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## **Introduction**

A society's discourse on marriage is symptomatic of the broader tensions and conflicts which define that society at a particular moment. More than a private matter of sexual intimacy, it concerns an individual's and group's relationship to the state. It is evident, for example, that contemporary debates in the US over "poor single mothers" and "gays who want to marry" is not simply a debate about marriage. At stake are fundamental issues of political, social and economic power. Marriage, in the words of the 1996 Welfare Reform Act, "is the foundation of a successful society." The point of this reform is to strongly suggest that poor women of color should marry because unwed mothers are the cause of alleged social breakdown. A segment of the gay and lesbian movement on the other hand, has chosen to struggle for its right to marry because marriage represents political power, access and acceptance. In one place poor single women of color are being forced to marry, and in another gays and lesbians are struggling for the right to marry. Though a private institution, marriage is thoroughly political.

Historians and theorists have shown that marriage produces gendered relations of power. However, given that marriage so fundamentally shapes social relations as is clear with the welfare example above, gender cannot be the only kind of power implicated. My question then is: does marriage *also* produce racialized relations of power? If so, how are race and gender power relations reflected in and reinforced by marriage? By looking at three distinct political moments - Reconstruction, the Progressive Era, and the post Civil-Rights era - I will analyze how differently placed political actors struggle to define marriage in relation to both gender and race. The comparison will allow me to locate the durable racialized aspects of marriage (continuities) as well as those that change in relation to different political moments. I will look at how marriage reflects and reinforces political hierarchies, relationships and identities based on the interrelationship of race and gender in a effort to not only better understand marriage but also the

identities which inform it. Drawing from the work that relates multiple identities, sometimes referred to as “intersections,” I will explore the racial and gender dimensions of marriage, examine how these categories take shape in relation to one another, and how their relationship has been constructed at various moments for political reasons.

### **The Politics of Marriage**

Marriage both marks and blurs the line between private and public in the United States. The right to marry is recognized by law as “one of the basic civil rights of man” (*Loving v. Virginia*). At the same time, it is considered “an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society without which there would neither be civilization nor progress” (*Maynard v. Hill*). By legislating marriage as both a right to contract and as an obligation to the state, the Supreme Court maintains the institution of marriage as neither entirely private nor public. Laws on marriage help shape and link personal, economic and political aspects of life. In the United States, marital status defines both an individual's household and sexual relationship, while shaping his or her civil and political status. Signifying a private relationship of familial intimacy, marriage law anchors private property by establishing familial inheritance rules. It is also a public, state-managed institution. Through property-holding, citizenship, immigration and tax policy, government and legal claims determine the obligations and privileges of marriage.

Historical work has shown how marriage and family are not “natural” phenomena but socially constructed institutions, changing with economic and intellectual shifts (Engels 1884; Degler 1980; Grossberg 1985; Bardaglio 1995). Political theorists have argued the importance of marriage both in liberal contract theory and for the founding of the liberal state. In particular, the male's right to participate in the state was based on his role as head of the household (Okin 1979; Pateman 1988). These works have examined how marriage performs critical roles in society, polity and economy by constituting the private, producing children, curbing sexual passions and protecting private accumulation.

Historian Nancy Cott, focusing on nineteenth-century United States, examines the political role of marriage, which she asserts is a form of public policy. She illustrates the

numerous ways state actors have used marriage to regulate and control the citizenry. Cott explains how, through marriage, the state has bestowed or denied rights of privacy, economic privileges, and some political rights such as voting and freedom of speech. Moreover, she argues by granting certain rights to men and women through the status of “husband” and “wife,” and by structuring a sexual division of labor, marriage policy creates and institutionalizes gender roles and statuses. Cott argues that heterosexual marriage is the most direct link of public authority to gender formation and the primary institution that makes the public order a gendered order (Cott 1995).

Cott also holds that marriage norms and laws have been deployed as important tools of racial formation. By controlling sexual reproduction through antimiscegenation laws, the state not only guarantees the population's survival but also controls the color of the polity (Cott 1995). Similarly, Jacqueline Stevens argues that through miscegenation laws, marriage has played a role in construction and perpetuation of racial identity in the United States (Stevens 1997). While both Cott and Stevens begin the important work of linking race and marriage, each limits her work to the role of antimiscegenation laws in the maintenance of white supremacy. Neither goes beyond a discussion of marriage as a way to maintain the color line. In focusing on the *effects* of marital policy, they fail to examine the discursive, political and economic context, which enabled and sustained such laws in the first place. Moreover, they do not theorize the link between race and gender in marriage.

