The concept of marriage as a fixed, unchanging institution represents a common misperception born from one's own subjective experience, which is then projected back throughout human history (Haeverle, 1983; Kindregan, 2007). However, as Stephanie Coontz (2005) points out, marriage as an institution steadily evolves and manifests itself in multiple forms to suit a variety of functions in all recorded human societies, except one. The pace of change increased from the mid-eighteenth century onwards, when Victorian marital ideals began to reflect the belief that love between two partners represented the idyllic foundation for marriage. This presented a radical shift away from the practice of arranged marriages where love formed a potential consequence of the partnership, but not the motivating cause (Coontz, 2005). Today, men and women access greater freedom than ever before to make individual choices about their marital future. The array of decisions includes whom one should marry, if one should marry at all, what the best age to marry is, and if they should have children (Coontz, 2005). It should come as little surprise then, that into this mix, the sex of one's lifelong partner is also no longer constrained by strict societal norms.

The marriage of Ellen DeGeneres and Portia de Rossi on August 16th, 2008, in Los Angeles, California, is one example of the growing number of legally wed same-sex couples in the United States. Nonetheless, same-sex couples still face significant legal and cultural obstacles in their quest for full marital rights. This paper reviews same-sex marriage as the latest frontier in the evolution of marriage, with the marriage of Ms. DeGeneres and Ms. de Rossi as the lens through which we can view the shifting legal and social status of married gay and lesbian couples in the United States.

It is unlikely that the United States will soon follow Canada, Belgium, and the Netherlands in granting federal recognition to same-sex marriage (Coontz, 2005). In 1993, the Hawai‘i Supreme Court decided that the Equal Protection Clause of the State Constitution protected the right of same-sex couples to marry (Kindregan, 2007). Following this decision, a constitutional amendment was enacted to explicitly define marriage as only between a man and a woman. President Clinton introduced the Defense of Marriage Act to similarly define marriage as heterosexual for the purpose of federal law. The Hawai‘i State Legislature then became the first in the nation to recognize domestic partnerships, where same-sex couples receive similar legal benefits to married heterosexual couples (Kindregan, 2007). Presently, ten states and the District of Columbia offer same-sex couples legal recognition via registered domestic partnerships or civil unions. Massachusetts and Connecticut are currently the only two states that grant marriage licenses to same-sex couples. On May 15th, 2008, the California Supreme Court overturned the state’s ban on same-sex marriages, citing constitutional protections surrounding the right to marry (Dolan, 2008). This ruling was subsequently nullified by the ballot measure known as Proposition 8, which amended the state constitution to define marriage as between a man and a woman. California voters narrowly approved Proposition 8 during the November election (Garrison et al, 2008).

Ms. DeGeneres and Ms. de Rossi took advantage of the narrow window of opportunity to get married after having been together for four years (Belge, 2008a; Kort, 2008). Ms. DeGeneres is a popular television talk-show host who has won several daytime Emmy awards. Ms. de Rossi was born Amanda Rogers in Melbourne, Australia, and changed her name at the age of fifteen after a character in Shakespeare’s The Merchant of Venice. She has appeared in the television shows, Ally McBeal, and Arrested Development. They first met in 2000, but in 2004, when both attended the VH1 “Big in ’04” awards show, their attraction to each other was apparent (Belge, 2008a; Kort, 2005).

The endogamous nature of homosexual relations contrasts with expected, and some would say, preferred norms of sexual orientation in

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American society. Nonetheless, strong ethnic and class endogamy persists, which is often internalized and outwardly expressed through assortative mating (Rauch et al, 2003). Ms. de Rossi and Ms. DeGeneres share similar characteristics regarding ethnicity and social economic status, and both are members of the Hollywood elite (Kort, 2008). These facts reinforce the propinquity that is a common feature of many relationships, regardless of sexual orientation. Propinquity denotes the tendency for individuals to live near their potential partners, and to live near individuals that share similar demographic characteristics; hence, partners usually mirror similar demographic characteristics (Rauch et al, 2003).

In addition, cultural norms dictate that weddings typically involve large public rituals where the couple announces their shared commitment (Rauch et al, 2003). The DeGeneres – de Rossi wedding reflected many of these elements. Writing for the popular LGBT (Lesbian, Gay, Bisexual, and Transgender) magazine, The Advocate, Michele Kort called their wedding an “archetypal” celebrity wedding similar to those often seen on the cover of People magazine (2008). Kort (2008) contrasts the lack of media “backlash” at their wedding with the treatment Ellen DeGeneres received after her public “coming out” on the cover of Time magazine in 1997. Subsequent to her public acknowledgement of homosexuality, Ms. DeGeneres’ television character, which was loosely based on her life, also became a lesbian. After protests from conservative religious groups, the ABC network cancelled the show, and Ms. DeGeneres experienced difficulty finding work (Kort, 2008). Kort (2008) uses Ellen DeGeneres as a barometer for how attitudes towards homosexuality have changed over the past ten years, and the DeGeneres – de Rossi wedding as an express signal of how great that shift has been. Unfortunately, that forecast turned out to be premature, as Proposition 8 has thrown into doubt the legal status of all same-sex weddings performed from May through November 2008 in California (Garrison et al, 2008).

