

Selected Readings for Jon & Jonathan's Wedding

In many ways our wedding ceremony will be very similar to others that you may have been to. Yet in one significant way it will be different, namely that we are both men. Though we've been to a lot of weddings, neither of us has ever attended a same-sex wedding or commitment ceremony. Same-sex marriage has been a hot topic in the country over the past few years, yet many of us can go through our day-to-day without being directly affected by the debate. Therefore we wanted to incorporate a time for thoughtful reflection and discussion about marriage and how non-heterosexual couples should be included in the institution.

The wedding ceremony itself will be a time for personal celebration, but we have decided to revise two events that often surround the ceremony, namely the "rehearsal dinner" and "post-wedding brunch," into opportunities to reflect on the greater social significance of the weekend. Towards that end, every guest has been invited to one of these two events, which we have re-named "Catered Conversations." And, because we are both nerds, we have decided to assign a few provocative readings to engage your thoughts in preparation for the discussion. Below you will find brief descriptions of the reading selections. Please take some time to at least peruse them before coming to the Catered Conversation. We are really looking forward to talking with you about the significance of this weekend!

Love Supreme: Gay Nuptials and the Making of Modern Marriage, by Adam Haslett

A history of marriage. This article, taken from *The New Yorker* magazine, provides a nice history of the institution of marriage, placing the current debate over same-sex marriage into a greater context. It is already somewhat dated, even though it was published in 2004, but the main ideas remain relevant. Haslett teaches at Columbia and was a National Book Award and Pulitzer Prize finalist for a book of short stories.

For Better or Worse? by Jonathan Rauch

A conservative argument for same-sex marriage. This paper, originally published in *The New Republic* magazine in 1996 and reprinted in the excellent Same-Sex Marriage: Pro and Con, edited by Andrew Sullivan in 2004, argues that same-sex marriage is fundamentally a "family values" proposition and dovetails nicely with the greater conservative movement. In doing so, it provides a somewhat unique twist on the mainstream arguments in favor of same-sex marriage. Rauch is a scholar at the Brookings Institution and a winner of the 2005 National magazine Award.

Since When is Marriage a Path to Liberation? By Paula Ettelbrick

A liberal argument against same-sex marriage. This article was published in 1989, a unique period within the modern gay rights movement, which many agree began with the Stonewall riots of June 1969. Deeply informed by 1960s and 1970s feminism, Ettelbrick argues that marriage is an inherently flawed institution and that striving for marriage equality will only further oppress gays and lesbians and constrain our power to challenge the social order. Ettelbrick teaches at Barnard and is the Executive director of the International Gay and Lesbian Human Rights Commissions.

Worried Sick: Why a Taste of Equal Treatment Left Us Feeling Less Secure, Not More, by Dan Savage

A personal account of why same-sex marriage matters. This brief piece from Seattle's weekly newspaper *The Stranger* provides a personal perspective on why the legal rights conferred by marriage make such a difference in people's day-to-day lives. Savage is a nationally-syndicated sex columnist, editor of *The Stranger*, and the author of excellent books on same-sex marriage ([The Commitment](#)) and on same-sex parenting, ([The Kid](#)).

2 Months After New Jersey's Civil Union Law, Problems Finding True Equality, by Tina Kelley

A description of the implications of "marriage" versus other legal designations. This April 2007 article from *The New York Times* makes clear why laws creating domestic partnerships and civil unions are different from laws creating marriage. In this case, separate is not equal. Kelley is a staff writer for *The New York Times*.

Three Maps, compiled by the Human Rights Campaign (HRC)

A way of displaying nationwide variation in laws. These three maps display the current status of same-sex relationship recognition, same-sex marriage prohibitions, and same-sex parenting laws throughout the nation. They demonstrate a few additional reasons why our wedding will be taking place in Massachusetts.

THE NEW YORKER

A CRITIC AT LARGE

LOVE SUPREME

Gay nuptials and the making of modern marriage.

by Adam Haslett

MAY 31, 2004



In December of 1990, Genora Dancel and Ninia Baehr, a lesbian couple from Honolulu, applied for and were denied a license to marry. They decided to file suit against the state for discrimination. The local branch of the A.C.L.U. declined to represent them, and the national gay legal organizations initially kept their distance, considering the issue premature. But the couple persisted, and three years later the Hawaii Supreme Court became the first in the nation to support the right of same-sex couples to wed. Conservative religious groups poured money into the state and eventually helped pass an amendment to its constitution declaring marriage an exclusively heterosexual institution.

More was at stake than the laws of Hawaii. Article IV of the United States Constitution establishes that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” This is the reason that a couple married in New York can fly to California and still legally be husband and wife when they land. Worried that other states might one day extend marriage rights to same-sex couples, conservatives in Congress introduced the Defense of Marriage Act, which defined marriage as between a man and a woman for the purposes of all federal law, from taxes to Social Security, and released the states from any constitutional obligation to recognize same-sex marriages that might be performed elsewhere. President Clinton, seeking to deny Bob Dole a wedge issue in his 1996 reelection campaign, signed the bill late on a Friday night, after the press corps had gone home.

The issue’s sudden prominence during the past several months stems from a decision of the Supreme Judicial Court of Massachusetts last November to grant same-sex couples full civil marriage. For the first time in this country’s history, a state has sanctioned the marriage of two men or two women; because the Massachusetts constitution can’t be amended any sooner than 2006—the process is under way but by no means certain to succeed—it will do so for at least the next two years. The Bay State thus joins the Netherlands, Belgium, and three Canadian provinces in offering gay couples not only the rights and obligations of marriage but the word itself.

The ensuing national ferment has become a struggle over the meaning and purpose of matrimony. For marriage as we know it today is the product of a particular history—a history that explains both its public character and the private expectations we have for it. The advent of same-sex marriage brings into focus a much larger transformation in how we have come to imagine the institution.

For centuries in Europe, formal marriage was a private contract between landed families, designed to insure that property remained within a particular lineage. In the upper classes, families essentially married other families, forging political alliances and social obligations among relatives and kin. It was during the Reformation, with the emergence of the early Protestant idea of “companionate marriage,” that the emotional bond between husband and wife came to be seen as an end in itself. As the social historian Lawrence Stone noted, this was a marked departure from the Catholic ideal of chastity, which considered earthly marriage a more or less unfortunate necessity meant to accommodate human weakness; “It is better to marry than to burn,” St. Paul had said, but he made it sound like a close call. So when the Puritans wrote of husbands and wives as mutually respectful and affectionate partners they were moving toward a new understanding of marriage as a kind of spiritual friendship.

It was Milton who took this concept to its logical conclusion. Having married a woman with whom he soon discovered he had nothing in common, he became a staunch advocate of divorce. When the “meet and happy conversation” that is “the chiefest and the noblest end of marriage” ceases, he argued, no authority should have the power to force a man and a woman to remain wed. It was hundreds of years before the law caught up with his notion that irreconcilable differences might be grounds for divorce. But what his tracts on the subject demonstrate is that early Protestant thinking about matrimony contained the seeds of our own more radical individualism.

These days, few would disagree that respect and affection are central to a successful marriage. But most of us would add another ingredient, which had long been viewed skeptically as a reason to wed: romantic love. Burton, in his “Anatomy of Melancholy”—the most widely read book of the seventeenth century after the Bible—reflected a common view when he described marriage as one of several “remedies of love,” which was itself an illness to be overcome. Not until the confessional diaries and novels of the late eighteenth and early nineteenth centuries started to influence bourgeois notions of what Jane Austen called “connubial felicity” did romance begin its steady ascent in the marital realm. Today, needless to say, the most respectable reason you can give for getting married is that you have fallen in love. We have managed to create an ideal of matrimony that combines both lifetime companionship and the less stable but more intoxicating pleasures of romantic ardor.

Such great expectations of marital happiness belong to a larger history of the Western emphasis on the self. The philosopher Charles Taylor, in an examination of how our attitude toward interior life has changed over the past five hundred years, argues that the trend line runs in one direction: from a self-understanding gained from our place in larger entities—such as a chain of being or divine order—toward purpose discovered from within, through what we consider to be authentic self-expression. This is the distance Western culture has travelled from the church confessional to the therapist’s couch. In turn, the choice of whom to marry has become less about satisfying the demands of family and community than about satisfying oneself. When you add the contraceptive and reproductive technologies that have separated sex from procreation, what you have is a model of heterosexual marriage that is grounded in and almost entirely sustained on individual preference. This is a historically peculiar state of affairs, one that would be alien to our ancestors and to most traditional cultures today. And it makes the push for gay marriage inevitable.

If agreement between two people were all that was required, of course, gays and lesbians would have been marrying for some time already. According to the 2000 census, the first to collect such data, there are five hundred and ninety-four thousand same-sex couples living in the United States (and that’s no doubt an undercount, given people’s reluctance to report their sexual orientation to the government). But marriage requires the consent of a third party—namely, the state.