Moreover, the study of antimiscegenation law does not fully address all the connections between race and marriage. As is raised in more detail below, there are moments when marriage represents racialized relations of power other than miscegenation. Marriage is a dynamic institution and its examination is useful in illuminating some of the workings of race and gender politics in American political development. In this project, I propose to offer a systematic account of the politics of marriage in the United States by conducting a thorough analysis of the racial underpinnings of marriage that explores, in addition to antimiscegenation laws, the relationship between marriage and race in immigration and welfare policy and politics. I am interested in examining not just how marriage is used to control racial reproduction, but how marriage is a political tool used to manage, protect and even help define political interests.

## **Institutions, Discourse and Identity**

How and where do changes come about in marriage? To what degree is marriage a vehicle for state authority and how is it shaped by discourse and political culture? The viewpoint that the state is the primary institution of politics is one of the main tenets of New Institutionalism (Skrowronek 1982; Skocpol 1985; Orren and Skrowronek 1993). Like the New Institutionalists I want to argue that state institutions have effects and shape political behavior. In *Bringing the State Back In*, Theda Skocpol argues that the state pursues goals independent of the interests of social groups, classes and society (Skocpol 1985). However, I depart from the New Institutionalists because I also see as important the role of discourse, political culture and identity in influencing and constructing political behavior. This relationship between institutions and identities as interrelated sites of politics is often missed in accounts of state institutions (Hattam 1993a).

By discourse, drawing from Joan Scott, I mean the terms which people take for granted as they organize and interpret themselves, their relationships, and their worlds. Discourse is neither a superstructural reflection nor a mystification of reality, but the organizing principle of social identity (Scott 1996). An analysis of marital discourse, the laws and politics around marriage furnishes an entry point for raising questions about politics and identities and how social and political relationships are conceptualized and organized. Identity categories are produced and reproduced through political relationships, fashioned out of issues of power, access, and privilege. Identities do not have stable characteristics or essential natures, but are the repositories of cultural practices and power relations. There is no pure embodiment of these analytic categories. Rather, they take shape and change among possibilities bounded by political culture, discourse, economics and institutions. Thus, an exploration of identity also elucidates contexts and historical moments.

Drawing from historian Kathleen Brown, I define gender as the historically specific discourses, social roles, and identities creating sexual difference, including sexuality, utilized to maintain social, economic and political order. Similarly, I define race as the historically specific discourses, social meanings and cultural constructions attached to phenotype and social appearance and used to foster economic order and national goals. For both I will examine the

ways in which they produce power relationships and reinforce the systemic maintenance of material inequities (Scott 1988; Morrison 1990; Brown 1996).

### **Multiple Identity Approach**

Analyzing the political role of marriage means focusing on gender identities, because who traditionally have been the subjects of marriage but men and women? At the same time, who can marry, and who is obliged to marry are contestable issues and have manifested differently through the changing conceptions about the category of race. The insights and approach of work on intersections or, what might also be called 'multiple identity analysis', are useful to examine the politics of marriage. The study of marriage strengthens the case for using a multiple identity analysis because marriage is a site, historically, where race, gender, sexuality and class categories with their economic and discursive underpinnings, interact. How do race and gender take shape in relation to each other through marriage? How has this relationship changed? What are and have been its political consequences?

The study of identity in politics and society has generally been concerned with processes of creating difference and similarities among groups. Recently, however, some scholars have argued that single-identity approaches, for example a focus exclusively on women, do not adequately address intra-identity power relations. Instead, they engender stark dichotomous analytic frameworks such as Man/Woman or White/Black. Moreover, they assume that power relations are mutually exclusive, conceptually cordoning off potential coalitions and more radical political possibilities (Spelman 1988; Fuss; Brewer 1993; Flax 1998). Many academics, including political scientists, historians and legal theorists, have begun to use multiple identity categories in their analyses to show the interrelationship between identities in politics, law and society. Multiple identity analysis attempts to articulate and highlight the interplay or dynamic between identity discourses which produce power relations, institutions and culture, and demonstrate the effects on how individual and group identities are formed and how political change is conceived. Multiple identity analyses ask, among other things, how do identities get constructed in relation to each other and how do those relations act, influence, construct and manifest in politics and society?

