

Partners Task Force for Gay & Lesbian Couples

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The History of Marriage as an Institution

by Larry R. Peterson, Ph.D.

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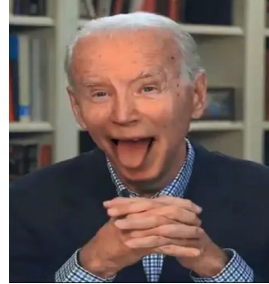
Virtually all scholars agree that we have witnessed a major transition in the meaning of marriage in the years from 1600 to 1995. In 1600, marriage for almost all Europeans and Europeans in America was primarily an economic arrangement negotiated between families in which family considerations of status, future economic stability, and prosperity were the most important considerations in selecting a potential spouse. By 1995, most Americans consider the primary purpose of marriage to be a commitment to emotional and psychological support between two individuals.

WTF???

Here are historical notations about some of the dramatic changes in the legal structure of marriage in Western Europe and the United States.

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1. From the 5th to the 14th centuries, the Roman Catholic Church conducted special ceremonies to bless same-sex unions which were almost identical for those to bless heterosexual unions. At the very least, these were spiritual, if not sexual, unions.
 2. In 1076, Pope Alexander II issued a decree prohibiting marriages between couples who were more closely related than 6th cousins.
 3. In the 16th century, servants and day laborers were not allowed to marry in Bavaria and Austria unless they had the permission of local political authorities. This law was not finally abolished in Austria until 1921.
 4. From the 1690s to the 1870s, "wife sale" was common in rural and small-town England. To divorce his wife, a husband could present her with a rope around her neck in a public sale to another man.
 5. Marriage was strictly a civil and not an ecclesiastical ceremony for the Puritans in Massachusetts Bay until 1686.
 6. The Pilgrims outlawed courtship of a daughter or a female servant unless consent was first obtained from parents or master.
 7. Until 1662, there was no penalty for interracial marriages in any of the British colonies in North America. In 1662, Virginia doubled the fine for fornication between interracial couples. In 1664, Maryland became the first colony to ban interracial marriages. By 1750, all southern colonies, plus Massachusetts and Pennsylvania outlawed interracial marriages.

8. Under English common law, and in all American colonies and states until the middle of the 19th century, married women had no legal standing. They could not own property, sign contracts, or legally control any wages they might earn.
9. In 1848, New York became the first state to pass a Married Woman's Property Act, guaranteeing the right of married women to own property.
10. Throughout most of the 19th century, the minimum age of consent for sexual intercourse in most American states was 10 years. In Delaware it was only 7 years.
11. As late as 1930, twelve states allowed boys as young as 14 and girls as young as 12 to marry (with parental consent).
12. As late as 1940, married women were not allowed to make a legal contract in twelve states.
13. In 1967, the U.S. Supreme Court struck down state anti-miscegenation laws in *Loving v. Virginia*.



As a result of the decision, Virginia and fifteen other states had their anti-miscegenation laws declared unconstitutional. Those states were: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and West Virginia.

In the fifteen years prior to the decision, fourteen states had repealed their anti-miscegenation laws. Those fourteen states were: Arizona, California, Colorado, Idaho, Indiana, Maryland, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming.

14. In 1978, New York became the first state to outlaw rape in marriage. By 1990, only a total of ten states outlawed rape in marriage. In thirty-six states rape in marriage was a crime only in certain circumstances. In four states, rape in marriage was never a crime.

These examples, and there are more, clearly document that marriage has not been an unchanging institution with unchanging definitions of who can marry and under what circumstances. Those who claim otherwise distort the historical record.

Footnotes

For the opening paragraphs:

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1. John Boswell, *Same-Sex Unions in Premodern Europe*, (New York: Villard Books, 1994).
2. Jack Goody, *The Development of the Family and Marriage in Europe*, (New York: Cambridge University Press, 1983) pp. 136-138.
3. Mitterauer and Sieder, p. 123.
4. John R. Gillis, *For Better, For Worse: British Marriages, 1600 to the Present*, (New York: Oxford University Press, 1985) pp. 211-217.
5. Edmund S. Morgan, *The Puritan Family: Religion and Domestic Relations in Seventeenth Century New England*. rev. ed. (New York: Harper & Row, 1966) p. 32.
6. John Demos, *A Little Commonwealth: Family Life in Plymouth Colony*, (New York: Oxford University Press, 1970) p. 154.
7. D'Emilio and Freedman, pp. 34-36.
8. Sara M. Evans, *Born for Liberty: A History of Women in America*, (New York: Free Press, 1989), p. 22.
9. Evans, p. 94.
10. Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America*. (Cambridge, MA.: Belknap Press of Harvard University Press, 1977), p. 465.
11. Mintz and Kellogg, p. 126.
12. Degler, p. 333.
13. *Loving v. Virginia*, 388 US 1, 18 L ed 2d, United States Supreme Court Reports, October Term, 1966, Lawyers' Edition, Second Series, Volume 18 (Rochester, N.Y.: Lawyers Cooperative Publishing Company, 1968) p.1014n.
14. Jane Sherron De Hart and Linda K. Kerber, "Gender and The New Women's History," in Linda K. Kerber and Jane Sherron De Hart, eds. *Women's America: Refocusing the Past*, 4th ed. (New York: Oxford University Press, 1995) p. 13.

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