Conflicting arguments exist about how flexible the institution of marriage truly is. Erwin J. Haeberle (1983) points out that any discussion about marriage is fraught with difficulties, owing to its various cultural forms and functions. For that reason, the following discussion will focus on the institution of marriage as it has appeared within the United States.

Undoubtedly, marriage in the United States exhibits a certain amount of Judeo-Christian influence (Kindregan, 2007). The marital system introduced into the American colonies has its roots in the English ecclesiastical courts, which held jurisdiction over marriage and associated marital law. However, American colonies expressed a more diverse set of views regarding the authority over marriage, with New England proclaiming it a purely civil issue (Kindregan, 2007). Around the same time, idealized constructions of potential mates began to include more affectionate terms, such as mutual support and companionship, in addition to the desired “industriousness” (Coontz, 2005:147). Moreover, America diverged from religious views that forbade divorce on the Biblically-inspired grounds that husband and wife are irrevocable joined and established divorce provisions in Massachusetts seventy-five years before England (Kindregan, 2007).

The absence of a monarchy and the establishment of a representative government paved the way for more equitable forms of marriage to appear; in England, the monarchical hierarchy, with the King at the helm, appeared on a smaller scale within each family, with the husband as the head of the household (Coontz, 2005). Enlightenment ideals combined with feminist principles to promote equality between the sexes, but this was somewhat tempered by the “cult of female purity” which emerged during the nineteenth century (Coontz, 2005:159). The cult of female purity sought to stabilize changing relations between men and women by delineating separate spheres of male and female activity and by reigning in women’s sexuality. However, this was only a temporary reprieve. The subordination of women inside the home gradually led to the sexualization of marriage and finally, the positioning of marriage as a highly intimate arrangement that nurtured individual fulfillment (Coontz, 2005).

The loosening of marital norms engendered multiple ramifications for same-sex relationships. In 1915, writer Margaret Anderson declared that homosexual love was no different from heterosexual love. Gay communities existed in many cities around the country. Nonetheless, the emphasis on marital intimacy decreased social acceptance of close relationships between women, which earlier had provided many women an important avenue for affectionate self-expression (Coontz, 2005).

Two twentieth century U.S. Supreme Court decisions concerning racial miscegenation are important in the journey towards federally-recognized same-sex marriages. In 1923, the Supreme Court decided that marriage formed an essential part of the pursuit of happiness. In 1967, the Court designated marriage as a “basic civil right” underlying the survival of American civilization (cited in Coontz,
These arguments can be interpreted in two, mutually-exclusive ways: firstly, as a guarantee of the right of all people to marry, regardless of personal traits (e.g. race, sexual orientation); or alternately, as an indicator of the need to keep marriage, and thus marriage law, pertaining solely to heterosexual unions lest the introduction of same-sex marriage upset the stability of this fundamental institution. Nonetheless, by the end of the twentieth century, marriage typically represented the union of two people who have chosen to spend their life together, and if fertile or if desired, to raise and care for their children. With procreation now a matter of choice, love, companionship, and joint financial security form preeminent marital values (Haeberle, 1983).

From this vantage point, the evolution of marriage away from its religious foundation towards a civil-sanctioned entity, and the loosening of expectations that the purpose of marriage is to have children, appears to predicate acceptance of same-sex marriage. Certainly, love, companionship, and financial security are not solely the domain of heterosexual unions (Haeberle, 1983). Coontz (2005) observes that the acceptance of alternative forms of marriage, like same-sex marriage, is correlated with the emergence of positive features like intimacy, mutual trust and support, and economic equity in heterosexual arrangements. When men and women are no longer polar opposites, trained to occupy different ends of the productive spectrum, but instead mix more freely with overlapping spheres of activity, there is less impetus for them to come together in some sort of gendered complimentarity. Indeed, Coontz (2005) believes that the turmoil surrounding the issue of same-sex marriage is rather like trying to “lock the barn door after the horses have already gone” (274). However, resistance to same-sex remains high. One of the arguments that obtained the greatest traction is that of the “slippery-slope,” where legalized same-sex marriage will unwittingly unleash a host of other consequences.

