

## Marriage and Equal Protection

Should childless people with sex partners be paid more and taxed less than those without sex partners?

That is the question raised by the recent rulings on marriage and homosexuality. The basis of recent arguments is the Fourteenth Amendment to the Constitution, which guarantees "The equal protection of the law" to all "persons," not to families or couples, but persons. The question, then, is what compelling reason could the state have for providing benefits and decreasing liabilities because a person has a spouse or partner? Those benefits have certainly been great, over the years. They have ranged from lower taxes to greater pension benefits to deferment from conscription.

There are two clear, rational answers to the question. One, though, is now moot.

That justification for special benefits for married people was that women could not support themselves independently and needed the support of a husband. Since many professions and trades were closed to women, it made sense for the government to reward men to provide these "dependent" women with support. So lower taxes for married couples, pensions that continued paying until the death of the dependent spouse, and many other accommodations were rationally provided. Today, however, when everyone is free to work and having one spouse leave the work force is an entirely a private choice, there is no rational justification for those benefits based simply on having a committed sexual partner or being someone else's registered sexual partner. Indeed, it is surprising that any adult American is still willing to accept the place of another's "dependent." *Not* being someone else's dependent was certainly the ideal feminists once set for all women.

The other justification for special benefits for married people is, of course, child-rearing.

Children are expensive, and the economic benefits they bring come not to their parents, but to themselves and to society in general. It made, and it still makes, perfect sense for the government to help fund those who support minor children. Marriage is, at its root, based on procreation. But, like other forms of sexual expression, it has been divorced from that root since the 1960's. The subsidies provided to married couples were based on the near inevitability of children being born to those in such unions. With the rise of contraception, that link has vanished, and with it the other justification for state support for marriage in general. The government should indeed support those who raise children, provided that they actually do the job, and see that the child receives appropriate health care, stays at least at grade level in school, and does not become a delinquent. There is no longer, however, any reason to provide special benefits to married people without children. The state should stop registering marriages and insist more strongly of registering parenthood—or, frankly, paternity, since maternity is always recorded—and on enforcing the obligations it entails.

If we demand “the equal protection of the law,” all the other government—and employer-based—benefits now associated with marriage should either be abolished or opened to everyone. A person should be allowed to annuitize his or her government pension to cover the life of anyone they please, so long as they accept the lower payment that will cover the costs. Taxes should be levied on the earner, not on couples, and they should not be lowered for those in “community property” states. And if the National Parks want to offer tickets that cover two, that should be any two, not just married couples.

Marriage would then become once again the province of the church or the community. It would be shaped by contract, rather than by law. Those believing in indissoluble Christian marriages could write contracts including joint ownership of property and heavy penalties for

adultery or abandonment. Those who believed in other things, from polygamy to standard suburban serial monogamy, could write other contracts. And everyone would have to choose those who will make their medical decisions, serve as guardians for their children, and administer their estates. That is, after all, what single people must do now.

Single people form a very large group in this country, but their interests have no political home. Those who benefit from traditional marriage and those who favor gay marriage can count on the political right and left to champion their interests. The legions of widowed, divorced, and not-even-looking cannot. That is true even when single people have burdens as great of those of their married fellow citizens. If you are supporting your schizophrenic brother, your 50-year-old laid-off aunt, your messed-up roommate from college, the government gives you no help. Aside from the roommate in a few states, you can't marry them and make them your dependents. The relationship must, like procreative marriage, be based on sex for the state to let you do that.

In other words, many citizens of this country are indeed denied the equal protection of the law. They are not homosexuals. They are all those who are forbidden to make use of the benefits and indemnities that are open to childless married people. Bringing equal treatment to them will solve the problem of "gay marriage," too.

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