Feminists of color have pioneered work in this area. In response to the exclusions in the white women's movement, many focused on how systems of oppression such as racism and sexism work to erase the position of black women in law, politics and society (Hull, Scott and Smith 1982; King 1988; Collins 1990; Crenshaw 1991; Brewer 1993;). While these works have raised important points, they are also limited by their insights. By recovering the experiences of black women, these scholars have risked reifying identity categories and lost sight of the political and historically situated nature of identity construction. The problem is distinguishing between how race and gender operate in individuals and how they emerge in history and politics.

Using more than one identity category poses the challenge of how to integrate concepts from diverse theoretical traditions, and to chart a "relationship" among them. As Iris Berger explains, "In the absence of analytical clarity, the litany of "race, class and gender" threatens to become a formulaic reiteration of belief rather than a source of innovative or systemic insights into historical processes" (Berger 1992). How do we go beyond the assertion that identities are situational? How do we describe and show that race, class and gender are discrete categories that nevertheless continually interact with and change each other?

The answer lies, in part, in examining how identities emerge in politics and institutions, rather than in individual experience. Two kinds of approaches offer ways into theorizing how multiple identities work in relation to each other. One approach has been to posit the relationship between race and gender as "overlapping" categories and demonstrate how race and gender enable or define specific configurations of power relations. By examining the relationship between categories it is possible to analyze how, for example, racism or sexism, are not each an unchanging, unified set of traits but change over time in relation to each other. Kathleen Brown, in her investigation of colonial Virginia, examines the changing role of gender in the creation of slavery and the intensification of patriarchal forms in gentry families, colonial culture and the legal apparatus of the state (Brown 1996). In her work, Gail Bederman investigates the turn of the century cultural struggle and ultimate reconfiguration of manhood and the re-definition of the term civilization through notions of race (Bederman 1995).

Another approach has been to place multiple identity categories such as race and ethnicity within a system. The notion of a system suggests that categories are produced by relationships

and are not things in themselves and that relations of power unfold along multiple dimensions. Victoria Hattam's conceptualization of "ethnicity" as the third term within the political "field of racial discourse," for instance, has recast Progressive era immigration politics in the US, redefining present political debates (Hattam 1999). Similarly, Claire Jean Kim's work on the triangularization of Asian-Americans vis-à-vis whites and blacks describe the complex system, which reproduces white power and privilege (Kim 1999).

Drawing on the above approaches, I seek to reconfigure questions about marriage by holding race and gender in relation and exploring the ways in which the two work together politically. I hold them together because I assume, building on work such as Cott and others, that talking about marriage necessarily entails talking about gender. To study marriage through multiple identities, then, is to study the historical ways different ideologies and discourses about womanhood and manhood develop, change, are combined, amended, and contested through their interaction with race, as well as, class, sexuality and ethnicity. How marriage is political can only be made sense of as part of an analysis of the construction and consolidation of power across multiple political fissures. I will ask what are the similar and different ways race or gender become salient for making determinations in marriage? I will examine the ways in which marriage not only informs gender and race but how the two are related in marriage. Hazel Carby has called for "more feminist work that interrogates sexual ideologies for their racial specificity" (Carby 1987). This study begins with that task in mind.

### **Research Questions**

Below is a brief summary of my three cases. The periods of Reconstruction, the Progressive era and the post Civil-Rights era are chosen because they are moments of political change, in relation to both race and marriage. During Reconstruction I focus on the politics of interracial marriage; during Progressive era I examine the politics of marital expatriation; and finally during the contemporary period I compare the politics of gay marriage and welfare reform. The three periods are chosen as cases to explore when the institution of marriage plays a role in race politics, what that role is, whether it has changed and what have been the political consequences. The study of changes in the institution of marriage during these three historical

moments offers a perspective on how race and gender interact politically. Moreover, these cases will demonstrate how key race and gender politics are to constructing and maintaining the institution of marriage.

While the cases are historical they are not, as yet, part of a historical narrative. Rather, I consider these cases on a horizontal plane, each with its own internal story and features. In this project, context is very important and I plan to compare and contrast across time, looking for how similar features play out differently in each of my cases. However, the cases are interlocking historically, as not only is marriage law based on legal precedent but marriage also has a cultural lineage. The elements of marriage as an institution and discourse that sustain race and gender power relations change over time as their legitimacy is contested. Thus, the past may shed light on the contemporary issues.

