate governance (state regulation of the population).

16. In the interest of public order, state governments have bundled together legal obligations with social rewards in marriage to encourage couples to choose committed relationships of sexual intimacy over transient relationships, whether or not these relationships will result in children. In the Anglo-American practice of four or five centuries ago that underlies our contemporary system, marriage was designed to be a regulatory institution that

established recognizable household heads who would take economic responsibility for their dependents. In the early United States, state governments encouraged marriage (among the free white population) because maritally-organized households organized the broader population under male household heads and promised economic stability, both of which functions contributed to the common good. These benefits advantaged the state in the past when households more often included large numbers of people, as well as now, when most households and families are small.

17. Today, too, the purpose of the state in licensing and incentivizing marriage is to create stable households in which the adults who reside there are committed to one another by their own consents and will support one another as well as any dependents they may have.

18. Over time, marriage has developed a social meaning in which the state places a unique value on the couple's choice to join in marriage, to remain committed to one another, to form a household based on their relationship, and to join in an economic partnership to support one another in the material needs of life.

19. The ability or willingness of couples to produce progeny has never been required for or necessary to marriage under the law of any American state. For example, no state ever barred women past menopause from marrying or allowed a husband to divorce his wife because she was past childbearing age. Men or women known to be sterile have not been prevented from marrying. Nor could a marriage be annulled for an inability to bear or beget children.

20. In the past, older adults who were widows and widowers remarried whenever a willing mate could be found; although it was often clear that no children would result, marriage was desirable because a married couple together had the wherewithal to carry on a stable household. In our contemporary post-industrial economy, many divorced or widowed older adults marry when they are past childbearing age, usually for reasons of intimacy and stability. Ever since the 1920s, when reliable (if not always convenient) contraception became available to those who sought it, sexual intimacy has been separable from reproductive consequences even for those of reproductive age. Since then—and even more commonly since the 1960s when contraception became more efficient and widely available—couples with no interest in or expectation of childbearing marry and re-marry.

21. The notion that the main purpose of marriage is to provide an ideal or optimal context for raising children was never the prime mover in states' structuring of the marriage

institution in the United States, and it cannot be isolated as the main reason for the state's interest in marriage today. Nor is it historically correct to say that a biological link between parents and children is a necessary foundation for marriage or the principal or sole reason why marriage is good for society.

22. Arguably, states' marriage rules with respect to children have aimed more consistently at supporting them than producing them. While having children was never a requirement, support for any child born or adopted into a family always has been an obligation of the household head. Today, it is a shared responsibility among the family, as much in the case of divorce or separation as in an intact marriage. Such rules have put a critical limit on the public's responsibilities for the young and the dependent.

23. Historically, marriage between the parents of a child was required for the child's "legitimacy." Marriage drew the line between legitimacy and illegitimacy—a function that was particularly important among the propertied who were concerned about "legitimacy" in lines of inheritance. Today, parentage can be determined for all children regardless of their parents' marital status, and both adoption and reproductive technology create parents apart from biology. The law requires all parents to support their children, regardless of the circumstances in which those children came to be.

C. Diversity in States' Marriage Rules

24. Marriage rules have varied from state to state, and legislators and judges in every state have changed those rules and interpretations significantly over time. Despite these many changes to the terms of marriage, the federal government has accepted the states' differing definitions of marriage for purposes of federal law.

25. Since the founding of the United States, different states have set, interpreted, altered and adjusted marriage terms and rules in response to local circumstances and preferences. Over time there have been many nontrivial differences in states' laws on who was permitted to marry, what steps composed a valid marriage, what spousal roles should be, and what conditions permitted divorce. State marriage laws arose and responded to changes in the political and economic environment, religious forces, changes in the ethnic composition of a state's residents, and many other local conditions. (In Massachusetts and New York, for example, after the large Irish immigration of the 1840s, the Catholic Church became a distinctive pressure group, its views influencing legislators regarding divorce policies.)

26. Regional and cultural differences, as well as state legislators' understandings of their states' interests, resulted in a patchwork quilt of marriage rules in the United States. Sometimes states purposely distinguished their marriage rules from those of other states for moral or political reasons, to compete in drawing population to their borders, or with the intent to reap economic benefit for their own state.

27. The legal historian Hendrik Hartog has observed of state practices in the nineteenth century, "Legislators and courts tinkered constantly with the rules of marital property, the rules regarding child custody, and those regarding divorce. In some states, particularly in the Midwest and West, lawmakers appear to treat the law of marriage not as an unchangeable inherited structure but, rather, as a testing ground for changing social theories." For example, the writers of California's first constitution in 1849 decided upon a marital regime of community property not only because it was familiar to the Mexican and Spanish settlers there, but also because they hoped that this regime would appeal (more than a common law system of husband's sole ownership of marital property) to the young white women whom they hoped would migrate to their state.

28. Competition and differentiation were not the only modes of states' expressions of their sovereignty over marriage rules, however; imitation was another. Marriage and divorce reform waves swept over states at various times, and as states looked to each others' laws and judicial opinions, multiple states might move sequentially in roughly the same direction.

29. The inconsistencies in marriage practice that occurred as a result of the diversity in states' rules raised alarms among some American reformers. When cumulative state statistics of marriage and divorce were first published (in the 1880s, covering the preceding twenty years), some observers were horrified by the evidence and saw in it an augury of marital decline. The statistics showed considerable regional and state differences in marriage laws and an increasing frequency of divorce. Reformers fearful about the future of marriage began calling for uniform marriage and divorce laws. Such reformers advocated a national legal code in order to cure the lack of uniformity and to eliminate the incitement to divorce present in a faraway state's liberality on the matter.

30. A constitutional amendment to establish national uniformity in marriage and divorce laws was first proposed in 1885-86. Legislative and constitutional proposals to nationalize the definition of marriage were put before Congress again and again, from the 1880s

to 1950s, with a particular burst of activity during and after World War II, because of the war's perceived damage to the stability of marriage and because of a steep upswing in divorce. No proposal ever succeeded. Few members of Congress were willing to supersede their own states' power over marriage and divorce. While members of Congress oversaw an expansion of the powers of the federal government in other domains, they guarded their own states' sovereignty over marriage.

31. In what follows, I will illustrate how states have varied in their decision-making about the forms of valid marriage, restrictions on who can marry, and ways of ending marriage. The examples that I will discuss are illustrative only, rather than comprehensive; numerous other kinds of difference could be cited. I will discuss common law marriage, age at marriage, "hygienic" restrictions, marriage across the color line, and grounds for divorce.

(i) Common Law Marriage

32. From the Revolutionary era on, state laws and court decisions have varied even in the most basic point of what constitutes a valid marriage. This became apparent soon after 1800 with respect to the validity of marriage without ceremony, which is often called "common law marriage." In many parts of early America, couples cohabited and acted like married partners but had not followed prescribed ceremonies, and their local community accepted them as married if they lived conventionally. Court challenges to such marriages usually arose in the course of a property inheritance dispute after the death of one of the partners.

33. Many American state courts were lenient (where English judges were not) in accepting these relationships as valid marriages—but not all. The Supreme Court of New York (then the state's highest court), in an 1809 decision attributed to Chief Justice James Kent (later the state's Chancellor and a highly influential jurist), affirmed an informal marriage, saying that "no formal solemnization of marriage was requisite" when the couple consented through mutual vows. Kent elaborated on this view in his 1826 Commentaries, saying that "consent is all that is required by natural or public law," citing Roman law for the doctrine that "the very foundation and essence of the construct consisted in consent freely given" and seeing this as "the language equally of the common law and canon law and of common reason."

34. The Supreme Judicial Court of Massachusetts had a different view. In cases in 1804 and 1810, the Commonwealth's high court refused to recognize marriages that had not been solemnized according to the prescribed ceremonies conducted by an authorized agent.

Justice Theophilus Parsons saw marriage as a civil contract, but one that required public oversight and validation. Even though Massachusetts did not expressly prohibit common law marriage, such an informal arrangement could not be validated, Parsons concluded, without rendering "all the statute regulations" on the subject of marriage "in a great measure nugatory."

35. Diversity in states' willingness to credit common law marriage continued through the nineteenth century. A few states absolutely prohibited or nullified such marriages, and even in the majority that did not, judges sometimes refused to recognize them, following Justice Parsons's reasoning. But Kent's view became the interpretation of the majority.

36. By the end of the nineteenth century, the tide turned. In one state after another, the reformers who were upset by the rising divorce rate also thought that marriages were too casually entered into, and they pressured legislators to regulate marriage formally to a greater extent than earlier generations had. Although the pattern was highly varied, a majority of states invalidated informal marriages over the course of a century.

37. Several states still hold out today, however, and continue to accept common law marriage for some or all purposes, including Alabama, Colorado, Iowa, Kansas, Montana, South Carolina, Rhode Island, Texas, and the District of Columbia. Others do not recognize common law marriages entered now, but will recognize one made before a certain date. For example, Pennsylvania honors common law marriages entered into prior to 2005; Idaho recognizes those contracted before 1996; and New Hampshire is willing to honor common law marriage for inheritance purposes after one spouse dies, but not before.

38. Despite this variation, the federal government has not interceded to determine whether any or some forms of common law marriage should be recognized for the purpose of federal law. The federal government accepts states' definitions in these cases.