This fact, too, can be traced to the same early Protestants who gave us companionate marriage. As the journalist E. J. Graff tells us, in her newly reissued popular history “What Is Marriage For?” (Beacon; \$16), at the time Luther nailed his proclamations to the door, Rome had no requirement that a priest be present at the wedding ceremony; vows spoken in private were sufficient to create a binding marriage. That caused the aristocracy no end of trouble, given that disobedient children were liable to threaten carefully negotiated contracts by running into the closet with a servant and whispering sweet promises. For the northern European Protestants, the solution was to require, for the first time, a public ceremony with the presence of witnesses. They also transferred the power to enforce the new rules to the emerging secular states. In England, precaution had long taken the form of “banns”: a couple’s intention to wed was proclaimed in church on three successive Sundays, thus giving a community plenty of time to determine whether either party was committed elsewhere. The state-issued marriage licenses we employ today originated in magistrates’ offices and enabled well-to-do families to avoid the banns by attesting to the fitness of the parties in a document.

Informal arrangements nevertheless persisted among those who were less well off, or who lived in less regulated societies. In the early days of the American Republic, with a population scattered across the continent, there were simply too few ministers and justices of the peace to go around. Largely for the practical reason of not wanting to declare so many children bastards, most state courts recognized common-law marriage, established by mutual consent and cohabitation. If you said you were married and the neighbors tended to believe you, then in the eyes of the law you were. (In eleven states, including Texas, this is still the case.) In the decades after the Civil War, however, government bureaucracy, spurred by the moralists and social scientists of the Progressive movement, began to regulate marriage far more aggressively. For the first time, people who sought to wed had to

submit to medical examinations, and those with syphilis or gonorrhea were prevented from marrying by criminal statute. By the century's end, state legislatures had all but mandated that couples obtain a license to marry.

These government-sponsored contracts are at the center of the fight over same-sex unions. In the modern administrative state, civil marriage condenses within a single document a vast array of legal, financial, and medical rights and benefits. Like citizenship for the immigrant, it is a passport to a more secure world. As the old status of marriage has come to include such a range of contractual benefits, the debates over equality within and access to the institution have intensified.

Owing to the reforms of the past forty years, men and women now enter the married state with more legal parity than ever before. Under the old doctrine of coverture, a man owned not only his wife's property but her body as well. Today, in nearly every state, men's and women's rights and obligations in alimony, child custody, child support, and property division in divorce have been made formally gender-neutral. Arrests and prosecutions for domestic abuse, rare thirty years ago, are now routine. As recently as 1984, a man could not be prosecuted for raping his own wife; today, it's a crime in all fifty states.

During the same period that the old patriarchal rules were being revised, the Supreme Court struck down a series of laws limiting the right of individuals to marry in the first place. In the most famous case, *Loving v. Virginia*, a unanimous Court held that anti-miscegenation laws were unconstitutional. "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," Chief Justice Warren wrote in 1967. A decade later, a Wisconsin law preventing people from marrying if they were behind on their child-support payments was overturned as too burdensome to the "basic civil rights of man." In 1987, the Rehnquist Court deemed the freedom to marry so fundamental that it could not be denied to prison inmates, whose other constitutional rights are routinely abrogated.

Those who opposed extending this right to same-sex couples used to cite the fact that many states outlawed sodomy: how could you sanction the marriage of people who could be arrested for what they did together in the bedroom? Then, last summer, in *Lawrence v. Texas*, the Court struck down the thirteen remaining sodomy laws in the country, and established a broad constitutional right to sexual privacy. The force and scope of the opinion surprised even its supporters. In a rare gesture, the Court not only overturned *Bowers v. Hardwick*, a 1986 opinion upholding a Georgia sodomy statute, but in essence apologized for it: "Its continuance as precedent demeans the lives of homosexual persons." The majority was careful to point out that the decision said nothing about the "formal recognition" of relationships. But opponents of same-sex marriage realized the decision's importance. As Justice Scalia warned in a caustic dissent, "If moral disapprobation of homosexual conduct is 'no legitimate state interest' . . . what justification could there possibly be for denying the benefits of marriage to homosexual couples exercising 'the liberty protected by the Constitution'? Surely not the encouragement of procreation, since the sterile and the elderly are allowed to marry." Five months later, the Massachusetts high court cited *Lawrence* in its decision.

Social conservatives now fear that, in the absence of a constitutional amendment to ban gay marriage, the Supreme Court will combine its precedents on the fundamental right to marry with the more recent decisions in favor of gay rights to give same-sex couples their own *Loving v. Virginia*—nationalizing gay marriage through constitutional interpretation. As a doctrinal matter, such fears are well grounded. Few legal scholars would disagree with Justice Scalia that *Lawrence* has made this outcome far more plausible.

Politically, however, a gay *Loving* is unlikely in the foreseeable future. The Supreme Court is seldom a force of social innovation. The first state to strike down its anti-miscegenation law was California, in 1948. For nearly two decades thereafter, all through the period of *Brown v. Board of Education*, the Court avoided the controversy over interracial marriage, exercising its discretion not to hear a case. By the time it decided *Loving*, fourteen states had followed California's lead, and only sixteen still maintained a ban. The Court endorsed what had become a majority position, if not in public opinion at least in legislative fact; the same can be said of *Lawrence*. The modern conservative obsession with what is selectively dubbed judicial activism has much to do with *Roe v. Wade*, and the fact that it struck down thirty state laws criminalizing abortion. No less an advocate of abortion rights than Justice Ruth Bader Ginsburg has suggested that it may have been precipitate not to allow the states to come to a stronger consensus before the Court brought the reform process to an end. In the informal electorate of the states, the vote on full civil marriage for same-sex couples now stands at forty-nine to one. It is difficult to conceive of the Supreme Court recognizing a right to gay marriage under these circumstances.

Meanwhile, interest groups on both sides are lobbying legislators and filing more suits, in an attempt to shape the outcome in one jurisdiction at a time. As a legal matter, these are contests over the expansion of the rights and obligations of marriage. As a political and cultural matter, they are contests over something less easy to codify: the official recognition of love. Here the two most important developments in the history of marriage—secular regulation and the rise of the romantic-companionate ideal—become intertwined. The state is being asked not only to distribute benefits equally but to legitimate gay people's love and affection for their partners. The gay couples now marrying in Massachusetts want not only the same protections that straight people enjoy but the social status that goes along with the state's recognition of a romantic relationship.

This is the difference between civil unions and marriage: one is a legal certificate and the other is a public endorsement. Not

surprisingly, many Americans who might support the first remain uncomfortable with the second. In “Gay Marriage” (Times Books; \$22), the journalist Jonathan Rauch means to persuade such people that same-sex marriage will be good not only for gay people but for marriage in general. Rauch is a conservative—how many books garner blurbs from both George Will and Barney Frank?—and his argument for the benefits to gay people is based largely on the social discipline he thinks it would impose: once gay men and lesbians are allowed to wed, society can begin expecting them to do so, as it does straight people. “The gay rights era will be over and the gay responsibility era will begin,” he writes. This soft coercion is a civilizing force, because “no other institution has the power to turn narcissism into partnership, lust into devotion, strangers into kin.” We shouldn’t expect results too soon, however: “As with the coming of capitalism to the Soviet empire, so with the coming of marriage to gay culture. Freedom and responsibility take time to learn.” With analogies as inviting as this, one wonders whether snuggling gay lovers ought to take a bus tour of Putin’s Russia before heading to the altar. Though clearly a true believer in matrimony, Rauch doesn’t make it sound like much fun.

The real threat to marriage, he says, is the growth of registered cohabitation, from domestic partnerships to civil unions, which increasingly includes unwed heterosexuals. He warns that we are heading to the day when marriage—straight or gay—will become “merely an item on a mix-and-match menu of lifestyle options, a truffle in the candy box.” For Rauch, whose view of marriage is more medicinal than confectionary, letting gays marry will actually help marriage by relieving the pressure to create alternatives.

What’s undeniable is that the battle over same-sex marriage arrives at a time of declining participation in the institution itself. The number of marriages performed each year in the United States (2.3 million) is as low as it has ever been relative to the adult population. As Andrew Hacker has pointed out, nearly half of Americans reach the age of thirty without having married, and almost twelve per cent of women and sixteen per cent of men enter their forties still never having wed—the highest percentages in the nation’s history.

As the numbers wane, though, the fantasy seems to grow more intense. The wedding industry generates at least seventy billion dollars a year in revenue, which is double the earnings of the movie business. Bridal magazines are some of the most profitable on the newsstand. The ersatz courtship of the Bachelor and the Bachelorette has provided some of the highest-rated television programming in recent years. At the same time, the pressures on the partnership that follows the wedding day are enormous: in an era of low civic participation and high economic insecurity, spouses are ever more relied upon as the sole providers of continuity and human solace. A state-sponsored, lifelong, intimate relationship—or the prospect of it—now carries a heavy and often unbearable responsibility for personal happiness.

What effect will allowing men to marry men and women to marry women have on our peculiarly modern venture of marriage? Proponents typically say that it will have hardly any—that there is no shortage of marriage licenses, and all that will happen is that more citizens and their children will have the benefits of existing family law. The opposition argues that one of the organizing institutions of our society will be imperilled.

