

On Domestic Partnerships, Civil Unions, and Marriage

An Essay
by
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Introduction to the Electronic Version

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Mankind has seen an unending change in societal rules throughout all of history. There have been matriarchal societies as well as patriarchal societies. There have been societies where the roles of males and females were roughly equivalent in authority and those where women were little more than slaves. There have been societies where open displays of sexual activity were encouraged and those where sexual activity was reserved strictly for the purpose of procreation. There have been societies where the bodily mutilation of children was a ritualized mode of social acceptance and those that found any physical alteration of the body abhorrent. In short, acceptable social behavior and rules are as mutable as the imaginations that led to their adoption.

The American colonies were assembled with a large influx of fundamental Christian groups that were as ideal for the rugged life of the frontier as they were a thorn in the side of European society. These societal groups were really tightly controlled mini-theocracies that were very communistic in their early agrarian forms. While their sense of community and the sharing of both work and the fruits of that work were essential for survival in the New World, they also brought a boatload of societal rules that plagues us even today. These religious groups were strong patriarchies and these rules evolved primarily to subjugate the female to a role of child bearing and drudgery bordering on slavery. The authority for the imposition of these rules was found in the Word of God.

If one disregards the individual members of these groups, it can be said that they did well in the New World, that is they prospered as groups, particularly when the economy stayed closely tuned to agronomy and when they comprised the entire societal body. As larger communities formed and industry and commerce began, they had difficulty fitting their rules into the demands of this new and more robust society. Nevertheless, their influence on societal rules was large, from the wording of the Constitution to the incorporation into common law of many of their religious interpretations for moral behavior.

All of the early religious groups of significance in America were patriarchal and monogamous, unlike many of the societies of the Bible on which they supposedly relied for their guidance. Of course, the natives of America were a curious mix of monogamy and polygamy (another reason to consider them expendable savages), and we solved that problem by one of the worst genocides in the history of mankind. Then the Mormon Church came along wanting to include the polygamy of the Old Testament as part of their societal rules, and we drove them into the wilderness of Utah.

So while the Constitution was framed based on the concepts of human rights adopted from the European enlightenment (although frequently worded in Christian phraseology), the people weren't all that tolerant. If you were both white and Christian, you were accepted. If you were black, brown, yellow, or red, or if you had non-Christian or no religious beliefs, you were a heathen—deserving of no respect and few human rights.

From all of this early and now ingrained moral piety we have inherited both moral strictures and common law which still asserts that the primary function of sexuality is procreation, that the rightful place of women is subservience to men,

that marriage is a bonding by God of a man and a woman for the purpose of procreation and subsequent nurture of the family (primarily by the woman), and so on. But as usual, society marches on, and the demands of newly morphed societies are rarely identical to those of the past.

We now have a society where some recognition of the reality of, and even tolerance for, homosexuality is beginning to take root. Paradoxically, we have even legislated some of this tolerance at the national level, while many states are still enforcing laws put in place in our Puritan past. We are still prosecuting polygamists in Utah (or killing them in shoot-outs with the law). We are still withholding the legal and civil rights of those in civil unions that do not meet the criteria of our Puritan Christian origins. Societal change is relentless and as inevitable as taxes, but it is never easy.

So let's examine the concept of civil unions without all the religious baggage of the past. Defining the civil union is probably easier if we first define what it is not. It is not a union granted by God, that's a different issue altogether, even though it is an issue at the root of the problem plaguing us today in America. At its minimum, a civil union is any domestic partnership of two consenting adults that provides a legal basis for the sharing of common property. At its maximum, it is a union that, beyond the personal reasons of convenience and expression of care and mutual responsibility, provides a legal basis for the sharing of common property and a guarantee of additional rights and benefits our society provides to encourage the formation of such a domestic, group entity.

A minimum civil union is available in only a few states at the moment, but it is inescapable in many states where common law provides precedence for dealing with common property that has been shared in a domestic relationship by any parties, regardless of sex or even number. Such is the beauty of common law where societal practicality demands solutions of real problems and thereby sets the stage for change of the more idealistic rules of society, bringing them ultimately more in line with reality.

The only maximum civil union available in America today is called marriage, and this is defined as the union of one male and one female consenting adult in a domestic relationship. This union provides for the legal disposition of common property, the legal assumption of responsibility by one party in matters of physical emergency to the other party, and legal entitlement to financial and other benefits legislated for those in a civil union.

Of course, many of these marriages include unacknowledged or unrecognized bisexual or even homosexual members, but the law seems to ignore this fact even when it becomes known. That is, the actual sexuality of the participants is disregarded as long as the union is between a male and a female. Does this defy all logic? Yes!

So it could be said that the law of the land guarantees civil rights but allows this guarantee to be eroded by arcane laws lingering from our Puritan past. It allows one kind of civil union but essentially denies all others. It accepts the reality of homosexuality when it is convenient but denies it when it conflicts with our Puritan sense of societal rules. Then again, this is quite consistent with a society that is comfortable, even intimate, with hypocrisy.

