Marriage: time for a spiritual – civil divorce

Spiritual and civil marriage have been growing apart for some time. Trial separation has not been working out. In light of the recent SCOTUS decision, it would be prudent to hasten the divorce for the sake of civil harmony and justice.

Spiritual or traditional marriage is largely a moral and ethical expression (often sanctified before God) conveying status and obligations upon the parties united. The parties and institutions blessing the union define the nature of the conveyance. Historically, this centered on fidelity, dependency care and child rearing. Many continue to believe it serves a useful societal purpose, even in an era of changing social mores and practices.

Civil marriage traditionally was a union (sanctified by the state) that avowed similar conveyances but added "licensed" legal rights and responsibilities, especially as involved the financial rights, assets and obligations of the parties and any offspring. It was conceived in an era where child rearing and non-working spouses were the norm. Many associated, antiquated legal and health practices are still operational despite the emergence of non-applicable situations.

It, also, has witnessed new contractual and other, basically "non-marital", legal instruments, e.g., prenuptial agreements, joint property deeds, wills, medical powers of attorney, being employed by committed parties outside – or in addition to – civil marriage. In my opinion, these instruments should continue to evolve to provide protections but replace civil marriage.

Social and legal sanctions directed at "illicit cohabitation" and "shacking up" are largely a thing of the past from a civil or secular perspective. Blended families often consist of more than two adults in an array of married, unmarried and sexual preference states. State authorities - rightfully so, in my opinion, – have largely ignored the adult arrangements and concentrated on protecting the children.

Various federal and state civil marriage statutes allow couples to game the system for financial gain. For instance, a divorced spouse is often granted alimony and/or a portion of an ex-spouse's retirement pension unless he or she remarries. To keep receiving such income from an ex-spouse, a spouse can remarry in a spiritual ceremony not recognized by the respective state or cohabit. By executing a civilly non-recognized marriage, the newlyweds can supplement family income and enjoy social "married" status. She and he can also enjoy the rights and asset distribution protections traditionally associated with civil marriage by using the various non-marital legal instruments mentioned.

By expanding civil marriage – and, de facto, various government sanctioned legal and financial rights and benefits – to same sex couples (straight or gay) SCOTUS added a new wrinkle. Same sex couples (gay or straight) in a committed, sharing, loving relationship must marry to receive these rights and benefits. If such same sex, committed couples can not marry, because of strong religious or spiritual beliefs they hold, they - and any children they jointly care for - could be discriminated against in receiving such benefits.

Does the Constitution require states to establish a “marriage” institution? Are states a good instrument to “recognize” individuals who claim they are in a committed loving relationship, regardless of number, sex and sexual preference? Exactly what are states “licensing” individuals to do that most have already not done? Would it not make more sense for the state to follow the lead of animal protection groups and license an individual or individuals who wish to conceive, adopt or rear a child?

To keep up with the cultural and social shifts that are occurring, I propose that at the age of majority, each individual would execute a civil document specifying the “right to act” in certain situations, (e.g., medical coma), assets and state recognized entitlement benefits he or she wishes to convey to others. Entitlements and benefits would be retained and conveyed by an individual regardless of spiritual marital status. With the exception of dependent children, the state would cease to assign rights and benefit designations.

As life situations change, one could change the designations much like one changes name or organ donation status on a driver’s license. Individuals would be free to marry spiritually in accordance with their personal vows, blessed by a spiritual institution if they desire. If the parties wished, they could legally convey certain rights and benefits at that time. The state would limit its role to child protection involving the financial and other obligations of individuals conceiving, adopting or otherwise caring for children.

For the sake of social harmony and justice, it is time to divorce spiritual and civil marriage.

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