

Libertarian Lifetime

The Newsletter of the East Bay Libertarian Party

PRIVATIZE MARRIAGE

One Solution To The Gay-Marriage Debate

In the debate over whether to legalize gay marriage, both sides are missing the point. Why should the government be in the business of decreeing who can and cannot be married? Proponents of gay marriage see it as a civil-rights issue. Opponents see it as another example of minority "rights" being imposed on the majority culture. But why should anyone have or need to have state sanction for a private relationship? As governments around the world contemplate the privatization of everything from electricity to Social Security, why not privatize that most personal and intimate of institutions, marriage?

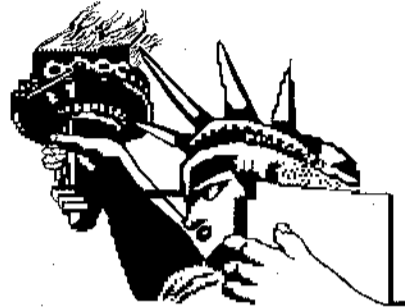
Yes, marriage is about more than sleeping arrangements. There are children, there are finances, there are spousal job benefits like health insurance and pensions. In all these areas, marriage is used as a substitute for other factors that are harder to measure, such as financial dependence or devotion to offspring. It would be possible to write rules that measure the real factors at stake and leave marriage out of the matter. Regarding children and finances, people can set their own rules, as many already do. None of this would be easy. Marriage functions as what lawyers call a "bright line," which saves the trouble of trying to measure a lot of amorphous factors. You're either married or you're not. Once marriage itself becomes amorphous, who-gets-the-kids and who-gets-health-care become trickier questions.

Marriage was not always regulated by law. In the early Middle Ages among those with power and property, all that marriage implied was a private contract between two families and was generally the means of cementing an alliance. For those without property, it was a private contract between two individuals, enforced by the community sense of what was right.

Only with the Marriage Act of 1754 did marriage in England come to be regulated by law. In the New England colonies, marriages were performed by justices of the peace or other magistrates from the beginning. But even then common-law unions were valid.

In the 20th century, however, government has intruded upon the marriage contract, among many others. Each state has tended to promulgate a standard, one-size-fits-all formula. Then, in the past generation, legislatures and courts have started unilaterally changing the terms of the marriage contract. Between 1969 and 1985 all the states provided for no-fault divorce. The new arrangements applied not just to couples embarking on matrimony but also to couples who had married under an earlier set of rules. Many people felt a sense of liberation; the changes allowed them to get out of unpleasant marriages without the often contrived allegations of fault previously required for divorce. But some people were hurt by the new rules, especially women who had understood marriage as a partnership in which one partner would earn money and the other would forsake a career in order to specialize in homemaking.

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Well, I think that Gavin Newsom will go down in history. It sure would be a breath of fresh air if all politicians had his balls. The only thing a lot of them seem to believe in is "I believe I want to get re-elected". Otherwise, they would all support him — well, maybe not all — but just tell me this: who's getting hurt? All those liberal Democrats with all of their rhetoric don't have squat to say now — just that same old safe stuff like "What's wrong with separate but equal?" The Supreme Court has already kicked the government out of our bedrooms — next step — our living rooms.

Privatization of religion — better known as the separation of church and state — was our founders' prescription for avoiding Europe's religious wars. Americans may think each other headed for hell, but we keep our religious views at the level of private proselytizing and don't fight to impose one religion by force of law.

So why not privatize marriage? Make it a private contract between two individuals. Marriage contracts could be as individually tailored as other contracts are in our diverse capitalist world. For those who wanted a standard one-size-fits-all contract, that would still be easy to obtain. Wal-Mart could sell books of marriage forms next to the standard rental forms. Couples would then be spared the surprise discovery that outsiders had changed their contract without warning. If couples want to cement their relationship with a ceremony or ritual, they are free to do so. Religious institutions are free to sanction such relationships under any rules they choose.

And what of gay marriage? Privatization of the institution would allow gay people to marry the way other people do: individually, privately, contractually, with whatever ceremony they might choose in the presence of family, friends, or God. Gay people are already holding such ceremonies, of course, but their contracts are not always recognized by the courts and do not qualify them for the 1,049 federal laws that the General Accounting Office says recognize marital status. Under a privatized system of marriage, courts and government agencies would recognize any couple's contract or, better yet, eliminate whatever government-created distinction turned on whether a person was married or not.

Marriage is an important institution. The modern mistake is to think that important things must be planned, sponsored, reviewed, or licensed by the government. The two sides in the debate over gay marriage share an assumption that is essentially collectivist. Instead of accepting either view, let's get the government out of marriage and allow individuals to make their own marriage contracts, as befits a secular, individualist republic at the dawn of the information age.