History suggests that neither view is quite accurate. Despite comparisons to the repeal of miscegenation laws, no other expansion of the marriage franchise—to the sterile, to slaves, or to interracial couples—has required an alteration in the basic definition of the term: the union of a man and woman as husband and wife. To discount this as mere semantics misses what the definition points up: that marriage, through all its incarnations, has been a procedure that assigns people a new identity based on their gender. For centuries, it has been the ceremony that makes males into husbands and females into wives. Until very recently, this meant a lifetime commitment to both the security and the constriction of a well-defined social role. The symbolic danger that gay marriage poses to such an arrangement is obvious. It alters the public meaning of the word by further draining it of its power to reinforce traditional expectations of behavior. What does it mean to be a husband in a world where a man could have one of his own? This is up to each individual couple, one is tempted to say. Fair enough; but the words we use to describe our relationships are shared cultural property. There is no private language. In this sense, granting the word “marriage” to gay couples will eventually affect everyone.

The mistake is to consider the change in meaning particularly drastic. After all, undoing customary expectations for how a husband and wife behave toward each other has been one of the goals of the women’s movement since its inception. Rather than an abrupt departure, same-sex marriage is the culmination of a larger and ultimately more consequential change in the nature of marital relations between men and women.

Which is one of the reasons that the opposition to it is so fierce. It has come to symbolize what is, historically speaking, radical about contemporary marriage: the decline of the patriarchal legal structure and the rise of the goal of self-fulfillment. Gay marriage is unsettling, to many, not because it departs from modern meanings of matrimony but because it embodies them. ♦

in the Retrouvaille method repeat their intimate tragedies in rehearsed monotone: McManus, for example, tells me with no hesitation that, though both his parents were alcoholics, he "grew up a whole person" because they stayed together. In the Retrouvaille world, no marriage is too broken; McManus has patched together alcoholics, abusers, even one wife and her bisexual husband who'd been having affairs for eight years.

McManus is lit by a kind of cultish fervor that pities all who do not possess it. One Friday afternoon, the 6'7" preacher is crammed into a chair at a Washington studio, the pro-marriage guest on a trashy low-budget show called "NewsTalk" being filmed in New York. The subject is "Should couples stay together for the sake of the children?" and the other guests are divorced women and couples who have saved their marriage. When a divorced mother describes why her marriage was irretrievable, McManus leans over to me and whispers, "She hadn't heard of Retrouvaille." When the talk-show host doesn't mention Retrouvaille, McManus throws a fit: "What are you doing? Talk about Retrouvaille. R-E-T-R-O-U-V-A-I-L-L-E. That's why I came. They told me I could. . . ." He is cut off, and a production assistant is called in. "But they told me they would talk about it," he says petulantly. "All you want to do is focus on the negative."

This patient patronizing, waiting to erupt into angry judgment, is not unique to the religious preachers of the pro-marriage movement. In what communitarian guru Michael Lerner calls his "Progressive, Ethical Covenant

with American Families," the manifesto for a two-day workfest held in April, he confuses political platforms ("Reduce the work week") with moral ones such as "Support people to work through difficulties in relationships" and "Support single people and those leaving oppressive relationships." These seem innocuous and obvious enough, until you get to the dogmatic details: divorce is a result of the "supermarket mentality" and "market consciousness" of America. Yet, at the same time, "we want to reject attempts to stigmatize the decision to leave an oppressive relationship," given "the distortions in human relationships fostered by the legacy of patriarchy and the dynamics of a society dominated by materialism and selfishness." The actual advice must be irrelevant, since the two platforms are exactly contradictory; what's important is achieving that perfect pedagogic pitch.

Across the states, it's this tone that is winning out over substance. Most of the no-fault repeal bills are in embryonic stages, and, at best, a few will squeak through this year. In Iowa, Governor Branstad has given up on repealing no-fault this session but is fighting for a series of community forums discussing "the importance of strong families" and a requirement that divorcing parents attend re-education classes to learn about the impact of divorce on their children. It's like McManus becoming incensed that schools teach "math and science but not marriage." But at least McManus has been to the brink and back and understands that marriage is a messy business. For the rest, it's just a matter of night school. •

The case for gay (and straight) marriage.

FOR BETTER OR WORSE?

By Jonathan Rauch

Whatever else marriage may or may not be, it is certainly falling apart. Half of today's marriages end in divorce, and, far more costly, many never begin—leaving mothers poor, children fatherless and neighborhoods chaotic. With timing worthy of Neville Chamberlain, homosexuals have chosen this moment to press for the right to marry. What's more, Hawaii's courts are moving toward letting them do so. I'll believe in gay marriage in America when I see it, but if Hawaii legalizes it, even temporarily, the uproar over this final insult to a

JONATHAN RAUCH is the author of *Demosclerosis: The Silent Killer of American Government* (Random House).

besieged institution will be deafening.

Whether gay marriage makes sense—and whether straight marriage makes sense—depends on what marriage is actually for. Current secular thinking on this question is shockingly sketchy. Gay activists say: marriage is for love, and we love each other, therefore we should be able to marry. Traditionalists say: marriage is for children, and homosexuals do not (or should not) have children, therefore you should not be able to marry. That, unfortunately, pretty well covers the spectrum. I say "unfortunately" because both views are wrong. They misunderstand and impoverish the social meaning of marriage.

So what is marriage for? Modern marriage is, of

course, based upon traditions that religion helped to codify and enforce. But religious doctrine has no special standing in the world of secular law and policy (the "Christian nation" crowd notwithstanding). If we want to know what and whom marriage is for in modern America, we need a sensible secular doctrine.

At one point, marriage in secular society was largely a matter of business: cementing family ties, providing social status for men and economic support for women, conferring dowries, and so on. Marriages were typically arranged, and "love" in the modern sense was no prerequisite. In Japan, remnants of this system remain, and it works surprisingly well. Couples stay together because they view their marriage as a partnership: an investment in social stability for themselves and their children. Because Japanese couples don't expect as much emotional fulfillment as we do, they are less inclined to break up. They also take a somewhat more relaxed attitude toward adultery. What's a little extracurricular love provided that each partner is fulfilling his or her many other marital duties?

In the West, of course, love is a defining element. The notion of lifelong love is charming, if ambitious, and certainly love is a desirable element of marriage. In society's eyes, however, it cannot be the defining element. You may or may not love your husband, but the two of you are just as married either way. You may love your mistress, but that certainly doesn't make her your spouse. Love helps make sense of marriage emotionally, but it is not terribly important in making sense of marriage from the point of view of social policy.

If love does not define the purpose of secular marriage, what does? Neither the law nor secular thinking provides a clear answer. Today marriage is almost entirely a voluntary arrangement whose contents are up to the people making the deal. There are few if any behaviors that automatically end a marriage. If a man beats his wife, which is about the worst thing he can do to her, he may be convicted of assault, but his marriage is not automatically dissolved. Couples can be adulterous ("open") yet remain married. They can be celibate, too; consummation is not required. All in all, it is an impressive and also rather astonishing victory for modern individualism that so important an institution should be so bereft of formal social instruction as to what should go on inside of it.

Secular society tells us only a few things about marriage. First, marriage depends on the consent of the parties. Second, the parties are not children. Third, the number of parties is two. Fourth, one is a man and the other a woman. Within those rules a marriage is whatever anyone says it is.

Perhaps it is enough simply to say that marriage is as it is and should not be tampered with. This sounds like a crudely reactionary position. In fact, however, of all the arguments against reforming marriage, it is probably the most powerful.

Call it a Hayekian argument, after the great libertarian economist F.A. Hayek, who developed this line of thinking in his book *The Fatal Conceit*. In a market system, the prices generated by impersonal forces may not make sense from any one person's point of view, but they encode far more information than even the cleverest person could ever gather. In a similar fashion, human societies evolve rich and complicated webs of nonlegal rules in the form of customs, traditions and institutions. Like prices, they may seem irrational or arbitrary. But the very fact that they are the customs that have evolved implies that they embody a practical logic that may not be apparent to even a sophisticated analyst. And the web of custom cannot be torn apart and reordered at will because once its internal logic is violated it falls apart. Intellectuals, such as Marxists or feminists, who seek to deconstruct and rationally rebuild social traditions, will produce not better order but chaos.

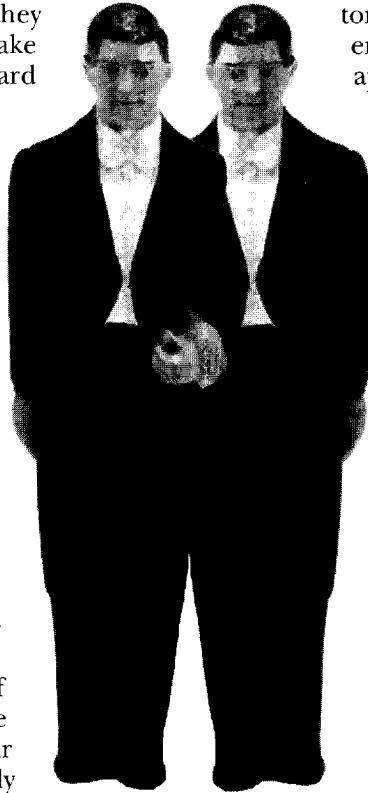
So the Hayekian view argues strongly against gay marriage. It says that the current rules may not be best and may even be unfair. But they are all we have, and, once you say that marriage need not be male-female, soon marriage will stop being anything at all. You can't mess with the formula without causing unforeseen consequences, possibly including the implosion of the institution of marriage itself.