I will approach the cases with questions about the interplay of identities with particular attention to race and gender, but also including sexuality and class where applicable. By interplay I mean to examine how the questions -- who can marry, who can not, who is strongly encouraged to marry and what are the political consequences of those determinations? -- are undergirded by race and gender. Mari Matsuda has called this line of inquiry into the multiple ground of identity, "asking the other question" (Matsuda 1991). In this project this means looking at an issue or condition traditionally regarded as a gender issue and ask, "Where is race in this?" This approach suggests examining the political processes by which certain marriages are prohibited against those which are strongly encouraged and legally sanctioned. It also proposes comparing and relating gendered configurations of marriage with those of racialized ones. How does race politics instigate legislation on marriage? And, in turn how does legislation on marriage reinforce, change, or enable certain kinds of race relations?

### **Case Description**

In this dissertation, through the institution of marriage I will examine moments when race and gender identities could either support or subvert, embrace or challenge political relations/structures; moments when those identities themselves change. Identity categories constructed in and through relations with others in political discourse and through institutions

both maintain the status quo and create the possibility for change in politics. Examining the politics of marriage offers an opportunity to analyze how power is secured or challenged in a mobile, complex and unstable system in institutions, and how the interplay of race and gender is a meaningful relationship for the constitution of specific political edifices.

### ***Case #1: Reconstruction Era***

The first case will be an analysis of the various conflicting marital discourses during Reconstruction. After the ratification of the Fourteenth Amendment, former slaves were granted the legal right to marry. Elizabeth Cady Stanton was arguing that marriage constituted the political, legal and economic subordination of women. And, for the first time, interracial marriages became possible. For some ex-slaves marriage was a metaphor for freedom, signifying citizenship rights and social acceptance, while from the perspective of some suffragists marriage symbolized women's lack of rights. At the same time, many white women rebuffed Stanton's analysis of marriage while many former slaves challenged marital policies of state organizations such as the Freedmen's Bureau which strongly encouraged them to marry. Moreover, during this time, Southern political elites forcibly prohibited interracial marriages. By examining various discourses of marriage during this period, I hope to analyze how antimiscegenation rulings and opinions were not only part of the general practice of white supremacy but also had specific political implications. I want to examine the ways interracial marriages, presumably between poor whites and ex-slaves, constituted a political threat to Southern political authority and worked within larger political trends.

In these different conceptualizations of marriage, how are race and gender defined and how do those definitions politicize marriage? I am interested in placing these particular race and gender configurations within context of the ratification of the Fourteenth Amendment and the right of black men to vote, and the growing tension between abolitionists and women's rights activists. In addition, I will ask how these marital discourses play into the Reconstruction politics between the South and the Union government. I want to examine the ways in which gendered discourse enabled the racial politics of the time.

### ***Case #2: Progressive Era***

The second case will focus on the political history of marital expatriation from 1907 to 1934. In 1907 Congress passed the Marital Expatriation Act which asserted "that any American woman who marries a foreigner shall take the nationality of her husband." Congress had previously passed an Act in 1855 declaring that any foreign woman who married an American male would automatically receive American citizenship. In 1922 Congress passed the Cable Act, which loosened the restrictions on married women's rights to nationality. It stated that a woman who married a foreigner could petition for American nationality on her own behalf but under the condition that her husband was eligible for citizenship as well. This eligibility was based on his racial make-up. It was not until 1934 when a married woman's citizenship rights were entirely dislodged from her marital status.

In this case I will focus on the question of why marriages between immigrant men and American women were basically prohibited. In examining the relationship between race and gender I will ask why and how political elites turned to marriage as a form of immigration restriction as well as how marital expatriation figured within the rise of anti-immigrant sentiment and modern feminist movement. The discourse and institutional reform regarding immigration and citizenship laws represented a desire for cultural homogeneity, white superiority, and a concern about the potential dangers stemming from a rise in immigration and black voting rights. The discourse of the suffrage movement and eventual ratification of the Nineteenth Amendment grew out of already-existing symbols of women as mothers and moral guardians who, with the vote, would educate future citizens in the traditions and values of America. How were debates about immigration and naturalization linked to women's relationship and membership in the national and political community? Why was stressing women's distinctive traits as wives and mothers most effective in getting the vote? How did the racial discourse and politics of the time enable the suffrage movement? How do class issues concerning immigration inform the politics of race and gender? By way of comparison, I will ask how the positioning of race and gender are similar or different from those during Reconstruction. And, is marriage functioning similarly to stabilize race and gender power relations?

