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A Communitarian Position for Civil Unions

Professor Shanley's argument is compelling, powerful, and well grounded in communitarian arguments. However, when all is said and done she does not directly address the question of whether gay and lesbian unions should be accorded the same legal status as heterosexual ones. I could go on and on about why I so strongly agree with her analysis, as far as it goes. Marriages indeed are not private events; they are occasions in which a couple comes before a community to make a commitment that falls in line with the values of that community. They are also the coming together of two families, not just two individuals.

Above all the commitment is not contractual but open ended. There is a world of difference between an agreement

to exchange services—you will take out the garbage and I will cook, you will take care of the children on even days and I on odd days, you will care for me when I am sick and I for you when you are sick—and a commitment to be together through thick and thin. No one in her right (“rational”) mind would stick to a contract when the other partner has advanced cancer, AIDS, or dementia. There is no return to be expected, and the burden is overwhelming. If marriage were a contract and these circumstances arose, one would look for ways to wiggle out of the contract or accept the penalty and move on. However, most marriage partners stay put in such circumstances because the marriage “contract” (a very misleading term) contains a moral obligation that is much more binding than contracts. It is indeed a covenant.

To replace marital covenants with private contracts is to burn down the house to accommodate some new tenants. But they would have no house either, once marriage becomes akin to an economic deal. A marriage based on agreed arrangements would be as vacuous for homosexuals as it would be for all others.

So far, I am just underscoring what Professor Shanley has said so well. She is, however, surprisingly vague about whether these public commitments should be framed differently for heterosexuals and homosexuals. Before I can directly answer that question I need to make a general point about a communitarian approach to politics. (I keep referring to “a” communitarian position because I of course speak only for this communitarian. Communitarians differ on this issue even more than other bodies of thought.) The

point is that society, unlike philosophy, cannot be derived or based on one overarching principle. A libertarian philosophy can be built around the primacy of liberty (or autonomous choices) and also the assumption that all that does not suit it can be treated as wrong, or at least as a deviation, at best as a bad compromise needed for expedient considerations.

In contrast, society appears to have values that cannot be fully realized nor made fully compatible because of the diversity of its members and their interests and needs. In principle, society must find ways to accommodate differences without going whole hog in one direction or the other. We cannot maximize liberty or equality. We must find ways for gun owners who believe that owning guns is part of their birthright to live with those who, like me, feel strongly that guns are evil incarnate. Communitarian politics hence entails finding ways for people of different basic values to live together without one set of values “trumping” the other. Much democratic politics reflects such communitarian treatment of basic differences.

In the case at hand, many gay people feel strongly that unless they are entitled to exactly the same marriages as heterosexuals, their basic individual rights are violated, which they (and many liberals) hold as semisacred. Many social conservatives feel that gay marriages drive a stake through their hearts and violate all that is holy to them. Civil unions—if made available to both gays and heterosexuals who want to signal a different form of commitment than traditional marriages—are a reasonable middle ground. (Indeed, societies are moving to form still other types of “marriages,” such as

those that are limited by time or those with or without children. Louisiana introduced a still different form—the covenant of marriage.)

Civil unions accord those involved in them *most* of what traditional marriages provide: the right to inherit, share health benefits, and so on. Indeed, ceremonies and public commitments can be made for civil unions too. And such unions allow social conservatives to believe that that which is sacred to them has been respected. Such a compromise is not the best of all worlds, but it is the best that one can achieve in our society at this stage in history. We must respect other members of our community the way that we wish for them to respect us.