(ii) Age at Marriage

39. In the late nineteenth century, reformers also urged state legislators to raise the bar to marriage entry in other ways, for example with respect to age limits. Common law set the age of consent at puberty. Under pressure from reformers, most state legislatures raised the age of consent to at least 14 for females and 16 for males. States have made subsequent adjustments, all upwards, in the past century. At present, all states but one allow 18-year-olds to marry without parental consent; Nebraska makes 19 the required age.

40. States also differ on the absolute minimum age for marrying Most states set this minimum at 16, but Mississippi, for example, has no minimum marriage age (so long as a judge or the parents give consent); West Virginia sets the minimum at age 18 and makes exceptions in case of pregnancy or the birth of a child; Hawaii sets the minimum at 15, and New Hampshire even lower.

41. Despite this variation, no minimum age is required for a marriage to be accepted as valid for purposes of federal law.

(iii) Public Health Concerns

42. State legislators in the late nineteenth and early twentieth centuries also implemented reformers' insistence on a new category of "hygienic" or "eugenic" regulation of marriage, though the implementation varied. Concerns about biological "fitness" to marry led states to add strictures about venereal disease, "feeblemindedness," epilepsy, and other conditions. Michigan led in 1899; by the 1930s, 25 more states criminalized marriage by persons with venereal disease. Wisconsin, in 1913, was the first state to require a medical examination for the prospective groom (to determine whether he had venereal disease) before a marriage license could be issued, and most states followed. Indiana was first in 1907 to require sterilization before individuals considered to be "idiots," "imbeciles," habitual criminals, or convicted rapists could marry. By 1931, 27 states had similar laws.

43. In the same time period, states also began to ban first-cousin unions. Marriages between first cousins had been common and approved for centuries in Europe and many U.S. states; elites especially favored first-cousin marriages as a way to consolidate rather than disperse family property. Kansas was the first state to ban first cousin marriage in 1858, presumably because of worries about hereditary risk. Seven states, mostly but not only in the West, followed suit in the 1860s. Other states followed in subsequent decades, to the 1920s, passing these bans along with others based on presumed hygienic or eugenic reasons. Then the wave of concern passed: only Kentucky (1946), Maine (1985), and Texas (2005) have passed such laws since the 1920s. At present, 31 states either ban first-cousin marriage or impose certain conditions on its validation.

44. Despite this variation, the federal government has not interceded to determine hygienic requirements for qualifying marriages under federal law and has accepted states' determinations.

(iv) Marriage across the Color Line

45. A major example of state variation in marriage law is the criminalization, nullification and voiding of marriages that crossed a "racial" or color line. This is a chequered history, not at all confined to the American South. The slaveholding states before the Civil War relied on the regime of slavery itself, more than marriage bans, to prevent legitimate marriage between whites and blacks. Because slaves lacked basic civil rights (*i.e.*, the right to body, liberty and property), they also lacked the ability to consent validly to marriage. Furthermore, marriage obliged those undertaking it to fulfill certain duties defined by the state; a slave's prior and overriding obligation of service to the master made carrying out the duties of marriage impossible.

46. Following the abolition of slavery, state legislators strengthened bars to marriage across the color line. Ten states enacted new laws that voided or criminalized marriage between blacks and whites, eight others strengthened their similar laws, and still others kept theirs in place. Enforcement of these laws usually occurred at the point of obtaining a marriage license. County clerks charged with issuing marriage licenses would typically look at the couple applying and decide whether to grant a license or not; hence, there was a great deal of inexactness in enforcement.

47. Following agitation in California and other Western states over Asian immigration, five Western states in the 1860s added the categories of Indians, Chinese and "mongolians" to those (Negro and mulatto) already prohibited from marrying whites. As theories of "race" continued to develop, laws using racial designations to proscribe marriages became more complex, especially the Western states. As many as 41 states and territories of the U.S. banned, nullified, or criminalized marriages across the color line for some period of their history, often using "racial" classifications that are no longer recognized.

48. These laws varied widely across the states. New England was less avid in preventing these marriages than other regions; Vermont, New York, and Connecticut never had such laws, but Massachusetts, Rhode Island, and Maine did, early in their histories.

49. Many states had complicated histories on this issue, legislating repeatedly and differently over the decades. Some imposed outsize punishments: Alabama, for example, penalized marriage, adultery, or fornication between a white and "any negro, or the descendant of any negro to the third generation," with hard labor of up to seven years. Some states

(especially in the West) expanded the categories of groups whose marriage to whites was prohibited. As the historian Peggy Pascoe has shown: "In one state or another, all of the following groups were prohibited from marrying Whites: Negroes, Mulattoes, Quadroons, Octoroons, Blacks, Persons of African Descent, Ethiopians, Persons of Color, Indians, Mestizos, Half-Breeds, Mongolians, Chinese, Japanese, Malays, Kanakas, Coreans, Asiatic Indians, West Indians, and Hindus."

50. The 1910s and 1920s were explosive in this contentious area, both because more African Americans migrated north and because Victorian sexual standards were overridden by more sexually expressive modern values. The marriage of African American heavyweight boxinig champion Jack Johnson to a young white woman made sensational national news in 1912, shortly after he had defeated the "great white hope," Jack Jeffries, in a match viewed as a contest for racial supremacy. In the next year, fourteen state legislatures—including New York's—saw bills introduced to institute or strengthen intermarriage bans. None passed in Northern states, however, mostly because of organized pressure by black voters. In the late 1920s, sparked by the resurgence of the Ku Klux Klan, legislators in Maine, Rhode Island and New York introduced new bills to criminalize intermarriage; and Congress introduced and returned several times to such a bill for the District of Columbia. None of these was successful, mainly because of the strong countermobilization by the NAACP.

51. Legislators often justified the laws criminalizing marriage across the color line by saying that such marriages were against nature or against the Divine plan, much as opponents of same-sex marriage argue today. They contended that permitting cross-racial couples to marry would degrade the institution of marriage fatally. To the white legislators who passed these laws, only marriage to other whites qualified as "natural."

52. Whatever the high-flown rhetoric surrounding them, however, these bars to marriage served to deprive intimate white-black relationships of public approval. By preventing an intimate relationship between a white and a person of color from ever gaining the status of marriage, legislators sought to delegitimize the relationship. In parallel fashion, preventing legal recognition of a relationship between a couple of the same sex (either at the state or federal level) functions to discredit that relationship.

53. These laws expressed state preferences at the time. In 1930, laws in thirty states nullified and/or punished marriage between whites and blacks—many of them, especially in the

West, treating marriage between whites and Asians the same way. As a result, marriage was the most criminalized form of race-related conduct at the height of the Jim Crow era.

54. Social and legal views on this question changed slowly and haltingly during the twentieth century. Although the Supreme Court of the United States articulated the right to marry as a fundamental right in 1923, Virginia passed the most restrictive marriage law in the nation the very next year.

55. The first real shift occurred in the wake of World War II, which had stimulated an emphasis on cultural and religious pluralism as national values in the United States. In 1948, the Supreme Court of California, where marriages between whites and either blacks or Asians had been prohibited for almost a century, was the first state high court to hold that race-based restrictions on marriages were unconstitutional. The California court recognized that freedom in exercising the "fundamental right" to marry was "essential to the orderly pursuit of happiness by free men." The Court struck down race-based restrictions on choice of spouse, holding that legislation addressing the right to marry "must be free from oppressive discrimination to comply with the constitutional requirements of due process and equal protection of the laws."

56. Over the next two decades, more than a dozen other states followed California by eliminating their own race-based bars to marriage, spurred, to be sure, by the civil rights movement's impact on Americans' racial views. Eventually, a challenge to Virginia's 1924 law (which made marriage between a white and a non-white person a felony) led the Supreme Court of the United States to affirm freedom of choice of spouse regardless of race in *Loving v. Virginia*. (At that time, sixteen states still banned interracial marriage.) Chief Justice Earl Warren's opinion for a unanimous Court rejected the longstanding contention that bans on marriage across the color line affected both races equally. He called such bans "measures designed to maintain White Supremacy" that were insupportable in view of the Fourteenth Amendment. The Court's opinion in *Loving* reiterated clearly that marriage was a fundamental freedom protected by the Constitution, observing (in an echo of *Perez v. Sharp*, the case decided by the Supreme Court of California): "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men."

57. Although opinion on interracial marriage was bitterly divided at the time, the federal government accepted all state marital status determinations for the purpose of federal law, throughout this period of legal change. When controversy arose because a state that did not

allow interracial marriages refused to recognize the marital status of a mixed couple validly married elsewhere, the issue was considered a conflict between the states and not a federal matter.

(v) Marriage Dissolution

58. The states also varied widely in setting the terms on which marriages could legally end.

59. Divorce is not a modern innovation in America. Several colonial legislatures made divorce possible (although English law would not have allowed it). Soon after the American Revolution, almost every state legislature entertained petitions for divorce, and by 1800 about a dozen states permitted divorce suits in court under limited circumstances. At first, divorce was typically only permitted for adultery, desertion for a number of years, and conviction for certain crimes. Most states expanded their grounds in the early nineteenth century; before the Civil War, many states permitted divorce for extreme cruelty, gross neglect of duty, and (under pressure from the temperance movement) habitual drunkenness.