Douglas W. Allen (2006) is one such proponent of this viewpoint. Allen (2006) promotes a “Darwinian” view of marriage based on the belief that marriage has evolved into a highly efficient institution - for heterosexuals – and that any tampering with marital law to accommodate homosexuals will negatively impact the law as it pertains to straight couples (256). The underlying theory is that marriage is designed to regulate the sexual behavior of men and women so that they produce and invest in their offspring, and thus ensure the continuity of the society. Since, according to Allen (2006), gay and lesbian individuals maintain different sexual habits than straight men and women, and that in a homosexual partnership with children at least one partner does not maintain a biological connection to the child, the incentives to either enter or exit a marriage will be different than heterosexual incentives. This warrants an entirely separate body of marital law, or no law at all.

Not withstanding Allen’s suspect procreation-oriented basis of marriage, and his reliance on stereotypes of gay and lesbian sexual activity, the evidence he introduces is debatable. Allen (2006) uses the perceived ramifications of the introduction of no-fault divorce law as an example of the unintended consequences of changes to marital law. He cites one study which shows that women who live in no-fault divorce states work on average 4.5 hours more per week than women who live in states where fault must be determined in order to obtain a divorce (973). Hence, the reasoning goes, no-fault divorce causes increased married women’s labor-force participation rate because they are protecting themselves against abandonment, and this ultimately detrims the quality of life for the entire family. Allen (2006) accords the phenomenon of “super-mom burnout” to no-fault divorce (273), when other causes, such as the cost of living, inflexible work schedules, and inequitable distribution of household labor, also warrant consideration.

The bottom line for Allen (2006) is that same-sex marriage will result in a range of unforeseen changes to marital law, which will make marriage less appealing to heterosexuals. The number of single-parent households will substantially increase, with impacts on the next generation significant enough to affect the overall quality of civilization.

This paints quite a drastic picture, and as Ms. DeGeneres states, “It’s not like Portia and I staying home and watching Dancing with the Stars is affecting anybody” (cited in Belge, 2008b). Of course, there is more to marriage than that, but in Western culture, marriage is the highest expression of commitment a couple can make, and it usually involves a greater degree of responsibility, intimacy, and fidelity than other arrangements (Coontz, 2005). So while Allen (2006) portrays only the negative consequences of same-sex marriage, there will undoubtedly be many positive consequences as well as a result of enfanchising same-sex couples with the status and respect accorded to married couples in American society (Coontz, 2005).

While Ms. DeGeneres has long advocated for same-sex marriage, she is not supported by the entire gay and lesbian community. John D’Emilio (2006) calls the pursuit of marriage an “unmitigated
disaster” because the conservative backlash has produced new anti-gay laws (10). When the mayor of San Francisco allowed the issuance of marriage licenses to same-sex couples in 2004, four thousand couples rushed to get married (Beck, 2005; Coontz, 2005). In response, President Bush called for a constitutional amendment to define marriage as between a man and a woman, and eleven states introduced ballot box measures to ban gay marriage, all of which passed. The California Supreme Court subsequently voided the licenses issued in San Francisco (Beck, 2005).

D’Emilio (2006) advocates greater recognition of the variety of alternative family structures in the U.S., and that along with that, gays and lesbians in domestic partnerships and civil unions will receive the respect and benefits they warrant and deserve. For many, however, these arrangements are irredeemably inferior to the status of institutionalized marriage (Coontz, 2005). The way forward is uncertain. Kindregan (2007) advises that in a country in which people of diverse religious faiths are covered by one body of law, it is important to separate religious beliefs from the civil institution of marriage. The largely religiously-motivated supporters of Proposition 8 described the measure as a “moral battle” (Dolan, 2008). When do we cross the line from enacting law based on religious beliefs, held by a slim majority, to giving unconstitutional recognition to a particular religion?

Instead of rushing to define marriage along sex and gender lines, a better solution might be to firmly recognize marriage as a civil institution subject to the progression and evolution of civil society (Kindregan, 2007). Undeniably, new legal issues that emerge from full recognition of same-sex marriages will need to be addressed, and there will be a transitional period. Distinct divorce laws may arise that pertains specifically to same-sex couples to facilitate matters concerning child custody. Existing laws relevant to heterosexual adoptive parents that divorce may offer some guidance here. But these issues are not substantial enough to warrant outright rejection of the right of same-sex couples to marry. Those who wish to enter marriage via a religious ritual can do so of their own accord, but this in no way impacts their civil obligations and entitlements (Kindregan, 2007).

Perhaps then, the marriage of couples like Alison Beck and her female partner need not only occur on one day of mayoral-inspired civil disobedience in San Francisco (Beck, 2005); and the legal status of marriages like that of Ellen DeGeneres and Portia de Rossi would not be suddenly thrown into doubt based on the religious whims of a slim majority of individuals who turned up on election day (Garrison et al, 2008). As a constitutional law professor at the University of Pennsylvania remarked, “the majority is not always supposed to have its way” (cited in Dolan, 2008).
REFERENCES