We can see that common law already includes the basics for dealing with civil unions. What are the next evolutionary steps we can expect in common law concerning civil unions? Again, let's start with the negative. What we shouldn't expect is a sudden capitulation of religious values, and this is how they are seen by most when the civil union is called a marriage. This is because marriage carries the baggage of tradition as a union bestowed by God, not the state. No matter how hard we godless try, this tradition will not just roll over—not as long as the truly religious and the hypocritically religious retain a large majority in the electorate.

“What's in a name? That which we call a rose by any other name would smell as sweet” (thank you, Will). The word “marriage” has all sorts of social and religious baggage, like many words. It has been applied both to monogamous and polygamous domestic arrangements in the past, but always to a union whose primary purpose was procreation and nurture of the resultant family. It became part of societal structure because it served the survival of the society by ensuring that one of the parties (mostly the man) would not shirk his nurturing responsibilities and thereby add to the general burden of the society at large. To make this contract even stronger, we added the sanctity of God (or the Gods, in some societies).

So why bother with trying to call all forms of civil union marriage? To do so is to uselessly burden the new forms of civil union with the social and religious baggage of the past. What we need are new forms of civil union that will transcend the antiquated concepts inherent in the traditional civil union of marriage, forms that will serve the original purposes but do it in the very different society of today.

Societal rules are always practical when they are generated, and they change when they no longer serve their original purpose. The civil union of marriage as defined above was a very practical societal rule and therefore a good one for all the previous societies of mankind, but it no longer serves its original purpose. The need for marriage as the sole form of civil union has changed along with the practicality of enforcing it.

Except for adoption, the only way of securing progeny was, until modern times, strictly a matter of male and female copulation to produce offspring. This is no longer true. Artificial insemination negates the need for a male's presence in fertilizing the egg of the female. In vitro fertilization negates the need for either sex to be present at the time of fertilization. In the near future, cloning (yes, the Puritanistic restrictions will eventually fade on this issue as well) will make it possible for either sex to procreate without any participation from the other. In the farther future, we can expect artificial wombs that would put even the women out of the equation.

Add to this scientific reality the social reality that Western cultures are well down the road of providing equal economic opportunity to women, and even providing special benefits to them in regard to familial responsibilities, regardless of marital status. This fact alone allows society's need for familial nurturing to be fulfilled by sources other than the traditional male-female civil union. When coupled with the varied ways in which a family group can now be created, it

makes socially practical sense to move on with formulating new modes of civil union that will more completely fill the needs of society.

The final cry for this change is the simple fact that the functioning of the family unit in our society is failing to provide the benefits it was designed to produce. The nurturing has been given over to caretakers of either choice (one or more of the parents pays for it) or necessity (the state pays for it). The passing on of values (if the parents have any) has been given over to the media. Knowledge of and adherence to the rules of acceptable social behavior have been added to the already weighty tasks of the schools.

This death of the old definition of the family unit was doomed with the emancipation of the woman in Western society. A key to which was the science of practical birth control, which succeeded in freeing many women from the tyranny of childbirth demanded by the then accepted rules of society. For all of the hoopla created on the patriarchal side of society (like wars) the family has always been matriarchal at its core. The physical and the psychological care of the family's children have been overwhelmingly left to the women. The teaching of societal rules and the transfer of values to the children has been predominantly accomplished by the women.

When society finally freed women, it simultaneously started us down the road to the current economic reality of the two income household and the restructuring of sexual morays. Since this has consequently doomed the old concept of family, did we do the wrong thing by giving women their freedom? Absolutely not. To think so is the same as believing that doing away with slavery in this country was wrong because it caused an upheaval in the economic structure of the South. We did both because it was the right thing to do—because it fit the basic precepts of our society to provide equality and opportunity for all, not just some.

The old concept of the family unit is dying or is already dead. It's time for a new plan. It's time for us to consider new forms of civil union, not just to provide equality and an opportunity to pursue happiness that is now being denied to a significant number of the electorate, but also because we need a practical answer to the disintegration of the family unit. We need a practical way to provide food, shelter, protection, guidance, and compassion for children that still works in the new realities of our society.

We need the traditional civil union that allows the domestic partnership of heterosexuals. We need a new civil union that allows the domestic partnership of non-heterosexuals. We need a new civil union that allows the domestic partnership of any type and size of mixed group that is capable of providing a stable and nurturing environment for children (thank you Mr. Heinlein).

To sum it up, domestic partnerships are matters of convenience, expressions of caring and mutual responsibility, and environments for the nurturing of children. The first two items are personal matters of individual freedom. Only the last item is of any concern to the state and only when it fails to function properly and increases the burden of the state. Out of the concern that domestic partnerships will offer adequate nurturing for children, the state has granted certain economic and social concessions to such domestic

partnerships in order to reduce the risk to the state. Clearly, these concessions should be equally available to all civil unions creating such domestic partnerships.

As for the term “marriage,” who needs its sexist connotations in a society finally freeing itself of such stupidities? Give it back to the extremists of the religious right.