60. As states expanded their grounds for divorce in response to local circumstances, extreme differences among them arose. South Carolina permitted no divorces until the late 1940s, and New York granted divorce for adultery only until the 1960s. Others went in the opposite direction. Before 1800, Connecticut added what critics called an "omnibus" clause, allowing a court to grant a divorce for any misconduct that "permanently destroys the happiness of the petitioner." Indiana had seven statutory grounds and added "any other cause for which the Court shall deem it proper that a divorce should be granted"—a provision that, together with its lack of a real residency requirement, made Indiana notorious as a "divorce mill" in the 1850s and 1860s. California also had several grounds, bringing a *San Francisco Chronicle* writer to observe sardonically in 1854 that "marriage among us seems to be regarded as a pleasant farce."

61. The multiplication of grounds for divorce was fiercely opposed in some quarters. Critics were sure that liberalized treatment of divorce would undermine the marital compact entirely. The significant differences among states' provisions caused great alarm about "migratory" divorce, which was attacked as a pernicious evil. Yet the wide disparities persisted, and no proposal for a uniform code for marriage and divorce succeeded.

62. Between the late 1960s and mid-1980s, in a major change of approach, almost all states left behind the previous adversary scheme in divorce suits and enabled couples who found

themselves incompatible to end their marriages. States retained a strong role in the ending of marriages (*e.g.*, post-divorce terms of support must be approved in state courts), but the move to what is commonly called "no-fault" divorce has reflected a major shift toward enabling spouses to set their own marriage goals and to determine how well these goals are being met.

63. Despite states moving in the same general direction, differences continue in states' specific provisions for divorces. Not all use the "no-fault" rubric today. States differ considerably in residency requirements for divorce, as well, requiring anywhere from six weeks (for example, in Nevada) to one year (for example, in New York and Connecticut).

64. Despite all of these variations, the federal government never interceded to create uniform requirements for termination of marriage for purposes of federal law.

D. States' Prescriptions for Spousal Roles

65. The common law of marriage inherited by the American states treated husbands and wives unequally and asymmetrically. According to the marital doctrine of coverture, the husband and wife were considered to be a single entity. The wife upon marriage ceded her legal and economic identity to her husband and was "covered" by him. (That is why Ann Doe became Mrs. John Smith.)

66. Coverture, which reflected a view of the marital couple as a unit naturally headed by the husband, allowed the wife no separate legal or economic existence. A married woman could not own or dispose of property, earn money, have a debt, sue or be sued or enter into an enforceable agreement under her own name, because her husband had to represent her. Neither married partner could testify for or against the other in court, nor commit a tort against the other, because the two were considered one person. Common law assigned the marriage partners opposite economic roles understood as complementary: the husband was bound to support and protect the wife, and the wife owed her service and labor to her husband. Any property she owned before marriage became his. (In community property states, unlike common law states, the wife retained title to her property but the husband became the manager of that property and had the right to dispose of it.)

67. States at first incorporated common law expectations in their marriage rules (with some exceptions in states with Spanish influence). By the 1830s, however, the notion that married women could have no economic personhood apart from their husbands began to clash with the realities of a developing society.

68. In several waves of statutory reform between 1830 and 1930, states replaced the common law regime of marriage with their own detailed and evolving provisions about the economic competence of married women. The timing and content of individual state actions depended on local conditions and perceptions. Some acted much sooner than others.

69. The initial phase was influenced by a rash of bankruptcies after the Panic of 1837, when state legislators in several states saw the usefulness of a wife's keeping the family homestead in her own name when her husband's creditors came calling. Mississippi was one of the earliest (1839) to declare married women's right to property, but its state law concerned only property in slaves. Agricultural states acted to separate wives' landed or slave property, while more urban areas gave broader property rights. Another economic panic, in 1857, spurred another rash of similar laws. Then a third series of state actions took place roughly from the 1860s to the 1880s, as more women became gainfully employed; these measures secured wives' rights to their own earnings.

70. Over a century, repeated law-making in every state incrementally eliminated the property basis of coverture and replaced it with myriad state laws. "The sheer volume of legislation astonished friends and foes alike" while "the reform impulse varied dramatically by region," in the words of the legal historian Sandra VanBurkleo.

71. Although coverture had been in place for hundreds of years and was typically seen as absolutely essential to marriage, state legislators used their power to alter marriage fundamentally. Far from viewing marriage as immutable, they took account of changing societal needs and spouses' evolving relationships within their households and in the larger society.

72. In a subsequent phase of major change in marriage, repeated and successful challenges to sex discrimination in state laws during the 1970s had profound effects on domestic relations law. Although the strenuous campaign to put an Equal Rights Amendment into the U.S. Constitution failed, states passed their own Equal Rights Amendments, which led toward gender neutrality in marriage and divorce reform. In divorce, for example, as in other aspects of family law today, gender neutrality in roles and decision-making is the premise. Obligations of the two spouses upon marital dissolution used to be assigned by gender, and they were asymmetrical: the husband was responsible for the economic support of any dependent children, while courts gave the mother a strong preference for custody. Under current divorce laws, in

contrast, both parents of dependent children have responsibility for economic support and for childrearing; gender neutrality is the judicial starting point for post-divorce arrangements.

73. For couples who consent to marry today, marriage has been transformed from an institution rooted in gender inequality and prescribed spousal roles to one in which the contracting parties decide on appropriate behavior toward one another, and the legal obligations and benefits of the spouses do not depend on their sex. The two partners in a marriage are still economically and in other ways bound to one another by law. But the law no longer assigns asymmetrical roles to the two spouses.

E. The Exceptional Role of the Federal Government in Marriage Regulation in the Nineteenth Century

74. The U.S. Congress has involved itself directly in making or breaking marriages only in exceptional situations. In the nineteenth century, federal authorities exercised their plenary powers when they enabled ex-slaves to marry legally during and in the wake of the Civil War, and when they campaigned against polygamy in the Utah Territory. These examples illustrate by their uniqueness the historical commitment to state jurisdiction over these matters.

(i) Civil War and Reconstruction

75. A signal mark of slaves' lack of freedom was their exclusion from legal marriage. Deprived of all civil rights, slaves lacked the ability to consent to marriage. They lacked the power to fulfill marital responsibilities because their masters could always supervene. A slave wedding meant nothing to the state government where the couple resided; that absence of public authority was the very essence of the marriage's legal invalidity. During Congressional debate on the proposed Thirteenth Amendment to eliminate slavery, more than one speaker noted disparagingly that no Confederate state honored "the relation of husband and wife among slaves, save only so far as the master may be pleased to regard it."

76. As the Union Army marched south, Confederate states crumbled and ceased to regulate marriage. In the spring of 1864, a Union military edict authorized the clergy in the Union-occupied areas to perform marriages among slaves who had fled to freedom from behind Union lines. Ex-slave recruits welcomed the opportunity to exercise a civil right that had long been denied them. An army chaplain in Mississippi remarked on the "very decided improvement in the social and domestic feelings of those married by the authority protection of Law. It causes them to feel that they are beginning to be regarded and treated as human beings."

77. Promoting legal marriage among ex-slaves then became a core policy of the Union government. In the Union Army's "contraband camps" where ex-slaves fled toward the end of the Civil War, the Secretary of War announced that couples who wished to cohabit would have to be legally married. During Reconstruction, the newly formed U.S. Freedmen's Bureau took power in the occupied South (where state legislatures had not yet been reconstituted), and regulated marriage there. This direct federal involvement in creating marriages among ex-slave couples was the exceptional result of a devastating Civil War that left no state governments in the occupied South to authorize marriages. Once state governments were reconstituted, the Freedmen's Bureau gave up its unusual authority, and Southern states resumed their jurisdiction over marriage law, subject however to the authority of the Fourteenth Amendment, ratified in 1868.

(ii) Polygamy in the Utah Territory

78. The other important and revealing example of exceptional federal action comes from the nineteenth-century federal campaign to eliminate polygamy as practiced by the Church of Jesus Christ of Latter-Day Saints. In 1862, after members of that church had moved to the Utah Territory, the U.S. Congress outlawed bigamy there and in all the territories under its jurisdiction. Congress had the same powers over marriage in the territories that states had in their own domains (and bigamy was a crime in every state). Federal anti-polygamy legislation applied only to the territories, over which Congress had plenary authority.

79. Congress acted not only because the presence of polygamy on the North American continent seemed loathsome, but because Utah's intent to apply for statehood loomed on the horizon. Federal legislators knew that they would have no power to define or regulate marriage in Utah once it obtained statehood. Under extreme federal pressure, the Church of Jesus Christ of Latter-Day Saints gave up polygamy. Still, Congress required Utah's state constitution to stipulate that polygamy was "forever prohibited" before Utah could be admitted to the Union.

80. The anti-polygamy laws, like the federal attention to the marriages of former slaves at the close of the Civil War, were exceptional actions in which plenary power was available to federal authorities to define marriage validity. In assaulting polygamy in the Utah Territory, Congress used the unique constitutional powers accorded it. The *quid pro quo* for

Utah's admission to the Union as a state showed Congressional understanding of the legitimacy and primacy of state jurisdiction over marriage.