### ***Case #3: Post Civil-Rights Era***

The third case will examine the recent enactment of the Personal Responsibility Act of 1996, and analyze the politics of gay marriage as point of contrast. The "over-dependent poor single mother" and the threat of gay marriage are concurrent pathologized notions of marriage circulating in the mainstream. However, marriage means something very different to welfare recipients with children than it does to gays and lesbians. This recent welfare law basically makes single mothers choose between work and marriage. Many believe, following the Moynihan Report, that marriage is a solution to poverty and crime among African Americans in the inner cities, obligating poor women to marry. Despite recent legislation in California enforcing heterosexuality in marriage, gays and lesbians articulate a political platform rendering the rights of gays to marry a form of political and social acceptance. Gay and lesbian activists argue that as citizens, it is their right to marry whomever they choose.

In this case, I will analyze why marriage plays such an important role in the 1996 welfare policy. In examining the relationship between marriage in welfare policy and gay politics, I will ask how they relate to the current discourses of "post-feminism" and "color-blindness?" Why is marriage conceived as a solution to poverty? What is the connection between the current rise in immigration and the 1996 welfare policy? How have race, gender, class and ethnicity come together to construct marriage as a corrective for social ills? Does prohibiting gay marriages enable welfare reform? In comparison to the Reconstruction case, is the push for women of color who receive state aid to marry similar or different from the policies during Reconstruction encouraging ex-slaves to marry? In addition, is the treatment of women in this case similar or different from that during the of marital expatriation?

### **Research Design**

I seek in this project to explore how marriage produces racialized relations of power. I am interested in examining the similar and different ways political and economic elites and social movement actors define and use the identity categories of race and gender as they relate to and define the institution of marriage. To do so:

1. I have structured each of the cases around a form of marriage legislation, where I will

- begin my research. I will examine the discursive and economic underpinnings of antimiscegenation law, marital expatriation and welfare law, searching for how each defines race and gender, and how marriage functions politically for elites. Here, I will analyze Congressional and legislative records as well as case law .
2. In turn, I will examine arguments and responses by social movement actors to legislative changes in marriage and examine if and how they accepted or challenged those definitions of marriage. Since marriage, historically, has been "a women's issue" I am interested in examining how women responded to changes in marriage which effected racialized subjects. Did racialized actors challenge or embrace these changes in the institution of marriage? Is marriage really only an issue for women, white or non-white? Have activists articulated a politics around marriage that is about race?
  3. I will contextualize each case of marriage within its larger discursive and economic framework. In addition, I will explore cultural documents of the time, such as books and other literature on the proper role of the family and marriage, and place them within a broader political context.

## Primary Source List (in progress)

### Reconstruction Era:

- Freedmen's Bureau documents
- Southern Legislative records
- *Scott v. Georgia*, 39 Ga. 323, 326 (1869).
- *State v. Gibson*, 36 Ind. 389 (1871).
- *Doc. Lonas v. State*, 50 Tenn. 287(1871).
- *Green v. State*, 58 Ala. 190 197 (1877).
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- Frederick Douglass -- Speeches on Women's Rights

### Progressive Era:

- U. S. Congress, Senate, *Reports of the Immigration Commission*, "Occupations of the First and Second Generations of Immigrants in the US and Fecundity of Immigrant Women," 61 Cong., 2 sess., Jan 12, 1910.
- House Committee on Immigration and Naturalization, *Hearings before the Committee on Immigration and Naturalization*, 70<sup>th</sup> Congress, 1<sup>st</sup> session, *Effect of Marriage Upon Nationality*, statement by Emma Wold, May 19, 1928 (Washington, DC:GPO, 1928).
- *United States v. Cohen*, 179 F. 834 (1910)
- *Mackenzie v. Hare*, 165 Cal. 776 (1913); 239 US 299 (1915)

### Post Civil-Rights Era:

- Department of Heath and Human Services *Comparison of Prior Law and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)* April 1993.
- Daniel Patrick Moynihan, *Report on the Negro Family*
- William Julius Wilson. *Truly Disadvantaged*
- Charles Murray. *Losing Ground*

### On Marriage generally:

- *Loving v. Virginia*, 388 U.S., 1, 87 S.Ct. 1817 (1967).
- *Reynolds v. United States*, 98 U.S. 145, 165 (1878).
- *Maynard v. Hill*, 125 U.S. 190 (1888).

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