However, there are problems with the Hayekian position. It is untenable in its extreme form and unhelpful in its milder version. In its extreme form, it implies that no social reforms should ever be undertaken. Indeed, no laws should be passed,

because they interfere with the natural evolution of social mores. How could Hayekians abolish slavery? They would probably note that slavery violates fundamental moral principles. But in so doing they would establish a moral platform from which to judge social rules, and thus acknowledge that abstracting social debate from moral concerns is not possible.

If the ban on gay marriage were only mildly unfair, and if the costs of changing it were certain to be enormous, then the ban could stand on Hayekian grounds. But, if there is any social policy today that has a fair claim to be scaldingly inhumane, it is the ban on gay marriage. As conservatives tirelessly and rightly point out, marriage is society's most fundamental institution. To bar any class of people from marrying as they choose is an extraordinary deprivation. When not so

continued on page 21



long ago it was illegal in parts of America for blacks to marry whites, no one could claim that this was a trivial disenfranchisement. Granted, gay marriage raises issues that interracial marriage does not; but no one can argue that the deprivation is a minor one.

To outweigh such a serious claim it is not enough to say that gay marriage might lead to bad things. Bad things happened as a result of legalizing contraception, but that did not make it the wrong thing to do. Besides, it seems doubtful that extending marriage to, say, another 3 or 5 percent of the population would have anything like the effects that no-fault divorce has had, to say nothing of contraception. By now, the "traditional" understanding of marriage has been sullied in all kinds of ways. It is hard to think of a bigger affront to tradition, for instance, than allowing married women to own property independently of their husbands or allowing them to charge their husbands with rape. Surely it is unfair to say that marriage may be reformed for the sake of anyone and everyone except homosexuals, who must respect the dictates of tradition.

Faced with these problems, the milder version of the Hayekian argument says not that social traditions shouldn't be tampered with at all, but that they shouldn't be tampered with lightly. Fine. In this case, no one is talking about casual messing around; both sides have marshaled their arguments with deadly seriousness. Hayekians surely have to recognize that appeals to blind tradition and to the risks inherent in social change do not, a priori, settle anything in this instance. They merely warn against frivolous change.

So we turn to what has become the standard view of marriage's purpose. Its proponents would probably like to call it a child-centered view, but it is actually an anti-gay view, as will become clear. Whatever you call it, it is the view of marriage that is heard most often, and in the context of the debate over gay marriage it is heard almost exclusively. In its most straightforward form it goes as follows (I quote from James Q. Wilson's fine book *The Moral Sense*):

A family is not an association of independent people; it is a human commitment designed to make possible the rearing of moral and healthy children. Governments care—or ought to care—about families for this reason, and scarcely for any other.

Wilson speaks about "family" rather than "marriage" as such, but one may, I think, read him as speaking of marriage without doing any injustice to his meaning.

The resulting proposition—government ought to care about marriage almost entirely because of children—seems reasonable. But there are problems. The first, obviously, is that gay couples may have children, whether through adoption, prior marriage or (for lesbians) artificial insemination. Leaving aside the thorny issue of gay adoption, the point is that if the mere presence of children is the test, then homosexual relationships can certainly pass it.

You might note, correctly, that heterosexual marriages are more likely to produce children than homosexual ones. When granting marriage licenses to heterosexuals, however, we do not ask how likely the couple is to have children. We assume that they are entitled to get married whether or not they end up with children. Understanding this, conservatives often make an interesting move. In seeking to justify the state's interest in marriage, they shift from the actual presence of children to the anatomical possibility of making them. Hadley Arkes, a political science professor and prominent opponent of homosexual marriage, makes the case this way:

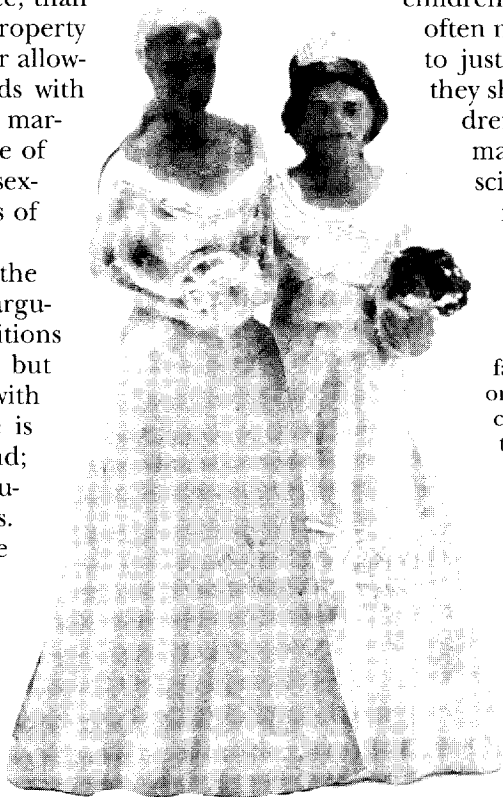
The traditional understanding of marriage is grounded in the "natural teleology of the body"—in the inescapable fact that only a man and a woman, and only two people, not three, can generate a child. Once marriage is detached from that natural teleology of the body, what ground of principle would thereafter confine marriage to two people rather than some larger grouping? That is, on what ground of principle would the law reject the claim of a gay couple that their love is not confined to a coupling of two, but that they are woven into a larger ensemble with yet another person or two?

What he seems to be saying is that, where the possibility of natural children is nil, the meaning of marriage is nil. If marriage is

allowed between members of the same sex, then the concept of marriage has been emptied of content except to ask whether the parties love each other. Then anything goes, including polygamy. This reasoning presumably is what those opposed to gay marriage have in mind when they claim that, once gay marriage is legal, marriage to pets will follow close behind.

But Arkes and his sympathizers make two mistakes. To see them, break down the claim into two components: (1) Two-person marriage derives its special status from the anatomical possibility that the partners can create natural children; and (2) Apart from (1), two-person marriage has no purpose sufficiently strong to justify its special status. That is, absent justification (1), anything goes.

The first proposition is wholly at odds with the way society actually views marriage. Leave aside the insis-



tence that natural, as opposed to adopted, children define the importance of marriage. The deeper problem, apparent right away, is the issue of sterile heterosexual couples. Here the "anatomical possibility" crowd has a problem, for a homosexual union is, anatomically speaking, nothing but one variety of sterile union and no different even in principle: a woman without a uterus has no more potential for giving birth than a man without a vagina.

It may sound like carping to stress the case of barren heterosexual marriage: the vast majority of newlywed heterosexual couples, after all, can have children and probably will. But the point here is fundamental. There are far more sterile heterosexual unions in America than homosexual ones. The "anatomical possibility" crowd cannot have it both ways. If the possibility of children is what gives meaning to marriage, then a postmenopausal woman who applies for a marriage license should be turned away at the courthouse door. What's more, she should be hooted at and condemned for stretching the meaning of marriage beyond its natural basis and so reducing the institution to frivolity. People at the Family Research Council or Concerned Women for America should point at her and say, "If she can marry, why not polygamy?"

Obviously, the "anatomical" conservatives do not say this, because they are sane. They instead flail around, saying that sterile men and women were at least born with the right-shaped parts for making children, and so on. Their position is really a nonposition. It says that the "natural children" rationale defines marriage when homosexuals are involved but not when heterosexuals are involved. When the parties to union are sterile heterosexuals, the justification for marriage must be something else. But what?

Now arises the oddest part of the "anatomical" argument. Look at proposition (2) above. It says that, absent the anatomical justification for marriage, anything goes. In other words, it dismisses the idea that there might be other good reasons for society to sanctify marriage above other kinds of relationships. Why would anybody make this move? I'll hazard a guess: to exclude homosexuals. Any rationale that justifies sterile heterosexual marriages can also apply to homosexual ones. For instance, marriage makes women more financially secure. Very nice, say the conservatives. But that rationale could be applied to lesbians, so it's definitely out.

The end result of this stratagem is perverse to the point of being funny. The attempt to ground marriage in children (or the anatomical possibility thereof) falls flat. But, having lost that reason for marriage, the anti-gay people can offer no other. In their fixation on excluding homosexuals, they leave themselves no consistent justification for the privileged status of *heterosexual* marriage. They thus tear away any coherent foundation that secular marriage might have, which is precisely the opposite of what they claim they want to do. If they have to undercut marriage to save it from homosexuals, so be it!

For the record, I would be the last to deny that children are one central reason for the privileged status of marriage. When men and women get together, children are a likely outcome; and, as we are learning in ever more unpleasant ways, when children grow up without two parents, trouble ensues. Children are not a trivial reason for marriage; they just cannot be the only reason.

What are the others? It seems to me that the two strongest candidates are these: domesticating men and providing reliable caregivers. Both purposes are critical to the functioning of a humane and stable society, and both are much better served by marriage—that is, by one-to-one lifelong commitment—than by any other institution.