F. Federal Benefits in Relation to Marriage

81. While accepting state jurisdiction over marriage definition, the federal government used marriage as a vehicle to convey benefits to the population. This began during the Revolutionary War, when men's war service prompted the Continental Congress in 1780 to award "pensions" to the widows and orphans of soldiers who died serving the new nation. Many subsequent U.S. Congresses perpetuated awards of military widows' pensions, to incentivize men to enlist and to express the nation's gratitude for their service. Benefits of this type were originally gender-specific (the soldiers assumed to be male and the surviving spouses assumed to be female), but after successful legal challenges on equal protection and sex discrimination grounds in the 1970s, federal benefits for married spouses have been gender-neutral.

82. Revolutionary War pensions 230 years ago became, in effect, the model for the federal government's use of marriage as a vehicle for channeling benefits to adult citizens and their dependents. With the expansion of federal economic programs over time, the extent of federal laws and policies utilizing marriage in this way has grown to cover vast and important areas, including income tax, Social Security, and citizenship and naturalization privileges and limits.

83. The federal laws directing benefits to flow through marital relationships are sometimes referred to, imprecisely, as "federal family law," but the policies in question do not define or regulate marriage per se, nor do they deny any state's power to create fully valid marriages among its inhabitants. Until 1996, Congress deferred to the laws of the states with respect to the definition of marriage partners who could benefit from federal policies.

IV. CONCLUSION

84. Throughout American history, state legislatures and courts have made and altered laws governing the meaning and structure of marriage.

85. Americans from the era of the American Revolution or the Civil War would be profoundly shocked by the gender equality of marriage today and the frequency of marriage across the color line. Restrictions on marriage that were seen as necessary in their time have since been removed as unwarranted and/or unconstitutional. Yet Americans of any era would recognize in contemporary marriage the institution's foundation in two consenting parties freely

choosing one another, and the state's role in defining and honoring their committed relationship, economic partnership, and common household.

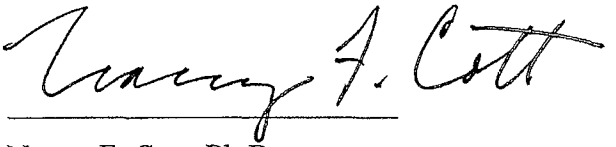
86. Distinctive features of contemporary marriage that we take for granted (including the ability of both spouses to act as individuals while married, the freedom to marry a spouse of a different race, and the liberal availability of divorce) were fiercely resisted when first introduced and were viewed by opponents as threatening to destroy the institution of marriage itself.

87. The institution of marriage has endured in great part because it has been flexible and resilient, not static. State legislators have preserved the appeal and value of marriage in our dynamic society by making adjustments in key features of marital roles, duties, obligations, and rules of entry.

88. Prior to 1996, the federal government accommodated the diversities among state marriage laws and their continual evolution by accepting states' determinations of marital status for purposes of federal law. In enacting the Defense of Marriage Act, however, the U.S. Congress interceded to define marriage by statute as between a man and a woman, at a time when only a minority of states had so specified the institution in their legal codes. In thus defining marriage for all federal purposes, the Defense of Marriage Act represents a substantial deviation from all the prior history of federal-state relations in marriage regulation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 20 day of May, 2011.



Nancy F. Cott, Ph.D.

EXHIBIT A

NANCY F. COTT **ncott@fas.harvard.edu**
Jonathan Trumbull Professor of American History, Harvard University, and
Carl and Lily Pforzheimer Foundation Director of the Schlesinger Library on the History of Women in America, Radcliffe Institute for Advanced Study

Department of History
35 Quincy St.
Harvard University
Cambridge MA 02138
tel. 617-495-3085

Schlesinger Library
10 Garden St.
Cambridge MA 02138
tel. 617-495-8647

EDUCATION:
Ph.D. 1974, in History of American Civilization, Brandeis University.
M.A. 1969, in History of American Civilization, Brandeis University.
B.A. l967, magna cum laude in History, Cornell University.

TEACHING APPOINTMENTS:
Harvard University: Jonathan Trumbull Professor of American History, and Carl and Lily Pforzheimer Foundation Director of the Schlesinger Library, Radcliffe Institute for Advanced Study, 2002—
Yale University: Assistant Professor of History and American Studies, 1975-79; Associate Professor, 1979-86; Professor, 1986-90; Chair of Women's Studies Program, 1980-1987, 1992-93; Chair of American Studies Program, 1994-97; Stanley Woodward Professor of History and American Studies, 1990--2000; William Clyde DeVane Professor, spring 1998; Sterling Professor of History and American Studies, 2001.
Boston Public Library, NEH Learning Library Program, Lecturer, 1975.
Wellesley College: Instructor of History, part-time, 1973-74.
Clark University: Instructor of History, part-time, 1972.
Wheaton College: Instructor of History, part-time, 1971.

HONORS, FELLOWSHIPS AND GRANTS:
American Academy of Arts & Sciences elected member, 2008
Centre d'etudes nord-americaines, Ecole des Hautes Etudes en Sciences Sociales, Paris: French-American Foundation Chair, 2003-04.
Fulbright Lectureship Grant (Japan-U.S. Educational Commission), July 2001.
Center for Advanced Study in the Behavioral Sciences, Stanford CA, 1998-99, 2008-09.
Radcliffe College Alumnae Association Graduate Society Medal, 1997.
Visiting Research Scholar, Schlesinger Library, Radcliffe College, 1991, 1997.
National Endowment for the Humanities Fellowship, 1993-94.
Liberal Arts Fellowship in Law, Harvard Law School, 1993-94, l978-79,.
A. Whitney Griswold grant (Yale Univ.), 1984, 1987, 1988, 1991, 1993, 2000.
American Council of Learned Societies Grant-in-Aid, 1988.
Charles Warren Center Fellowship, Harvard University, l985.
John Simon Guggenheim Memorial Foundation Fellowship, l985.
Fellow, Whitney Humanities Center, Yale University, l983-84, 1987.
Radcliffe Research Scholarship, Spring l982.
Rockefeller Foundation Humanities Fellowship, l978-79.
Phi Kappa Phi, l967.
Phi Beta Kappa, l966.

PUBLICATIONS: BOOKS

Public Vows: A History of Marriage and the Nation (Harvard U. Press, 2000).
No Small Courage: A History of Women in the United States, editor (Oxford U. Press, 2000).
Root of Bitterness: Documents of the Social History of American Women, revised edition, coeditor with Jeanne Boydston, Ann Braude, Lori D. Ginzberg, and Molly Ladd-Taylor, Northeastern U. Press, 1996)
A Woman Making History: Mary Ritter Beard Through Her Letters (Yale U. Press, 1991).
The Grounding of Modern Feminism (Yale U. Press., 1987).
A Heritage of Her Own: Towards a New Social History of American Women, coeditor with E. H. Pleck (Simon & Schuster, l979).
The Bonds of Womanhood: 'Woman's Sphere' in New England, l780-l835 (Yale U. Press, 1977; 2d ed. with new preface, 1997).
Root of Bitterness: Documents of the Social History of American Women (E.P.Dutton, l972)

PUBLICATIONS: ARTICLES

"The Public Stake," in Just Marriage, Mary Lynn Shanley et al., (NY, Oxford U Press, 2004), 33-36.
"Public Emblem, Private Realm: Family and Polity in the United States," in Democratic Vistas, ed. Anthony Kronman, (New Haven, Yale U. Press, 2004).
"Women's Rights Talk," American Studies in Scandanavia 32:2 (2000), 18-29.
"Marriage and Women's Citizenship in the United States, 1830-1934," American Historical Review 103:5 (Dec. 1998), 1440-74.
"Justice for All? Marriage and Deprivation of Citizenship in the United States," in Justice and Injustice, Amherst Series in Law, Jurisprudence & Social Thought, ed. Austin Sarat (Ann Arbor, U. Mich, 1996).
"'Giving Character to Our Whole Civil Polity': Marriage and State Authority in the Late Nineteenth Century," in U.S. History as Women's History, ed. Linda Kerber et al. (Chapel Hill, U.N.C., 1995).
"Early Twentieth-Century Feminism in Political Context: A Comparative Look at Germany and the United States," in Suffrage & Beyond, ed. Caroline Daley and Melanie Nolan (Auckland, NZ, Auckland U.P., 1994).
"The Modern Woman of the 1920s, American Style," in La Storia Delle Donne, vol. V, Francoise Thebaud, ed., G. Laterza & Figli (Italy), 1992 (also French, Dutch, Spanish and U.S. editions).
"Two Beards: Coauthorship and the Concept of Civilization," American Quarterly, 42:2 (June 1990).
"Historical Perspectives: The Equal Rights Amendment in the 1920s," in Conflicts in Feminism, ed. Marianne Hirsch and Evelyn Fox Keller (N.Y., Routledge, 1990).
"On Men's History and Women's History," in Meanings for Manhood: Constructions of Masculinity in Victorian America, ed. Mark Carnes and Clyde Griffen (Chicago, U. Chicago Press, 1990).
"Across the Great Divide: Women's Politics Before and After 1920," in Women, Politics, and Change, ed. Louise Tilly and Patricia Gurin (N.Y.,Russell Sage Foundation, 1990); revised and reprinted in One Woman, One Vote: Rediscovering the Woman Suffrage Movement, ed. M. Wheeler (NewSage, 1995).
"What's in a Name? The Limits of Social Feminism or, Expanding the Vocabulary of Women's History," Journal of American History, 76:3 (December 1989).
"The South and the Nation in the History of Women's Rights," in A New Perspective: Southern Women's Cultural History from the Civil War to Civil Rights, ed. Priscilla C. Little and Robert C. Vaughan (Virginia Foundation for the Humanities, Charlottesville, 1989).
"Beyond Roles, Beyond Spheres: Thinking about Gender in the Early Republic," with Linda Kerber et al., William and Mary Q., 3d ser., 46 (July 1989).
"Women's Rights: Unspeakable Issues in the Constitution," The Yale Review, 77:3 (Spring 1988), 382-96.
"Feminist Theory and Feminist Movements: The Past Before Us," in What is Feminism? ed. Juliet Mitchell and Ann Oakley (Oxford, Basil Blackwell, l986, and N.Y., Pantheon, 1986).
"Feminist Politics in the l920s: The National Woman's Party," Journal of American History, 71 (June

1984).
"Passionlessness: An Interpretation of Anglo-American Sexual Ideology, 1790-l840," Signs: A Journal of Women in Culture and Society, 4 (1978).
"Notes Toward an Interpretation of Antebellum Childrearing," The Psychohistory Review 6 (Spring 1978).
"Eighteenth-Century Family and Social Life Revealed in Massachusetts Divorce Records," Journal of Social History, 10 (Fall l976).
"Divorce and the Changing Status of Women in 18th-Century Massachusetts," William and Mary Quarterly, 3rd ser., 33 (October 1976).
"Young Women in the Second Great Awakening in New England," Feminist Studies, 3 (Fall 1975).

