

Standing on Ceremony

Marriage Does Entitle People To Benefits Denied Other Cohabitants

By Mitchell Kelter

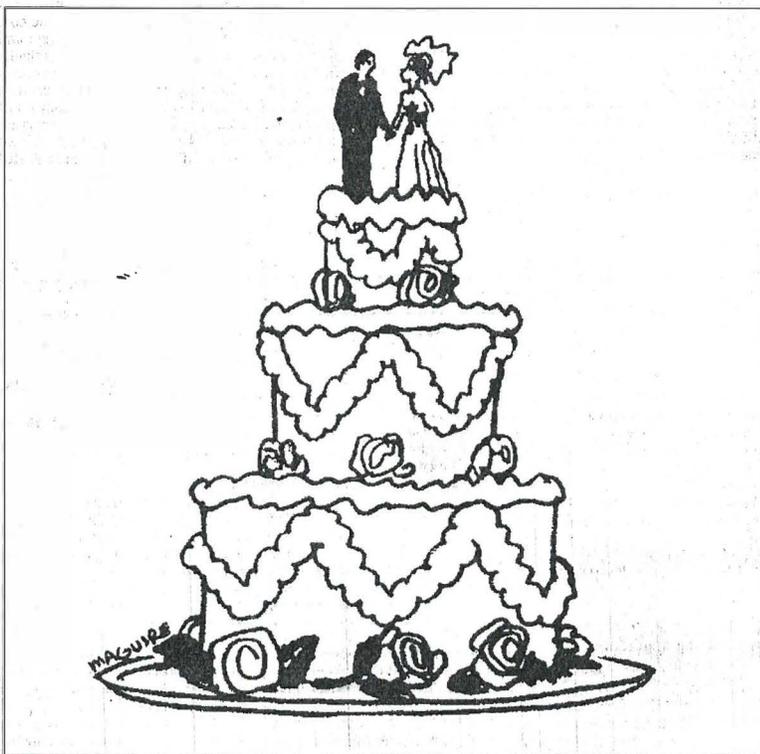
Gov. Gray Davis is currently deciding whether to extend "marital" (insurance, pension) benefits to unmarried heterosexual couples. The Los Angeles City Council is also considering compelling private employers to provide such benefits. Attorney Thomas Coleman believes there is no reason to deny cohabiting couples the same benefits offered to married couples ("Singed Out," Forum, July 23). But insofar as such benefits are designed to lead couples to commit to each other, offering them the rewards of marriage without its responsibilities is a bad bargain.

The argument for extending benefits to cohabiting couples rests on two inconsistent propositions: employees deserve equal pay for equal work, regardless of their domestic arrangements, and unmarried individuals who live with a "domestic partner" deserves tangible benefits denied to those who room with a sibling or friend. If the former proposition is true, the latter is not.

Despite the appeal of a general equality principle, states provide special benefits to couples who marry. These benefits are justified by the reciprocal benefits that such commitments provide the couples, their children and society as a whole. See *Peden v. State*, 930 P2d 1, 15-16 (Kan. 1996).

"Domestic partners" benefits were initially based on the theory that homosexual couples may also benefit by maximizing their commitment. No comparable theory justifies offering special benefits to unmarried heterosexual couples. Overwhelming empirical data show cohabitation not only fails to offer society the same benefits as marriage, but also imposes substantial costs.

Individuals benefit personally by marrying. For instance, according to one study, one of every three unmarried individuals dies before reaching age 65; only one-eighth of the married population dies before 65. Some of this is "cause": Healthy people are more likely to marry. But much is "effect": People live more responsibly when a spouse



and possibly children depend on them. Accordingly, married males commit far fewer crimes than unmarried ones.

But since couples invest less in cohabitation, they derive less from it than marriage. Some reports indicate that compared to married couples, cohabitators have three times the alcohol problems, three times the domestic violence and six times the infidelity (and consequent transmission of sexual diseases). One Center for Disease Control study showed that the single factor that best predicted whether a man beat his child's pregnant mother was not the couple's income or education, but their marital status.

These studies actually show that the problems of alcohol, violence and infidelity, among others, are significantly more prevalent among cohabitators than noncohabiting dating couples. The negative effects remain even after the couple marries: Married couples who lived together first have much higher rates of abuse and adultery (though not alcoholism) than couples who did not.

Conventional wisdom notwithstanding, reliable studies have shown premarital cohabitation substantially increases the probability of divorce. Living together does not "train" couples for marriage, it reflects and reinforces the one-day-at-a-time, me-first attitude that inhibits the sacrifice and mutual investment necessary for a successful lifetime union.

The primary beneficiaries of marriage, and victims of its absence, are children. Cohabiting couples who

reproduce may separate without ever marrying, and their marriages frequently end in divorce. The result is that 75 percent of children born to cohabiting couples will not live with both parents; only 33 percent of married parents' children will face such parental separation.

The *Peden* court recalled some of the sociological studies showing that single parenthood at least doubles the risk that children will commit crimes, drop out of school, give birth as a teenager, have psychological problems, suffer abuse or have a marriage that ends in divorce. The child poverty rate is five times higher in one-parent families. Children raised by cohabiting couples have outcomes that resemble those of single-parented children.

Because 75 percent of teenagers who murder come from one-parent homes, all of society benefits from the existence of marriages, which provide stable environments for child-rearing. Just as nonparents benefit from state subsidies that educate other people's children, unmarried individuals also gain from subsidies that promote marriage.

Unmarried cohabitation, by contrast, imposes costs on society. Generally when private behavior imposes public costs (externalities), government seeks to discourage such behavior, not encourage it. There is simply no state interest in inducing couples, unprepared for a permanent commitment, to move in and possibly procreate together.

Mr. Coleman suggests several reasons why certain couples may choose not to marry, among those

are lost pension or disability benefits if they do. But if lawmakers believe individuals should not forfeit these benefits, the proper remedy is to remove the financial deterrents to remarriage, not promote a subterfuge.

The other excuses to nonmarriage are less plausible, i.e., women who have been abused by a man who has been abused by a woman who trusts a husband. But a woman who shares her bedroom and bankroll with a man will not be endangered by a marriage certificate. On the contrary, a woman and her children are much safer from abuse when she receives a legal promise from a husband.

This is because, as Justice Thurgood Marshall explained for a unanimous Supreme Court, a man's willingness to marry his child's mother manifests a tangible commitment to the child. Husbands thus deserve favorable legal treatment over boyfriends. *Quillion v. Walcott*, 434 U.S. 246, 255-56 (1978). Assuming the special responsibilities of marriage entitles a person to its special benefits.

But to extend the benefits of marriage to people who are not bound by its obligations will essentially deter marriage and invite cohabitation. The result will lead more children to be raised by a merry-go-round of shifting households, undermining their individual welfare and our collective welfare.

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