Civilizing young males is one of any society's biggest problems. Wherever unattached males gather in packs, you see no end of trouble: wildings in Central Park, gangs in Los Angeles, soccer hooligans in Britain, skinheads in Germany, fraternity hazings in universities, grope-lines in the military and, in a different but ultimately no less tragic way, the bathhouses and wanton sex of gay San Francisco or New York in the 1970s.

For taming men, marriage is unmatched. "Of all the institutions through which men may pass—schools, factories, the military—marriage has the largest effect," Wilson writes in *The Moral Sense*. (A token of the casualness of current thinking about marriage is that the man who wrote those words could, later in the very same book, say that government should care about fostering families for "scarcely any other" reason than children.) If marriage—that is, the binding of men into couples—did nothing else, its power to settle men, to keep them at home and out of trouble, would be ample justification for its special status.

Of course, women and older men don't generally travel in marauding or orgiastic packs. But in their case the second rationale comes into play. A second enormous problem for society is what to do when someone is beset by some sort of burdensome contingency. It could be cancer, a broken back, unemployment or depression; it could be exhaustion from work or stress under pressure. If marriage has any meaning at all, it is that, when you collapse from a stroke, there will be at least one other person whose "job" is to drop everything and come to your aid; or that when you come home after being fired by the postal service there will be someone to persuade you not to kill the supervisor.

Obviously, both rationales—the need to settle males and the need to have people looked after—apply to sterile people as well as fertile ones, and apply to childless couples as well as to ones with children. The first explains why everybody feels relieved when the town delinquent gets married, and the second explains why everybody feels happy when an aging widow takes a second husband. From a social point of view, it seems to me, both rationales are far more compelling as justifications of marriage's special status than, say, love. And both of them apply to homosexuals as well as to heterosexuals.

Take the matter of settling men. It is probably true that women and children, more than just the fact of marriage, help civilize men. But that hardly means that the settling effect of marriage on homosexual men is negligible. To the contrary, being tied to a committed relationship plainly helps stabilize gay men. Even without marriage, coupled gay men have steady sex partners and relationships that they value and therefore tend to be less wanton. Add marriage, and you bring a further array of stabilizing influences. One of the main benefits of publicly recognized marriage is that it binds couples together not only in their own eyes but also in the eyes of society at large. Around the partners is woven a web of expectations that they will spend nights together, go to parties together, take out mortgages together, buy furniture at Ikea together, and so on—all of which helps tie them together and keep them off the streets and at home. Surely that is a very good thing, especially as compared to the closet-gay culture of furtive sex with innumerable partners in parks and bathhouses.

The other benefit of marriage—caretaking—clearly applies to homosexuals. One of the first things many people worry about when coming to terms with their homosexuality is: Who will take care of me when I'm ailing or old? Society needs to care about this, too, as the AIDS crisis has made horribly clear. If that crisis has shown anything, it is that homosexuals can and will take care of each other, sometimes with breathtaking devotion—and that no institution can begin to match the care of a devoted partner. Legally speaking, marriage creates kin. Surely society's interest in kin-creation is strongest of all for people who are unlikely to be supported by children in old age and who may well be rejected by their own parents in youth.

Gay marriage, then, is far from being a mere exercise in political point-making or rights-mongering. On the contrary, it serves two of the three social purposes that make marriage so indispensable and irreplaceable for heterosexuals. Two out of three may not be the whole ball of wax, but it is more than enough to give society a compelling interest in marrying off homosexuals.

There is no substitute. Marriage is the *only* institution that adequately serves these purposes. The power of marriage is not just legal but social. It seals its promise with the smiles and tears of family, friends and neighbors. It shrewdly exploits ceremony (big, public weddings) and money (expensive gifts, dowries) to deter casual commitment and to make bailing out embarrassing. Stag parties and bridal showers signal that what is beginning is not just a legal arrangement but a whole new stage of



life. "Domestic partner" laws do none of these things.

I'll go further: far from being a substitute for the real thing, marriage-lite may undermine it. Marriage is a deal between a couple and society, not just between two people: society recognizes the sanctity and autonomy of the pair-bond, and in exchange each spouse commits to being the other's nurse, social worker and policeman of first resort. Each marriage is its own little society within society. Any step that weakens the deal by granting the legal benefits of marriage without also requiring the public commitment is begging for trouble.

So gay marriage makes sense for several of the same reasons that straight marriage makes sense. That would seem a natural place to stop. But the logic of the argument compels one to go a twist further. If it is good for society to have people attached, then it is not enough just to make marriage available. Marriage should also be *expected*. This, too, is just as true for homosexuals as for heterosexuals. So, if homosexuals are justified in expecting access to marriage, society is equally justified in expecting them to use it. I'm not saying that out-of-wedlock sex should be scandalous or that people should be coerced into marrying. The mechanisms of expectation are more subtle. When grandma cluck-clucks over a still-unmarried young man, or when mom says she wishes her little girl would settle down, she is expressing a strong and well-justified preference: one that is quietly echoed in a thousand ways throughout society and that produces subtle but important pressure to form and sustain unions. This is a good and necessary thing, and it will be as necessary for homosexuals as heterosexuals. If gay marriage is recognized, single gay people over a certain age should not be surprised when they are disapproved of or pitied. That is a vital part of what makes marriage work. It's stigma as social policy.

If marriage is to work it cannot be merely a "lifestyle option." It must be privileged. That is, it must be understood to be better, on average, than other ways of living. Not mandatory, not good where everything else is bad, but better: a general norm, rather than a personal taste. The biggest worry about gay marriage, I think, is that homosexuals might get it but then mostly not use it. Gay neglect of marriage wouldn't greatly erode the bonding power of heterosexual marriage (remember, homosexuals are only a tiny fraction of the population)—but it would certainly not help. And heterosexual society would rightly feel betrayed if, after legalization, homosexuals treated marriage as a minority taste rather than as a core institution of life. It is not enough, I think, for gay people to say we want the right to marry. If we do not use it, shame on us. •

**Since When Is Marriage
a Path to Liberation?**

PAULA ETTTELBRICK

*From OUT/LOOK National Gay and Lesbian
Quarterly, no. 6, Fall 1989*

*A traditional leftist worries about what same-sex marriage
would do to the radical agenda.*

Marriage is a great institution . . . if you like living in institutions," according to a bit of T-shirt philosophy I saw recently. Certainly, marriage is an institution. It is one of the most venerable, impenetrable institutions in modern society. Marriage pro-

122

The Debate on the Left

vides the ultimate form of acceptance for personal, intimate relationships in our society, and gives those who marry an insider status of the most powerful kind.

Steeped in a patriarchal system that looks to ownership, property, and dominance of men over women as its basis, the institution of marriage has long been the focus of radical-feminist revulsion. Marriage defines certain relationships as more valid than all others. Lesbian and gay relationships, being neither legally sanctioned nor commingled by blood, are always at the bottom of the heap of social acceptance and importance.

Given the imprimatur of social and personal approval that marriage provides, it is not surprising that some lesbians and gay men among us would look to legal marriage for self-affirmation. After all, those who marry can be instantaneously transformed from "outsiders" to "insiders," and we have a desperate need to become insiders.

It could make us feel okay about ourselves, perhaps even relieve some of the internalized homophobia that we all know so well. Society will then celebrate the birth of our children and mourn the death of our spouses. It would be easier to get health insurance for our spouses, family memberships to the local museum, and a right to inherit our spouse's cherished collection of lesbian mystery novels even if she failed to draft a will. Never again would we have to go to a family reunion and debate about the correct term for introducing our lover/partner/significant other to Aunt Flora. Everything would be quite easy and very nice.

So why does this unlikely event so deeply disturb me? For two major reasons. First, marriage will not liberate us as lesbians and gay men. In fact, it will constrain us, make us more invisible, force our assimilation into the mainstream, and undermine the goals of gay liberation. Second, attaining the right to marry will not transform our society from one that makes narrow, but

123

dramatic, distinctions between those who are married and those who are not married to one that respects and encourages choice of relationships and family diversity. Marriage runs contrary to two of the primary goals of the lesbian and gay movement: the affirmation of gay identity and culture and the validation of many forms of relationships.

When analyzed from the standpoint of civil rights, certainly lesbians and gay men should have a right to marry. But obtaining a right does not always result in justice. White male firefighters in Birmingham, Alabama, have been fighting for their "rights" to retain their jobs by overturning the city's affirmative-action guidelines. If their "rights" prevail, the courts will have failed in rendering justice. The "right" fought for by the white male firefighters, as well as those who advocate strongly for the "rights" to legal marriage for gay people, will result, at best, in limited or narrowed "justice" for those closest to power at the expense of those who have been historically marginalized. . . .

Justice for gay men and lesbians will be achieved only when we are accepted and supported in this society despite our differences from the dominant culture and the choices we make regarding our relationships. Being queer is more than setting up house, sleeping with a person of the same gender, and seeking state approval for doing so. It is an identity, a culture with many variations. It is a way of dealing with the world by diminishing the constraints of gender roles that have for so long kept women and gay people oppressed and invisible. Being queer means pushing the parameters of sex, sexuality, and family, and in the process transforming the very fabric of society. Gay liberation is inexorably linked to women's liberation. Each is essential to the other.