PUBLICATIONS: MISCELLANY

"Introduction," Feminists Who Changed America, 1963-75, ed. Barbara Love (U. of Illinois Press, 2006).
"Afterword," Haunted by Empire: Geographies of Intimacy in North America, ed. Ann Laura Stoler, (Duke Univ. Press, 2006).
"Janet Flanner," in Notable American Women: Completing the Twentieth Century (Cambridge, Harvard Univ. Press, 2005).
Co-editor with Drew Gilpin Faust, The Magazine of History, special issue on Gender History, March 2004.
"Considering the State of U.S. Women's History," with others, Journal of Women's History 15:1 (2003).
"Response," to "Books in Review: *Public Vows: A History of Marriage and the Nation*," The Good Society, 11:3 (2002), 88-90.
"The Great Demand," in Days of Destiny, ed. James MacPherson and Alan Brinkley, Society of American Historians (Agincourt Press, 2001).
Introduction to Jane Levey's "Imagining the Postwar Family," Journal of Women's History, Fall 2001.
"Mary Ritter Beard," in American National Biography (Oxford U. Press, 1999).
"Challenging Boundaries: Introductory Remarks," Yale Journal of Law and Feminism 9 (1997).
"A Conversation with Eric Foner," culturefront 4:3 (Winter 1995-96).
"Bonnie and Clyde," in Past Imperfect: History and the Movies, ed. Mark Carnes (N.Y., Henry Holt, 1995).
"Privacy"; "Domesticity"; "Mary Ritter Beard"; in A Companion to American Thought, ed. Richard Wightman Fox and James Kloppenberg (Cambridge, Basil Blackwell, 1995).
"Charles A. Beard and Mary Ritter Beard," The Reader's Companion to American History, ed. Eric Foner and John Garraty, 1991.
"Comment on Karen Offen's 'Defining Feminism: A Comparative Historical Approach,'" Signs: Journal of Women in Culture and Society, 15:11 (1989).
Editorial, Special issue of Women's Studies Quarterly, XVI:1/2 Spring/(Summer 1988), "Teaching the New Women's History."
Introduction to A New England Girlhood by Lucy Larcom (Boston, Northeastern U. Press, 1985).
"Women as Law Clerks: Memoir of Catherine G. Waugh," in The Female Autograph, New York Literary Forum, 12-13 (l984).
Afterword to Sarah Eisenstein, Bread and Roses, ed. Harold Benenson (London, RKP, 1983).
"Mary Ritter Beard," in Notable American Women: The Modern Period (1980).

PUBLICATIONS: REVIEW ESSAYS

"Adversarial Invention," American Quarterly, 47:2 (June 1995).
"Patriarchy in America is Different," American Bar Foundation Research Journal, 1987:4 (Fall 1987).
"Women and the Ballot," Reviews in American History, 15:2 (June 1987).
"The House of Feminism," New York Review of Books, 30 (March 17, 1983).
"The Confederate Elite in Crisis: A Woman's View," The Yale Review, 71 (Autumn 1981).
"Liberation Movements in Two Eras," American Quarterly, 32 (Spring 1980).

"Abortion, Birth Control, and Public Policy," The Yale Review, 67 (Summer 1978).

PUBLICATIONS: REVIEWS

in American Historical Review, American Prospect, Boston Globe, Business History Review, Intellectual History Newsletter, International Labor and Workingclass History, Journal of American History, Journal of Interdisciplinary History, New Mexico Historical Review, New York Times Book Review, Pacific Studies, Signs: A Journal of Women in Culture and Society, The Times Literary Supplement, Women's History Review, and The Yale Review.

PUBLICATIONS: EDITORIAL PROJECTS

General editor, The Young Oxford History of Women in the United States, 11 volumes, Oxford University Press, 1994.

Editor, History of Women in the United States, 20 volumes (article reprint series), K.G. Saur Publishing Co., 1993-94.

Guest Editor, special issue of Women's Studies Quarterly, XVI:1/2 (Spring/Summer 1988), on "Teaching the New Women's History."

OTHER PROFESSIONAL ACTIVITIES:

GRANT PROJECTS:

Dissertation seminar in gender history for graduate students, Mellon Foundation, 2002.

Steering Committee, Ford Foundation Project on Women and Gender in the Curriculum in Newly-Coeducational Institutions, 1985-90.

Principal Investigator, National Endowment for the Humanities Implementation Grant, "Strengthening Women's Studies at Yale," l983-86.

Principal investigator, National Endowment for the Humanities Pilot Grant to Women's Studies, Yale University, l98l.

ACADEMIC JOURNALS AND REFERENCE WORKS:

American National Biography, senior editor, 1989-98.

American Quarterly, editorial board, l977-l980.

Feminist Studies, associate editor, l977-85, editorial consultant, 1985-97.

Gender and History, advisory board, 1987-92; editorial collective, 1993-96.

Journal of American History, editorial board, 1996-99.

Journal of Social History, editorial board, l978-.

Journal of Women's History, editorial board, 1987-98.

Notable American Women, volume 5, advisory board, 1999-04.

Orim: A Jewish Journal at Yale, editorial board, l984-88.

The Readers' Encyclopedia of American History, advisory board, 1989-91.

Reviews in American History, editorial board, 1981-85.

Women's Studies Quarterly, editorial board, 1981-94.

Yale Journal of Law and the Humanities, advisory board, 1988-2001.

The Yale Review, editorial board, 1980-88, 1991-99.

SERVICE IN PROFESSIONAL ORGANIZATIONS:

American Historical Assocation, delegate to American Council of Learned Societies, 2008-11.

Society of American Historians, Executive Board, 2006--

Elected member: American Academy of Arts and Sciences, American Antiquarian Society, Massachusetts Historical Society, Society of American Historians,

Organization of American Historians: Merle Curti Prize Committee, 2008; Binkley-Stephenson Prize Committee, 1987-1990 (chair, 1988); elected member of Nominating Committee, 1993-95 (Chair, 1994-95); elected member of Executive Board, 1997-2000; OAH Lecturer, 1997--.
Berkshire Conference of Women Historians: Co-Chair, Eighth Berkshire Conference on the History of Women (1990).
American Studies Association: Nominating Committee, l98l-84; National Council, 1987-90; American Quarterly Review Committee, 1989.

ACADEMIC ADVISORY BOARDS:

The Museum of Women/The Leadership Center, N.Y. State, (chair of historians' advisory board) 2000--.
Princeton University Program in Women's Studies, l985-2001.
Project on Gender in Context, Mt. Holyoke College, l982-83.
The Correspondence of Lydia Maria Child, 1977-80.
Schlesinger Library on the History of Women, Radcliffe College, 1977-80.

AUDIOVISUAL MEDIA PROJECTS:

Advisory Board, Women 2.0 website and documentary project, 2008--
Advisory Board, 888 Film Project, "Left on Pearl," 2006-10.
Advisory Board, Women 2.0 Summit, 2007.
Advisory Board, Blueberry Hill Productions Ten Stories Project, 2005--
WGBH documentary proposal on the History of Marriage in America, Principal consultant, 2002.
Institute on the Arts and Civic Dialogue, Affiliated Scholar, American Repertory Theatre and W.E.B. DuBois Institute, summer 1999.
Margaret Sanger film project (by Bruce Alfred), Consultant, 1994—96,
"One Woman, One Vote: The Struggle for Woman Suffrage in the U. S.," Advisory Board, Educational Film Center, 1991-95.
"The American Experience," Advisory Board, WBGH-TV, Boston, MA, 1986--90.
Consultant, "Mary Silliman's War," film by Steven Schechter, 1987.
Consultant, "Lowell Fever," film by Made in U.S.A., Inc. 1985-87.
"Legacies: Family History in Sound," radio course on the history of women and the family in the U.S., Advisory Board, l984-86.
Connecticut Public Radio series, "Choices"/Everyday History, Radio Programs for Children 8 to 12," Consultant, 1982-83.
Dan Klugherz (Film) Productions, N.Y., Consultant, l98l-82.
Stanton Project on Films on Women in American History, Advisory Board, 1974-77.

