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MARRIAGE LAW: OBSOLETE OR CUTTING EDGE?

UNIVERSITY OF MICHIGAN LAW SCHOOL
ROOM 250 HUTCHINS HALL

FRIDAY, MARCH 22, 2002

INTRODUCTION

WELCOME AND INTRODUCTORY REMARKS

DEAN JEFFREY S. LEHMAN: Okay everyone, let's start. I'm Jeff Lehman, Dean of the Law School and it's a privilege to welcome you here this morning.

Law is arguably the most important instrument through which a society determines the consequences that follow from individuals' words and deeds. And within the law, the law of marriage is arguably one of the most significant domains in almost every legal system in the world. Through the law of marriage, individuals' actions or expressions of commitment can create enduring rights and duties: rights that can be enforced against one another and against third parties, duties to one another and sometimes to outsiders as well. Inherent in the idea of law is some element of consistency over time. In positive terms, the force or precedent is usually described as stable and predictable. In negative terms, that same force can be described as rigid and archaic.

Over the past hundred years, social and cultural expectations surrounding various forms of committed relationships have changed dramatically, and contemporary legal systems have struggled to adapt. The result has been an extraordinary opportunity to test fundamental assumptions about law, about the cultural understandings that are enforced through state power, and about the mechanisms that drive law's evolution. The *Michigan Journal of Gender & Law* has drawn together an exceptional group of panelists who will discuss these questions throughout the day. The four panels develop these questions chronologically, beginning with a more historically grounded conversation about the way in which marriage law has evolved and ending with a more speculative conversation about the way in which marriage law is likely to evolve in the future. The panelists bring deep expertise from a variety of disciplines. We are all grateful to the editors of the *Journal of Gender &*

Law for their work in preparing what promises to be a day of intellectual stimulation and insight.

And so without further ado, let's have the first panel come forward and we'll turn things over to the first moderator, Bruce Frier.

PANEL I

MARRIAGE IN HISTORICAL AND CULTURAL PERSPECTIVE: TRADITION AS EMBODIED AND ENFORCED THROUGH LAWS

BRUCE W. FRIER, MODERATOR: Let me welcome you to this first panel on Marriage in Historical and Cultural Perspective: Tradition as Embodied and Enforced Through Laws. This first session of the symposium on marriage law centers on the weight of history in relation to the institution of marriage. The historical development of marriage, the historical forms that marriage has assumed, these things are of considerable interest in determining the extent to which the familiar institution of marriage is malleable, either through the direct normative control of law or through supplier responses to social changes. In order to decide whether marriage has a future, we must first discuss whether marriage has a past.

The principal question that historical sources pose may perhaps be put in the following way. Marriage in some form or another is an all but ubiquitous feature of human societies in the sense that external observers will virtually always find within each society an institution that they broadly recognize as what we call marriage: a regularized and long-term coupling of a man and a woman, a degree of guaranteed domestic exclusivity and autonomy associated with that coupling, and a widespread social understanding that such a coupling is intimately associated with procreation and the demographic reproduction of society.

Nonetheless, even if we confine ourselves solely to the mainstream Western cultural tradition, thus ignoring huge masses of evidence on non-Western societies, the forms that marriage has taken over the past three millennia have been so diverse as to make it questionable whether we are correct in referring to one single institution that has undergone repeated metamorphosis in response to social and legal demands, or rather to a series of institutions or social formations, more or less historically independent of one another, that for the sake of convenience we simply designate with the cover name of marriage. The answer to this question may in turn influence the extent to which we feel free to alter the legal institution of marriage in order to make it conform more perfectly with modern social expectations. Is marriage a natural human