The moment we argue, as some among us insist on doing, that we should be treated as equals because we are really just like married couples and hold the same values to be true, we un-

dermine the very purpose of our movement and begin the dangerous process of silencing our different voices. As a lesbian, I am fundamentally different from nonlesbian women. That's the point. Marriage, as it exists today, is antithetical to my liberation as a lesbian and as a woman because it mainstreams my life and voice. I do not want to be known as "Mrs. Attached-To-Somebody-Else." Nor do I want to give the state the power to regulate my primary relationship. . . .

By looking to our sameness and de-emphasizing our differences, we do not even place ourselves in a position of power that would allow us to transform marriage from an institution that emphasizes property and state regulation of relationships to an institution that recognizes one of many types of valid and respected relationships. Until the Constitution is interpreted to respect and encourage differences, pursuing the legalization of same-sex marriage would be leading our movement into a trap; we would be demanding access to the very institution that, in its current form, would undermine our movement to recognize many different kinds of relationships. We would be perpetuating the elevation of married relationships and of "couples" in general, and further eclipsing other relationships of choice.

Ironically, gay marriage, instead of liberating gay sex and sexuality, would further outlaw all gay and lesbian sex that is not performed in a marital context. Just as sexually active nonmarried women face stigma and double standards around sex and sexual activity, so too would nonmarried gay people. The only legitimate gay sex would be that which is cloaked in and regulated by marriage. Its legitimacy would stem not from an acceptance of gay sexuality, but because the Supreme Court and society in general fiercely protect the privacy of marital relationships. Lesbians and gay men who do not seek the state's stamp of approval would clearly face increased sexual oppression.

Undoubtedly, whether we admit it or not, we all need to be

accepted by the broader society. That motivation fuels our work to eliminate discrimination in the workplace and elsewhere, fight for custody of our children, create our own families, and so on. The growing discussion about the right to marry may be explained in part by this need for acceptance. Those closer to the norm or to power in this country are more likely to see marriage as a principle of freedom and equality. Those who are acceptable to the mainstream because of race, gender, and economic status are more likely to want the right to marry. It is the final acceptance, the ultimate affirmation of identity.

On the other hand, more marginal members of the lesbian and gay community (women, people of color, working class, and poor) are less likely to see marriage as having relevance to our struggles for survival. After all, what good is the affirmation of our relationships (that is, marital relationships) if we are rejected as women, people of color, or working class?

The path to acceptance is much more complicated for many of us. For instance, if we choose legal marriage, we may enjoy the right to add our spouse to our health insurance policy at work, since most employment policies are defined by one's marital status, not family relationship. However, that choice assumes that we have a job and that our employer provides us with health benefits. For women, particularly women of color who tend to occupy the low-paying jobs that do not provide health-care benefits at all, it will not matter one bit if they are able to marry their women partners. The opportunity to marry will neither get them the health benefits nor transform them from outsider to insider.

Of course, a white man who marries another white man who has a full-time job with benefits will certainly be able to share in those benefits and overcome the only obstacle left to full societal assimilation—the goal of many in his class. In other words, gay marriage will not topple the system that allows only the privi-

leged few to obtain decent health care. Nor will it close the privilege gap between those who are married and those who are not.

Marriage creates a two-tier system that allows the state to regulate relationships. It has become a facile mechanism for employers to dole out benefits, for businesses to provide special deals and incentives, and for the law to make distinctions in distributing meager public funds. None of these entities bothers to consider the relationship among people; the love, respect, and need to protect that exists among all kinds of family members. Rather, a simple certificate of the state, regardless of whether the spouses love, respect, or even see each other on a regular basis, dominates and is supported. None of this dynamic will change if gay men and lesbians are given the option of marriage. . . .

If the laws changed tomorrow and lesbians and gay men were allowed to marry, where would we find the incentive to continue the progressive movement we have started that is pushing for societal and legal recognition of all kinds of family relationships? To create other options and alternatives? To find a place in the law for the elderly couple who, for companionship and economic reasons, live together but do not marry? To recognize the right of a longtime, but unmarried, gay partner to stay in his rent-controlled apartment after the death of his lover, the only named tenant on the lease? To recognize the family relationship of the lesbian couple and the two gay men who are jointly sharing child-raising responsibilities? To get the law to acknowledge that we may have more than one relationship worthy of legal protection?

The lesbian and gay community has laid the groundwork for revolutionizing society's views of family. The domestic-partnership movement has been an important part of this progress insofar as it validates nonmarital relationships. Because it is not limited to sexual or romantic relationships, domestic partnership

SAME-SEX MARRIAGE: PRO AND CON

provides an important opportunity for many who are not related by blood or marriage to claim certain minimal protections.

It is crucial, though, that we avoid the pitfall of framing the push for legal recognition of domestic partners (those who share a primary residence and financial responsibilities for each other) as a stepping-stone to marriage. We must keep our eyes on the goals of providing true alternatives to marriage and of radically reordering society's view of family. . . . We must not fool ourselves into believing that marriage will make it acceptable to be gay or lesbian. We will be liberated only when we are respected and accepted for our differences and the diversity we provide to this society. Marriage is not a path to that liberation.

the Stranger

FEATURES

August 1, 2006

Worried Sick

Why a Taste of Equal Treatment Left Us Feeling Less Secure, Not More

by [Dan Savage](#)

It started at the airport—the nausea, the headache, the dizziness—but I didn't say anything to my boyfriend.

Terry had been fighting off a bad cold the entire time we were in Chicago for Thanksgiving, and three days of looking after our son, DJ, while Terry rested had left me exhausted. But it would seem like an awfully convenient coincidence if I started to feel sick just before we boarded an airplane that Friday night. I didn't want Terry to think I was trying to weasel out of doing the hard work that is keeping a child entertained and distracted on a long flight home.

In hindsight, I should have said something to Terry. Because then it wouldn't have come as such a shock when I started vomiting—into a plastic bag—before collapsing in the aisle on my way to the bathroom. We were somewhere over North Dakota when I passed out—the only other thing I remember about that flight is being carried off the plane by paramedics when we landed at Sea-Tac Airport.

I was taken to a nearby hospital, diagnosed with the flu, and sent home with some painkillers for the headache. Go to bed, the doctor ordered, and drink a lot of fluids.

But over the next two days, I got progressively worse. I threw up anything I ate or drank, and by Sunday morning my headache was so bad that I couldn't open my eyes or sleep. I was so dizzy that I had to have help sitting up in bed when I needed to throw up.

By late Sunday night, I was in so much pain I became delirious. Terry took me back to the hospital, where an emergency-room doctor took one look and admitted me. It wasn't the flu after all—I had bacterial meningitis, a potentially life-threatening infection of the fluid in the spinal cord and the fluid that surrounds the brain. While I was curled up in a ball on the bed, the doctor tried to ask me questions. But I couldn't answer, or consent to medical treatment; I didn't know where I was or what was happening. So the doctor turned to Terry—who was standing across the room, DJ at his side—and asked if he could make medical decisions on my behalf.

"I'm his partner," Terry said.

Terry quickly okayed a morphine drip (the nicest thing he ever did for me); he okayed a spinal tap (the worst thing he ever did to me); and okayed a course of powerful antibiotics. The doctors and nurses treated Terry like my spouse, like my next of kin—not just allowing him to remain at my bedside, but also empowering him to make crucial medical decisions for me in a crisis.

The next day I was sitting up, still in a great deal of pain, when the doctor came by. He directed his comments and questions to Terry, not to me; Terry was still in charge, still making medical decisions for me. The only thing I was in charge of was the button in my hand that delivered drops of morphine into my veins.

I was sent home three days later with a catheter in my chest, a cooler full of antibiotics, and a warm feeling in my heart. Wasn't I lucky to have a boyfriend who cared so much for me? And weren't we lucky to live in a place where our relationship was respected? The medical personnel didn't have to treat Terry like my spouse, but they did. Our experience at the hospital left me feeling uncharacteristically optimistic.

Then the painkillers wore off.

Back at home, once the headaches and dizziness and nausea were replaced by the head-clearing feeling of being kicked hard in the gut every time Terry administered my antibiotics through the catheter in my chest, it hit me: The doctors and nurses didn't have to treat Terry like my spouse; they didn't have to let him make medical decisions on my behalf. They *chose* to. It was their call, not ours, and if we had gone to some other hospital, or if a different team of doctors and nurses had been on duty when we arrived at the hospital, things could have gone very differently. What if the doctor that night had been a born-again Christian, a man who felt it violated his religious beliefs to treat Terry as my next of kin? If treatment had been delayed while the doctors tried to reach my mother or father on the phone, I could have died.

Instead of making us feel more secure, we wound up feeling less secure. Going in that night, we could not expect to be treated like spouses and we were pleased when we were; after we left, we realized we could not expect to be treated like spouses the next time we go in to a hospital—and so we worry.

April 13, 2007

2 Months After New Jersey's Civil Union Law, Problems Finding True Equality

By [TINA KELLEY](#)

Nickie Brazier called U.P.S., where she is a driver, to add Heather Aurand to her health insurance the day after their Feb. 22 civil union in [New Jersey](#), knowing it would save them \$340 a month. But U.P.S. said no. "They said it was because we're not married," Ms. Brazier recalled.