PRIZE AND FELLOWSHIP SELECTION COMMITTEES:

Merle Curti Prize, Organization of American Historians, 2008.
Mark Lynton History Book Prize, 2002.
Bunting Institute Fellowship Program, Radcliffe College, 1982, 1996.
American Antiquarian Society Fellowships, 1991, 1992, 1994.
Governors' Prize, Yale University Press, 1990.
American Council of Learned Societies, Fellowships for Recent Recipients of the Ph.D., 1987, 1988, 1990.
Bancroft Prize (Columbia University), 1985.
Radcliffe Research Scholars Program, 1982.
Hamilton Prize, Women and Culture Series, U. Michigan Press, 1981.

CONSULTANT/EVALUATOR (selected list)**:**

Johns Hopkins University, History Department, February 2011.
Wellesley College, Wellesley Centers for Women, June 2010.
University of Helsinki, city center campus, 2005.
Univ. of California at Santa Barbara, Women's Studies Program, February 2002.
National Endowment for the Humanities, fellowships for university teachers, 1998; media projects, 2001.
History Department, University of Oregon, 1999.
Woodrow Wilson Center Fellowships, 1991, 1992, 1994.
State of Colorado Commission on Higher Education, 1990.
National Humanities Center Fellowships, 1988, 1989, 1991, 1992, 1994.
"Foundations of American Citizenship," curriculum project, Council of Chief State School Officers, 1987.
Connecticut Humanities Council, 1986.
Rockefeller Foundation Gender Roles Fellowships Program, 1985.
Radcliffe Research Scholars, l983.
Working Women's History Project, 9 to 5, Organization for Women Office Workers, 1981.
Rockefeller Foundation Humanities Fellowships, l980.

ACADEMIC LECTURES, PAPERS, COMMENTS DELIVERED (selected list)**:**

"The Future of Marriage," M.I.T., *Boston Review* event, March 2010.
"The History of Marriage on Trial," Margaret Morrison Distinguished Lecture in Women's History, Carnegie Mellon University, Pittsburgh, PA March 2011.
"Why History Matters: Same-Sex Marriage," U.C.L.A. History Department, February 2011.
"The History of Marriage on Trial in *Perry v. Schwarzenegger*," American Association of Law Schools conference, San Francisco, January 2011.
"Marriage on Trial," Gender and Women's Studies Program, University of Kentucky, December 2010.
"The Craft of History and the Constitution: The Role of Historians as Expert Witnesses in *Perry v. Schwarzenegger*," Yale Law School, October 21, 2010.
Keynote, "Embedded Bodies: Reproductive Justice in Social Context," Harvard Law School, October 15, 2010.
"The History of Marriage on Trial," University of California at Berkeley, History Department, March 2010.
Panelist, "State of the Field: History of Women/Gender/Sexuality," Organization of American Historians annual meeting, April 2010.
"Born Modern," Center for Advanced Study in the Behavioral Sciences, Stanford University, October 2008.
"Revisiting the Jazz Age," John O'Sullivan Memorial Lecture, Florida Atlantic U., November, 2007.
"Recovering the Interwar Generation," Modern America Workshop, Princeton University, April 2007; University of Chicago Social History Workshop, May 2007.
"The Reproduction of Gender," graduate student conference on Nineteenth-Century Reproduction,Temple University, February 2007.
"Women in the Rubble," Newcombe Institute Summit on Educating Women for a World in Crisis, New Orleans, LA, February 2007.
"Marriage and Citizenship in the History of the United States," Hall Center for the Humanities, University of Kansas, November 2006.
"Women of Happenstance," First Ladies Conference, McKinley Homestead, Canton, OH, Apr 2006.
"Revisiting the 1920s Generation," Rothermere American Institute, Oxford Univ., January 2006.
"Boundaries and Blinders in History: Revisiting the 1920s Generation," keynote address, Western Association of Women Historians annual meeting, Phoenix, AZ, April 2005.
Panelist, "The Political Spectrum of Same-Sex Marriage," conference on Breaking with Tradition: New Frontiers for Same-Sex Marriage, Yale Law School, March 2005.

"Gender History and Generations," Women's History Month address, Rutgers-Camden Law School, Camden NJ, March 2005.
"Collecting Women's History at the Schlesinger Library," Society of American Archivists annual meeting, August 2004.
Colloquium on George Chauncey's *Gay New York*, Dec. 2003, Ecole Normale Superieur, Paris.
Closing remarks, Library of Congress symposium, "Resourceful Women," June 19-20, 2003.
"Women, Men, and Modern Marriage," Ecole des Hautes Etudes en Sciences Sociales, November 2003.
"What's Love Got to Do with It? Marriage as a Public Institution in the United States," Fairleigh Dickinson University, March, 2003.
Comment, "Revisiting Domesticity: Symbolic Economies of Sex and Gender," American Historical Assoc. annual meeting, Washington, D.C., January 2003.
"Gendering Colonial America, Making Women's History Colonial: A Roundtable," Berkshire Conference on Women's History, Storrs, CT, June 2002.
Comment, panel on "Race and Family in Wartime America: Illegitimacy, Immigration, and the Church," Organization of Amer. Hist. annual meeting, Washington, D.C. April 2002.
"New Directions in Women's History after 9/11," Brandeis University, March 2002.
"The Efficacy of Women's History," Bridgewater State University, March 2002.
"Marriage and the Nation," Harvard Law School Legal History Forum, October 2001.
"The Family, Citizenship, and Democracy in the United States," University of Tokyo, Japan, July 2001.
"Women as Workers, Citizens, and Activists in the Mid-Twentieth-Century U. S." four- seminar series, Ritsumeikan University, Kyoto, Japan, July 2001.
"Grooming Citizens: Marriage in the Political History of the United States," Kyoto American Studies Seminar, Kyoto, Japan, July 2001.
"Public Sanctity for a Private Realm: The Family, the Rhetoric of Democracy, and Constitutional Values in the U.S.," Bacon Lecture on the Constitution, Boston Univ., May 2001.
"Democracy and the Family," Yale Tercentennial Series "Democratic Vistas," April 2001.
"Marriage and the Nation: Historical Perspectives," Northeastern University Feminist Studies Colloquium, March 2001.
"Public Vows: On Marriage and the Nation in the Early Twentieth-Century U.S.," Center for Historical Study, U. Maryland, College Park, October 2000.
"Marriage Revised and Revived," Associated Yale Alumni faculty lecture, May, 2000.
Comment, session on "The Idea of Marriage: The British Atlantic Context," International Seminar on the History of the Atlantic World, 1500-1800, Harvard Univ., August 2000.
"Reflections on Women and/in Authority," Women, Justice, and Authority: A Working Conference, Yale Law School, April 28, 2000.
"Grooming Citizens: Marriage and the Civic Order in the United States," In the Company of Scholars Lecture Series, Yale University Graduate School, April 2000.
"Public Vows: Marriage as a Public Institution," History Department, Stanford University, January 2000.
"An Archaeology of American Monogamy," History Department, Northwestern Univ., October 1999.
"The Modern Architecture of Marriage," Gender and Policy Workshop, Department of Economic History, Stockholm University, Stockholm, Sweden, October 1999.
"Women's Rights Talk," conference on "Rights--Civil, Human, and Natural," University of Southern Denmark, Odense, Denmark, October 1999.
Comment, "Making and Breaking Marriages: Reconsidering American Families through the Law, Berkshire Conference on the History of Women, June 1999.
"Marriage Fraud in the Making of Immigration Restriction in the U.S." Center for Cultural Studies, Univ. of California, Santa Cruz, May 1999.
Panel discussant, women and citizenship, Univ. of California, Berkeley, October 1998.
"An Approach to Citizenship through Gender History," Univ. of Colorado at Colorado Springs, Feb.1999.

"Marriage and Citizenship," Legal Theory Workshop, Yale Law School, October 1998.
Comment, "Public Policy and Marriage," American Society for Legal History, Seattle, WA, Oct. 1998.
"Thinking about Citizenship and Nationality through Women's History," keynote address, Australian Historical Association, Sydney, Australia, July 1998.
"Race, Blood, and Citizenship: A Gendered Perspective on U.S. Immigration Restriction, 1895-1917," International Federation for Research in Women's History conference, Melbourne, Australia, June 1998.
Introduction, Conference on Sexual Harassment Law, Yale Law School, February 1998.
"Marriage and Public Policy: The Politicization of Marriage in the 1850s," Schlesinger Library, Radcliffe College, May 1997.
Comment, "Association-Building in America," Organization of American Historians annual meeting, San Francisco, April 1997.
"Writing American Women's History: Retrospect on Nineteenth Century Domesticity," Clarion University, Clarion, Pa., April 1997.
"Against Equality: Mary Ritter Beard and Feminism," DePauw University, March 1997.
"Marriage and Women's Citizenship: A Historical Excursion," N.Y.U. Law School, March 1997.
Discussant, "One Woman, One Vote: Painting a 70-year Battle on a 2-hour TV Canvas," Berkshire Conference on the History of Women, June 1996, U.N.C.
Chair, "International Feminism, 1840-1945," American Historical Association annual meeting, January 1996, Atlanta, Ga.
"The Gender of Citizenship and the 19th Amendment," keynote address, University of Texas 8th Biennial Graduate Student Historical Symposium, Austin, Oct.1995; Women's History Week lecture, Fitchburg State College, Fitchburg Mass., March 1996.
"Effects of the 19th Amendment," Delaware Heritage Commission Conference on the 75th Anniversary of the 19th Amendment, Delaware State Univ., November, 1995.
"Forming the Body Politic: Gender, Race, and Citizenship Traditions in the U.S., "John Dewey Lecture in the Philosophy of Law, Harvard Law School, October 1994; Jane Ruby Humanities Fund Lecture, Wheaton College, March 1995.
"The Marriage Knot: Gender, Race and Citizenship Policy in the U.S., 1855-1934," UCLA Center for the Study of Women, October 1994.
Chair and comment, "Debating Democracy in the 19th Century," annual meeting of the Organization of American Historians, Atlanta, GA, April 1994.
"Justice for All? Marriage, Race, and Deprivation of Citizenship in the Early 20th-Century U.S.," Keck Lecture, Amherst College, February 1994; Harvard University, February 1994.
"Marriage, Gender, and Public Order," Symposium of the Association for Women's History, Amsterdam, Holland, November 1993.
"Early Education of Women," symposium on Uncovering Women's History in Museums and Archives, Litchfield (CT) Historical Society, October 1993.
"Early 20th-century Feminism in Germany and the U.S. Compared," Suffrage Centenary Conference, Wellington, New Zealand, August 1993.
"Reviewing the Private and the Public through Women's History," Conference for 20 Years of the Edith Kreeger Wolf Distinguished Visiting Professorship, Northwestern Univ., April 1993.
"Marriage as/and Public Policy in the Late Nineteenth-Century U.S.," annual meeting of the Organization of American Historians, Anaheim, CA, ; Northwestern University History Department, Apr1993.
"Against Equality: Mary Ritter Beard and Feminism," Conference on the 200th Anniversary of Wollstonecraft's Vindication of the Rights of Women, Sussex, England, Dec. 1992.
"'Enlightenment Respecting Half the Human Race': Mary Ritter Beard and Women's History," Sophia Smith Collection Semi-Centennial, September 1992.
"Women's History in Contemporary Perspective," Harvard University Women's History Week, Mar 1992.
"Educating Women in the U.S.," Founders Day lecture, Mary Baldwin College, October 1991.

"Feminism in the U.S. in the Early 20th Century in Comparative Perspective," German Association for American Studies annual conference, Muenster, Germany, May 1991.
Comment, "Women and American Political Identity," conference on Political Identity in American Thought, Yale Univ., April 1991.
"Slavery, Race, and the History of Women's Rights in the U.S.," Trenton State College, NJ, March 1991.
Comment, "Contextualizing Feminism," annual meeting of the American Historical Association, New York City, December 1990.
"The Political Isn't Personal: Mary Ritter Beard's View of Women's History," Center for American Culture Studies, Columbia U., October 1990.
"Mary Ritter Beard and Women's History," N.Y. Public Library, Sept. 1989.
Chair, "Power in the Early Twentieth Century," Organization of American Historians annual meeting, St. Louis, April 1989.
"What's in a Name?: The Limits of Social Feminism," Boston U., Jan. 1989; Brandeis U., Sept. 1989.
Panelist, "Feminist Theory," 10th Anniversary Celebration of the Women's Studies Program at Brandeis U., November 1988.
"Reconsidering Individualism and 'Nature Herself' in the Era of Laissez-Faire Constitutionalism," Harvard U. History Department, April 1988.
Panelist, "Individualism," N. Y. U. Humanities Center, March 1988.
Afterword, "Masculinity in Victorian America," Barnard College, Columbia U., January 1988.
Panelist, "Beyond Roles, Beyond Spheres: Thinking about Gender in the Early Republic," U. of Pennsylvania, December 1987.
Chair, "Women in American Constitutional History at the Bicentennial," Annual Meeting of the American Hist. Assoc., Washington, D.C., December 1987.
"Women's Rights: Unspeakable Issues in the Constitution," Association of Yale Alumni Faculty Seminar, September 1987, New Haven, CT; Brandeis U., March 1988; Second Annual Lowell Conference on Women's History, Lowell, MA, March 1988; Conference on the Constitution as Historical and Living Document, Duchess County Community College, April 1988; Richardson American Studies Lecture, Georgetown U., April 1988.
"How Weird Was Beard? Mary Ritter Beard and American Feminism," Seventh Berkshire Conference on the History of Women, June 1987, Wellesley MA.
"The Birth of Feminism," Women's Studies Program, Cornell U., March 1987.
"Feminism and Women's Political Participation in the Early 20th Century," Conference on Women and Citizenship, Women Historians of the Midwest, St. Paul, MN, March 1987.
"The Power of Communalism: Reflections through Women's History," Historic Communal Societies Conference, October 1986.
Chair, "Women in the 1950s: An Interdisciplinary Exploration," Organization of American Historians annual meeting, N.Y., April 1986.
"Feminism in the 1920s," Boston Area Feminist Colloquium, Northeastern U., January 1986.
"History of Feminism," Institute for Policy Studies, Washington, D.C., May 1985.
"Feminist Theory and Feminist Movements: The Past Before Us," Women's History Week, Harvard U., March 1985.
"Problems of Feminism in the l920s: the Political Environment," Women's History Series, New York U., February 1985; American Studies Lecture, Smith College, March 1985; Harvard Law School Faculty Colloquium, May 1985.
"Has Modern Woman Disrupted the Home? 1920s Answers," Wesleyan Center for the Humanities, October 1984.
"Feminism and Women in Professional Occupations in the 1920s," American Studies lecture, Amherst College, February 1984.
"Feminism in Transition, 1910-1930," Sixth Berkshire Conference on the History of Women, June 1984,

Northampton, MA.
Comment, "Nineteenth-Century Gender Conventions," Smith-Smithsonian Conference on Conventions of Gender, February 1984.
"Definitions of Feminism in the Early Twentieth-Century United States," Whitney Humanities Center, Yale U., September 1983.
"Challenging Myths of Victorian Womanhood," American Psychiatric Association Convention, New York City, May 1983.
"Women's History and Feminism," Phi Beta Kappa Lecture, Sweet Briar College, February 1983; Sarah Lawrence College, March l983.
"Reappraising the History of Feminism in the 1920s," American Studies Series, Boston College, February 1983; History Dept. Series, U. of Virginia, February l983; Hamilton College, April 1983; Trinity College, April 1983.
"The Hundred Fragments: Feminism, the Woman Suffrage Coalition, and American Society," Whitney Humanities Center, Yale U., January 1983; History Colloquium Series, Princeton U., March 1984.
"Women's Education Before 1837," panel, Conference on Women and Education: The Last 150 Years, Mt. Holyoke College, April 1982.
"The Crisis in Feminism, 1910-1920," Radcliffe Research Scholars Series, Radcliffe College, May 1982; Women's Studies Series, Wesleyan U., October 1982.
"Feminism and Women's History," Harvard U., Women's History Week, March 1982.
"The Problem of Feminism in the 1920s," Isabel McCaffrey Lecture, May 1981, Harvard U.; American Civilization Dept., Brown U., November l98l; History and Women's Studies Series, U. of Michigan, March 1982; Center for European Studies, Harvard U., April 1982.
Comment, "Consciousness and Society in New England, 1740-l840," Organization of American Historians annual meeting, April 1980, San Francisco, CA.
"Women's History: Retrospect and Prospect," Harvard Divinity School History Colloquium, March 1980; U. of South Florida Women's Week, March 1980; American Assoc. for State and Local History, NE Regional Seminar, November 1980, New Haven, CT.
"Women and Feminism in the 20th Century," Bunting Institute, Radcliffe College, October 1978.
"Roundtable on Mary Ritter Beard," Fourth Berkshire Conference on the History of Women, August 1978, South Hadley, MA.
"Ministers and Women in the Late l8th and Early l9th Century," Princeton Theological Seminary, March 1978.
1978.
"New England Women's Work in the Early National Period," Historic Deerfield, MA, February 1978.
Comment, "Sexuality and Ideology in l9th-century America," Southern Hist. Assoc. Conference, November 1977, New Orleans, LA.
"Passionlessness: An Interpretation of Anglo-American Sexual Ideology, 1790- l840," History Dept. Colloquium, U. of Mass., April 1977; Rutgers U., March 1978; Marjorie Harris Weiss Lectureship, Brown U., March 1978.
"Women and Religion in Early l9th-Century New England," History Department Colloquium Series, U.of Conn., February 1977; Old Sturbridge Village, March 1977.
Chair and comment, "Comparative Perspectives on Sexual and Marital Deviance and the Law," Third Berkshire Conference on the History of Women, June 1978, Bryn Mawr, PA.
"Adultery, Divorce, and the Status of Women in Revolutionary Massachusetts, "Conference on Women in the Era of the American Revolution, July, 1975, Washington, D.C.; Princeton U. Colloquium Series, November 1975; Boston State College Lecture Series on the American Revolution, November 1976.
Young Women's Conversion in the Second Great Awakening," Second Berkshire Conference on the History of Women, November 1974, Cambridge, MA.
Chair and comment, "Women in the Professions," First Berkshire Conference on the History of Women,

March 1973, New Brunswick, N.J.