Dr. Kevin Slavin was able to sign his partner up for the health plan at the hospital where he specializes in pediatric infectious diseases but soon learned that both men's benefits would be treated as taxable income — not the case for his married coworkers — and that his partner could not collect his pension if Dr. Slavin died.

Merissa Muench of Mount Olive, N.J., said her employer of seven years, a medical sterilization office where she is a technician, told her the company did not cover civil union partners.

"It just irks me that a guy they just hired, his wife — bing! — has health insurance," said Ms. Muench, 30, who declined to name her employer for fear of being fired. "What else does the gay American community have to do to prove that we're worth it just as much as you guys?"

Nearly two months after New Jersey became the third state to approve civil unions for same-sex couples, many are finding that all partnerships are not created equal, raising questions about whether the new arrangement adequately fulfills the promise of the State Supreme Court ruling that led to it.

In October, the court declared that the state's Constitution "guarantees that every statutory right and benefit conferred to heterosexual couples through civil marriage must be made available to committed same-sex couples," leaving it to the Legislature to decide how to do it. Lawmakers rejected the option of same-sex marriage, but pledged that "civil union couples shall have all of the same benefits, protections and responsibilities under law" that married couples have.

Nevertheless, residents who work for companies headquartered in other states, and those whose insurers are based outside New Jersey, have found it difficult if not impossible to sign their partners up for health insurance. Unions and employers whose self-insured plans are federally regulated have also denied coverage in some cases. Staff members in doctors' offices and emergency rooms have questioned partners' role in decision-making. Confusion abounds over the interplay of state and federal laws governing taxes, inheritance and property.

Then there are cases like that of the lesbian who was told that she was likely to be denied coverage for a mammogram after she added her partner to her insurance. The insurance company changed the employee's designation to male since there was no spot on its forms for "civil union spouse."

Some 229 couples obtained civil unions in New Jersey in the first month they were available. Gay-rights advocates say they have collected two dozen discrimination complaints, laying the groundwork for a legal challenge to the civil union law that would essentially re-petition the Supreme Court for same-sex marriage. The highest courts in Connecticut, which established civil unions in 2005, and California, where domestic partnerships offer benefits and protections like those

provided by civil unions, are already considering similar cases.

“How can you call it equal protection when you have to go through hell maybe to get your civil union recognized?” asked Steven Goldstein, chairman of Garden State Equality, a gay-rights group. “Why should gay couples have to take those steps? That’s not equal protection under the law. That’s why we’re fighting for marriage equality.”

As Thomas H. Prol, co-chairman of the New Jersey Bar Association’s committee on gay issues, put it, “The word’s starting to spread that civil unions aren’t working in the real world.”

State officials attribute many of the problems to unfamiliarity with the civil union law’s provisions and its interaction with dozens of state statutes governing matters like adoption, workers’ compensation and hospitalization. They said it was far too early to judge the law a failure, and said they would work with couples and companies to resolve problems.

“This is uncharted territory, and we’re talking about an area of undeveloped law,” said J. Frank Vespa-Papaleo, director of the New Jersey Division on Civil Rights. Told about some of the couples’ experiences, he suggested that employers whose health insurance plans were governed by federal laws, for example, should provide civil union couples with the option of signing up with a comparable plan for the same fees.

Assemblyman Wilfredo Caraballo, a Democrat from Essex County who was a lead sponsor of the civil union law, said he was “frustrated because the intent of the bill is not being met.”

“We’ve got a real problem, and the problem is the feds do govern some areas,” Mr. Caraballo said. “The truth is there’s nothing any of us can do about the federal law. To the extent we can make the law stronger on the state level, I assure you we’re trying it.”

Nathaniel Persily, a law professor at the [University of Pennsylvania](#) who has published a study of same-sex marriage and public opinion, said “these kinds of difficulties were inevitable” when New Jersey created a parallel institution, noting, “Whenever there’s a sort of spotty civil innovation, it takes civil society some time to catch up.”

“The state has not sent the clearest signal,” Professor Persily added. “The fact that they are given different status under law brings up the possibility that private companies will also treat them differently.”

In some cases, though, companies have adjusted quickly after receiving complaints from couples or inquiries from their lawyers, or from reporters.

Timothy Zimmer, a computer programmer who works in Newark for a Massachusetts company he declined to name, said his insurance company, United Healthcare, had told him that his partner would not be covered even if they got a civil union.

“First, the NJ civil union is not deemed to be a marriage under NJ law,” the insurer wrote in an e-mail message to him. “Therefore there is no ‘spouse’ as defined in the MA plan. The MA law recognizes marriages between members of the same sex only for marriages performed in MA between MA residents. Since the NJ members are not ‘married’ under either NJ or MA law, there is no ‘spouse’ eligible for coverage as a dependent.”

Mr. Zimmer, 52, said in an interview last week, “Apparently the civil union law gave us all the rights of marriage, except the ones we really need.”

After being contacted by The New York Times, a spokesman for United Healthcare said Monday night that the company

had reviewed a bulletin on civil unions from the New Jersey Department of Banking and Insurance, consulted the employer, and decided that civil union partners in New Jersey were the legal equivalent of spouses.

"It's kind of nice if they do say yes," Mr. Zimmer said Tuesday. "I'm used to the no." He was still awaiting word yesterday.

Similarly, Cookie Van Pelt of Jackson, N.J., who works for Sam's Club, said she was told that her partner, Jean Farr, could not be covered because "their medical benefits fall under federal law, and they won't change for us." But John Simley, a spokesman for Wal-Mart, which operates Sam's Club, said the company allowed employees to choose between a self-insured health plan, which is federally regulated, and a health-maintenance organization that covers civil union partners.

Such self-insured plans, which are financed by employers rather than purchased from a state-regulated insurer, have caused problems for couples. Since they are governed by the Employee Retirement Income Security Act of 1974, a federal law, insurers and employers often presume that the plans are also subject to the 1996 federal Defense of Marriage Act, which defines marriage as between a man and a woman.

Sharon Mayhak said she was denied coverage by her partner's employer, which has a self-insured plan, so she remains without insurance despite bad arthritis. (She refused to name the company.)

"The thing is my partner really likes her job, we are in our 50s, and this is not a good time to look for work," Ms. Mayhak said a few weeks after she and her partner of 37 years were joined in a civil union. "We were told this is supposed to be equal in every way, and this is not equal."

Ms. Brazier, the U.P.S. driver — who gave birth to twins five weeks ago and also has a 2-year-old son — remains in limbo amid mixed messages from her employer and her union. Norman Black, a spokesman for United Parcel Service, said that the company had offered benefits to domestic partners of its nonunion workers since 2004, but that hourly workers like Ms. Brazier were covered by the [Teamsters](#) under a self-insured plan.

A spokesman for Ms. Brazier's union local said its lawyers were looking into whether it could do anything to push U.P.S. to provide partner benefits for its members.

"It's been a strain," said Ms. Aurand, Ms. Brazier's partner. "We didn't know all the loopholes — we were sure they'd let us go on." But gay-rights advocates said federal law did not prohibit self-insured companies from providing benefits to same-sex couples. A 2006 report by the Human Rights Campaign Foundation found that more than half the Fortune 500 companies, most of which have self-insured plans, offered benefits to domestic partners.

"It's the employer's own choice to decide who's a beneficiary, and the federal government doesn't prevent employers from doing the right thing," said Michele Granda, a staff lawyer with the Boston-based Gay and Lesbian Advocates and Defenders. "Those employers are purposefully choosing to discriminate against their employees."

While health insurance has caused the bulk of the problems so far in New Jersey, civil union couples are also beginning to grapple with the complex interactions of state and federal laws regarding other matters. Civil union partners filing taxes jointly in New Jersey have to file federal tax returns as if they were single, then calculate what they would owe on a joint federal return to figure their state credits and deductions, said Stephen J. Hyland, a lawyer and writer of "New Jersey Domestic Partners: A Legal Guide."

"Civil union couples will most likely be treated as if they are single for purposes of qualifying for Medicaid, which can

jeopardize the couple's home if one partner needs nursing home care," Mr. Hyland said.

Bankruptcy is governed by federal law, although state law determines how married and civil union couples hold title to their property.

Couples who drew up the equivalent of prenuptial agreements before registering as domestic partners may need to update the agreements before getting a civil union, which offers more legal protections, said Felice Londa, a lawyer in Elizabeth, N.J.

Then there are more immediate, if mundane, matters, like Ms. Londa's frustration while shopping for dresses with her partner of eight years for their May 6 ceremony.

"We said we're going to have a civil union, and one said, 'Oh, is that some kind of business dinner?' " she recalled the saleswoman saying. "Nobody gets it."

[Copyright 2007 The New York Times Company](#)

[Privacy Policy](#) | [Search](#) | [Corrections](#) | [RSS](#) | [First Look](#) | [Help](#) | [Contact Us](#) | [Work for Us](#) | [Site Map](#)

Relationship Recognition in the U.S.