PUBLIC SERVICE LECTURES:

"Women's Rights in the 20th Century," week-long series of lectures, Gilder-Lehrman Institute for American History seminars for teachers, June 2008,2009, 2011.

"What is Gender History?" Symposium on Women, History Connections Teaching American History Grant, Rockford Public Schools, Rockford, Illinois, October 2007.

"Marriage and the State," Thursday Morning Club (for the benefit of Mt. Auburn Hospital), Feb. 2006.

"What Can Venturesome Women of the 1920s Tell Us Today?" Linda Rosenzweig Memorial Lecture, Wellfleet Public Library, Wellfleet MA, August 2005.

"Marriage and the Public Order in the History of the United States," 2005 American Studies Summer Institute, John F. Kennedy Library, July 2005.

"Preserving Women's History at Radcliffe and Harvard," Committee on the Concerns of Women at Harvard, June 2005.

"Women's Education in the 18th Century," Adams Historic Site, Quincy, MA, April, 2005.

Moderator, "What Sort of a Right is Marriage?" Harvard University Human Rights Program, March 2005.

"What is Gender History?" annual luncheon for the College Board, Organization of American Historians, annual meeting, San Jose, CA, April 2005.

"What the State Has to Do with It: Changing Marriage," Democrats Abroad, Paris, Dec. 2003.

"Marriage and the Law," invited discussion with Senior Matrimonial Lawyers, educational retreat, Troutbeck Conference Center, Amenia NY, October 2003.

"Marriage as a Public Institution in the United States," Harvard Neighbors, February 2003; Harvard Librarians' group, February 2003.

"Looking at the World after 9/11 through a Women's History Lens," Radcliffe Seminars Final Conference, April 2002.

"Women as Workers and Citizens in the Twentieth Century," Institute for Emerging Civil Rights Leaders, Harvard Graduate School of Education, June 11, 2001.

"The Value of Women's Work: Historical, Public and Private Views," Bostonian Society, May 2001.

"Woman Suffrage: Why Did It Take So Long?" and "The Gender Structure of Citizenship," NEH Summer Institute for High School and Middle School Teachers on Women's Rights and Citizenship in American Thought," Ohio State Univ., July 2000.

"Education in Abigail Adams' Time," Women and the American Revolution Lecture Series, Adams National Historical Site, Quincy, MA, June 2000.

"Women of Conscience in Politics," Maine Town Meeting, 50th anniversary of Sen. Margaret Chase Smith's Declaration of Conscience, June 1, 2000, Skowhegan, Maine.

"The History of Marriage," testimony and discussion before the Judiciary Committee, Vermont House of Representatives, January 2000.

"Women as Citizens in the 20th Century," A Millennium Evening at the White House, Washington, D.C., March 1999.

"Historians and Filmmakers: A Dialogue," Chatauqua .N.Y., August 1997.

"Winning the Women's Ballot: Citizenship, World War, and the Woman Suffrage Campaign," U.S. Air Force Academy, Colorado Springs, August 1995.

"The Beginnings of Women's Education in the U.S.," Witmer Lecture, Social Studies Dept., Hunter College High School, March 1995.

"New Immigrants, New Women," Rebecca Plank Memorial Lecture, Milton Academy, March 1995.

"The South and the Nation in the History of Women's Rights," Conference of Southern Humanities Foundations, Washington, D.C., May 1988.

"Women's Rights: Unspeakable Issues in the Constitution," Judicial Seminar, N.Y. State Judiciary Continuing Education, July 1988.

EXHIBIT B

Bibliography

Bank, Steven A. "Anti-Miscegenation Laws and the Dilemma of Symmetry: The Understanding of Equality in the Civil Rights Act of 1875," University of Chicago Law School Roundtable 2:1 (1995), 303-344.

Basch, Norma. Framing American Divorce (Berkeley: University of California Press, 1999).

Basch, Norma. In the Eyes of the Law: Women, Marriage and Property in Nineteenth-Century New York (Ithaca: Cornell University Press, 1982).

Blake, Nelson. The Road to Reno: A History of Divorce in the United States (New York: Macmillan, 1962).

Burnham, Margaret. "An Impossible Marriage: Slave Law and Family Law," Law and Inequality, 5 (1987), 187-225.

Caldwell, Katherine. " 'Not Ozzie and Harriet': Postwar Divorce and the American Liberal Welfare State," Law and Social Inquiry, 23:1 (Winter 1998), 39-40.

n.a., "Chart 4: Grounds for Divorce and Residency Requirements," Family Law Quarterly 44.4 (2011), 514.

Chused, Richard H. "Married Women's Property Law: 1800-1850," Georgetown Law Journal 71:5 (June 1983), 1359-1425.

Cornell University Law School Legal Information Institute. "Marriage Laws of the Fifty States, District of Columbia and Puerto Rico." http://topics.law.cornell.edu/wex/table_marriage

Cott, Nancy F. "Marriage and Women's Citizenship in the United States, 1830-1934," American Historical Review 103:5 (Dec. 1998), 1440-74.

Cott, Nancy F. Public Vows: A History of Marriage and the Nation (Cambridge, Mass.: Harvard University Press, 2000).

Edwards, Laura F. " 'The Marriage Covenant is at the Foundation of all Our Rights': The Politics of Slave Marriages in North Carolina after Emancipation," Law and History Review 14:1 (Spring 1996), 81-124.

Fowler, David H. Northern Attitudes towards Interracial Marriage: Legislation and Public Opinion in the Middle Atlantic and the States of the Old Northwest, 1780-1930 (New York and London: Garland, 1987).

Franke, Kathryn. "Becoming a Citizen: Reconstruction Era Regulation of African American Marriages," Yale Journal of Law & the Humanities 11:2 (Summer 1999), 251-309.

Glendon, Mary Ann. The Transformation of Family Law: State, Law, and Family in the United States and Western Europe (Chicago: University of Chicago Press, 1989).

Grossberg, Michael. Governing the Hearth: Law and the Family in Nineteenth-Century America (Chapel Hill: University of North Carolina Press, 1985).

Hartog, Hendrik. "Marital Exits and Marital Expectations in Nineteenth Century America," Georgetown Law Journal 80:1 (October 1991), 95-129.

Hartog, Hendrik. Man and Wife (Cambridge: Harvard University Press, 2000).

Hasday, Jill Elaine. "Federalism and the Family Reconstructed," UCLA Law Review 45:5 (June 1998), 1297-1400.

Hasday, Jill Elaine. "The Canon of Family Law," Stanford Law Review 57:3 (Dec. 2004), 825-900.

Kessler-Harris, Alice. In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-century America (New York: Oxford, 2001).

McCurry, Stephanie. Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country (New York: Oxford, 1995).

Paul, Diane, and Hamish Spencer, " 'It's OK, We're Not Cousins by Blood': The Cousin Marriage Controversy in Historical Perspective," PLOSBiology 6:12 (Dec. 2008).

Pascoe, Peggy. "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America," Journal of American History 83:1 (June 1996), 44-69.

Pascoe, Peggy. What Comes Naturally: Miscegenation law and the Making of Race in America (New York: Oxford, 1999).

Phillips, Roderick. Putting Asunder: A History of Divorce in Western Society (Cambridge and New York, Cambridge University Press, 1988).

Revolutionary War Pension and Bounty-Land Application Files, Introduction, microfilm Records of the Veterans Administration RG 15, http://www.footnote.com/pdf/M804.pdf

Sayre, Paul. "A Reconsideration of Husband's Duty to Support and Wife's Duty to Render Services," Virginia Law Review 29 (1943), 857-75.

Shammas, Carole. "Re-assessing the Married Women's Property Acts," Journal of Women's History 6:1 (Spring 1994), 9-30.

Siegel, Reva B. "The Modernization of Marital Status Law: Adjudicating Wives' Rights to Earnings, 1860-1930," Georgetown Law Journal 82:7 (Sept. 1994), 2127-2211.

Skocpol, Theda. Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States (Cambridge, Mass.: Harvard University Press, 1992).

Stein, Edward. "Past and Present Proposed Amendments to the United States Constitution Regarding Marriage," Washington University Law Quarterly 82:3 (Fall 2004), 611-686.

Sugarman, Stephen D., and Herma Hill Kay, eds. Divorce Reform at the Crossroads (New Haven: Yale University Press, 1990).

VanBurkleo, Sandra F. 'Belonging to the World': Women's Rights and American Constitutional Culture (New York: Oxford, 2001).

Vernier, Chester G. American Family Laws: A Comparative Study of the Family Law of the Forty-Eight American States . . . (Stanford: Stanford University Press 1931). vol I Introductory Survey and Marriage (to Jan. 1 1931); vol III, Husband and Wife (to Jan. 1, 1935).

Wallenstein, Peter, "Race, Marriage and the Law of Freedom: Alabama and Virginia, 1860-1960s," Chicago-Kent Law Review 70:2 (1994), 371-437.

Warren, Joseph. "Husband's Right to Wife's Services," Harvard Law Review 38 (Feb. 1925), pt. 1, 421-46, pt. 2, 622-50.

Cases

Meyer v. Nebraska, 262 U.S. 390 (1923).

Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942).

Perez v. Sharp, 198 P.2d 17 (Cal. 1948).

Loving v. Virginia 388 U.S. 1 (1967).

Gleason v. Gleason, 256 N.E.2d 513 (N.Y. 1970).

Statutes

N.Y. Domestic Relations Law Section 170