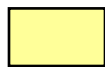


State issues marriage licenses to same-sex couples (Massachusetts only, 2004)



Statewide law providing the equivalent of state-level spousal rights to same-sex couples within the state (6 states)

- Vermont (civil unions, 2001)
- Connecticut (civil unions, 2005)
- California (domestic partnerships, 2006*)
- New Hampshire (civil unions, 2008)
- New Jersey (civil unions, 2007)
- Oregon (domestic partnerships, 2008)



Statewide law providing some statewide spousal rights to same-sex couples within the state (3 states and Washington, DC)

- Hawaii (reciprocal beneficiaries, 1997)
- Maine (domestic partnerships, 2004)
- Washington State (domestic partnerships, 2007)
- District of Columbia (domestic partnerships, 2002**)

* California domestic partnership law has been expanded several times, most recently in 2006.

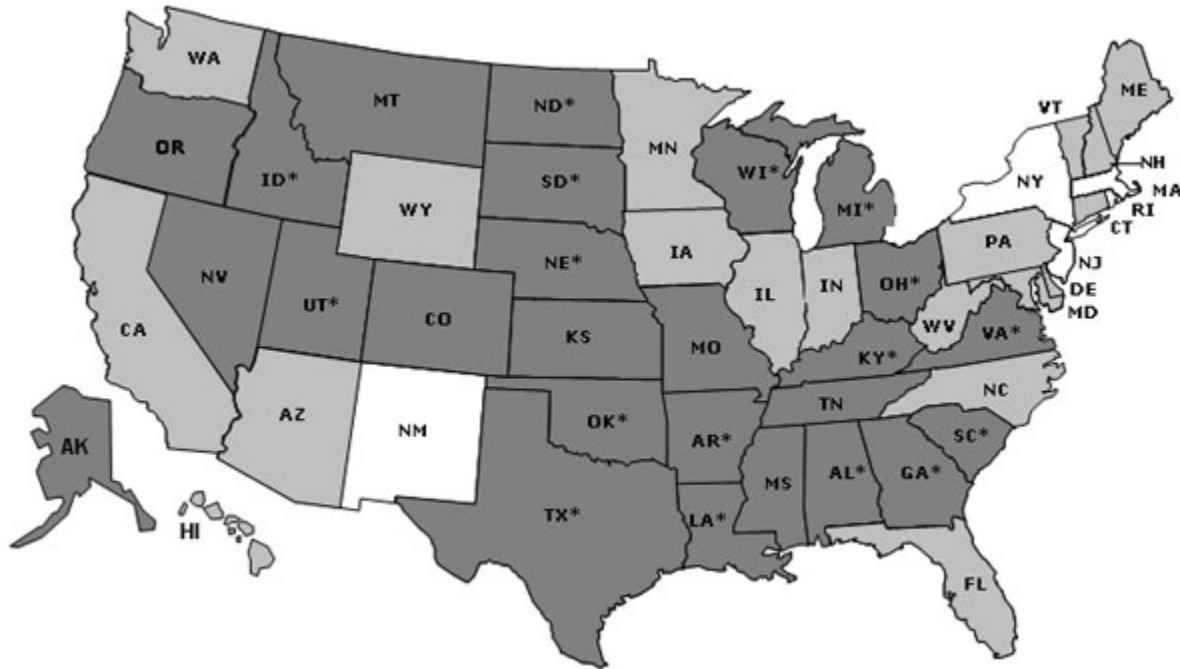
** The District of Columbia passed a domestic partnership law in 1992 that did not become effective until 2002, because Congress prohibited implementation of the law.




HUMAN
RIGHTS
CAMPAIGN®

1640 Rhode Island Ave., N.W.
Washington, D.C. 20036
web: www.hrc.org
phone: 202/628-4160
fax: 202/347-5323

Statewide Marriage Prohibitions



Statewide prohibitions against marriage for same-sex couples are in place in most states – either in the form of statutory law or amendment to the state's constitution. States that explicitly bar same-sex couples from marriage are as follows.

-  States with constitutional amendments restricting marriage to one man and one woman. (26 states)
Alabama (2006), Alaska (1998), Arkansas (2004), Colorado, Georgia (2004), Kansas (2005), Idaho (2006), Kentucky (2004), Louisiana (2004), Michigan (2004), Mississippi (2004), Missouri (2004), Montana (2004), Nebraska (2000), Nevada (2002), North Dakota (2004), Ohio (2004), Oklahoma (2004), Oregon (2004), South Carolina (2006), South Dakota (2006), Tennessee (2006), Texas (2005), Utah (2004), Virginia (2006) and Wisconsin (2006).
-  States with law restricting marriage to one man and one woman. (19 states)
In addition to those listed above, Arizona, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Maine, Maryland, Minnesota, New Hampshire, North Carolina, Pennsylvania, Vermont, Washington, West Virginia and Wyoming.

Broader Consequences: *States where the law or amendment has language that does, or may, affect other legal relationships, such as civil unions or domestic partnerships. (17 states): *Alabama, Arkansas, Georgia, Kentucky, Idaho, Louisiana, Michigan, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia and Wisconsin.*

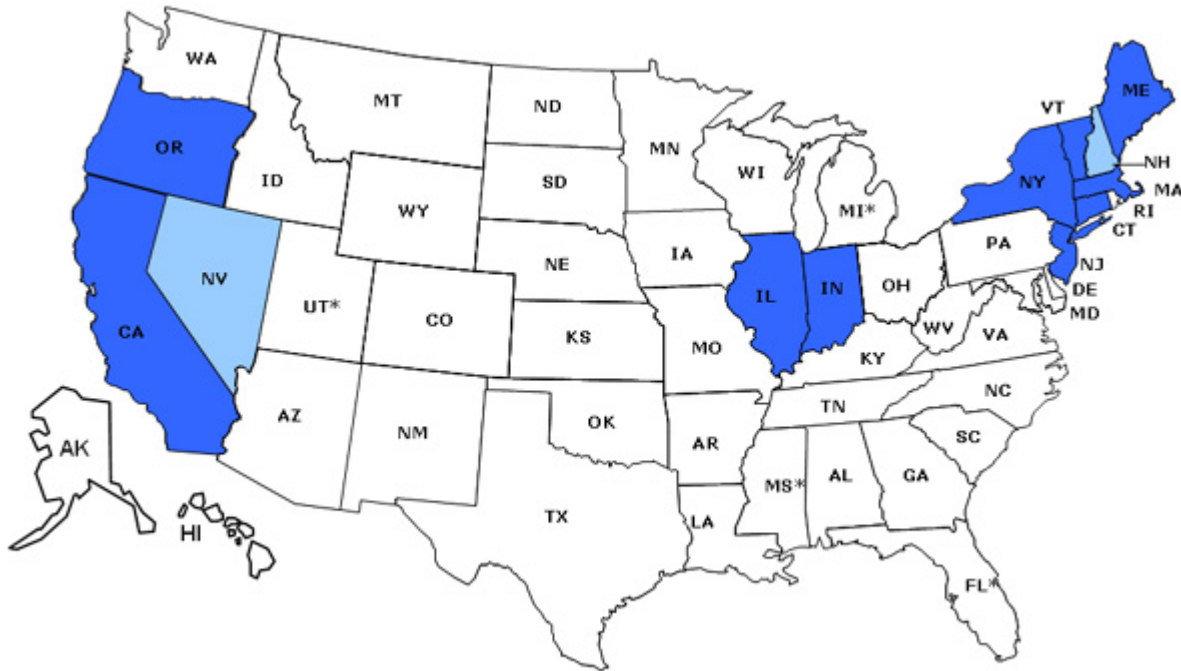
Pending Legislation: As of this writing, hostile amendments are being considered by legislators in 9 states: Alaska, Delaware, Illinois, Minnesota, New Jersey, North Carolina, Oklahoma, Washington and West Virginia. Keep track of all state legislative action on the HRC website .




HUMAN
RIGHTS
CAMPAIGN®


1640 Rhode Island Ave., N.W.
Washington, D.C. 20036
web: www.hrc.org
phone: 202/628-4160
fax: 202/347-5323

Parenting Laws: Joint Adoption



Each state has its own laws governing adoption and they vary widely. A *joint adoption* involves a couple adopting a child who has been put up for adoption by the child's biological parent(s) or is in the custody of the state. In many states it is unclear whether a same-sex couple would be permitted to file a joint petition to adopt. This map provides information on the known laws and policies.

 States where same-sex couples can jointly petition to adopt statewide. (10 states and D.C.)
California, Connecticut, District of Columbia, Illinois, Indiana, Maine, Massachusetts, New Jersey, New York, Oregon and Vermont.

 States where same-sex couples have successfully petitioned to adopt in some jurisdictions. (2 states)
Nevada and New Hampshire.

In many states the status of parenting law for GLBT people is unclear. The determination of parenting rights is always made on a case-by-case basis and it is ultimately the decision of the judge whether to grant the adoption petition. If you are considering becoming a parent, you should consult with a lawyer licensed in your state and familiar with GLBT family law.

*Obstacles to equal treatment:

Same-sex couples are prohibited from adopting in Florida, Mississippi and Utah. State courts in Michigan have ruled that unmarried individuals may not jointly petition to adopt. Florida is the only state that explicitly prohibits all GLB people, whether individuals or couples, from adopting.