

Should Gays Have Marriage Rights?

On two coasts, the growing debate produces two different answers

BY WALTER ISAACSON

Long-term homosexual lovers in New York State, thanks to regulations issued by Governor Mario Cuomo's housing commissioner last week, now have the same right as surviving spouses to take over rent-stabilized apartments upon the death of their partners. In San Francisco voters last Tuesday narrowly rejected—after vocal opposition from the city's archbishop and other religious leaders—a proposal entitling gay couples to register their relationships with the county clerk. In Washington and Los Angeles, task forces have been set up to investigate whether denying gay couples the benefits enjoyed by married people is a form of discrimination. It is all part of a growing national debate over whether gay couples should be allowed to declare themselves "domestic partners," or even become legally married, and thus be eligible for some of the rights accorded to married couples.

The rewards of marriage in today's society are more than merely emotional. Among the tangible benefits available to husbands and wives are coverage under their spouses' health and pension plans, rights of inheritance and community property, the joys of joint tax returns, and claims to each other's rent-controlled apartments.

Such policies have evolved as the expression of a basic social value: that the traditional family, with its economic interdependence, is the foundation of a strong society. But what about a gay couple? They might be similarly dependent on each other, economically and emotionally. Yet no state in the U.S. allows them to marry legally, and nowhere are they offered the same medical, pension, tax and legal advantages as married heterosexuals.

Since as much as 40% of a worker's compensation comes in the form of fringe benefits, the issue is partly one of economic equity: Is it fair to provide more for a married employee than for a gay colleague who does the same work? There is also a larger moral issue. Health plans, pension programs and inheritance laws are designed to accommodate the traditional family. But nowadays, only 27% of U.S. households consist of two parents with children, down from 40% in 1970. Is the goal of encouraging traditional families therefore obsolete? Is it discrimina-

tory? Or is it now more necessary than ever?

Although the drive for domestic-partnership legislation partly reflects the changing priorities of the gay-rights movement, the new rights being proposed would be available to heterosexual couples as well. Of the nation's 91 million households, 2.6 million are inhabited by unmarried couples of the opposite sex. Only 1.6 million households involve unmarried couples of the same sex. These figures include a disparate array of personal arrangements: young male-female couples living together before getting married, elderly friends who decide to share a house, platonic roommates and romantic gay or straight lovers. Among those whose emotional and financial relationship would qualify them to be called domestic partners, only 40% or so are gay.

Do you think homosexual couples should be legally allowed to inherit each other's property?

Yes 65%

No 27%

Not sure 8%

Do you think homosexual couples should be permitted to receive medical- and life-insurance benefits from a partner's policies?

Yes 54%

No 37%

Not sure 9%

From a telephone poll of 1,000 adult Americans taken for TIME/CNN on Oct. 9-10 by Yankelovich Clancy Shulman. Sampling error is plus or minus 3%.

Still, the most ardent support for partnership rights comes from gay groups. For them the issue is more pressing: heterosexual couples at least have the option to wed if they wish to be eligible for family benefits, but gays do not. (Denmark in October became the only industrial nation to allow registered gay partnerships.) In addition, the spread of AIDS has raised the importance for gays of medical coverage, bereavement-leave policies, pension rules, hospital visitation rights and laws giving family members the authority to make medical decisions and funeral arrangements. "We are not talking about symbols here," says Thomas Stoddard, executive director of the Lambda Legal Defense and Education Fund, a well-organized gay-rights group. "These are bread-and-butter issues of basic importance to individuals."

In an attempt to clarify the murky statistics, the Census Bureau is making a major change in family categories when its decennial count begins in April. For the first time, couples living together will have the option to designate themselves "unmarried partners." The bureau has not yet said whether it will get explicit about the precise sexual and emotional relationship that distinguishes "unmarried partners" from another category in the survey, "housemates-roommates." (Those who have to ask can perhaps be assumed to be merely roommates.)

"We are hoping that we will get at the true unmarried-couple situation where there is intimacy between partners," says Arlene Saluter, who studies marriage and family composition for the Census Bureau, "but it will depend on how people view the question."

This difficulty in defining who qualifies is one of the problems facing those who would grant new rights to domestic partners. It is important to have criteria that are strict enough to prevent just any casual lover, roommate or friendly acquaintance in need of health insurance from cashing in. But prying into private lives and requiring proofs of emotional commitment are hardly suitable activities for government.

In order to qualify as "domestic partners" in New York City, which offers bereavement leave to municipal workers, a couple must officially register their relationship with the city's personnel department, have lived together for one year

and attest that they have a "close and committed personal relationship involving shared responsibilities." Thomas F. Coleman, a law professor who directs California's Family Diversity Project, proposes that live-in couples "who have assumed mutual obligation of commitment and support for each other" be allowed to apply for a "certificate of domestic partnership" that would function like a marriage certificate.

In addition to New York, five other cities provide bereavement leave for domestic partners: Los Angeles; Madison, Wis.; San Francisco; Seattle; and Takoma Park, Md. The only cities that currently offer health benefits to the domestic partners of employees are three in California: Berkeley, Santa Cruz and West Hollywood. State governments, which have the real authority to legislate family and marriage laws, have so far shied away from the issue. But across the country, major efforts are under way to change the laws:

► In Los Angeles a new task force on marital-status discrimination is investigating discrimination against domestic partners by insurance companies, health clubs, credit companies and airline frequent-flyer programs.

► In Seattle the city's human rights department ruled in June that the AAA automobile club of Washington had illegally discriminated on the basis of marital status by refusing to grant associate membership to a gay man's domestic partner. A city law that could require health plans to provide insurance benefits to domestic partners has been shelved while officials await clarification of an Internal Revenue Service ruling that suggests that these benefits might be considered taxable.

► In Washington a domestic-partnership benefits commission has been established by the city council to explore extending benefits to the partners of municipal employees.

► In New York City three gay teachers are suing the board of education for the right to include their companions in their group health plans, citing a state law prohibiting employment discrimination based on marital status.

One large problem facing the domestic-partnership movement is a practical one: major U.S. insurance companies have thus far refused to offer group plans that include coverage for unmarried partners, partly because of the unspoken fear that the pool would include a higher proportion of gay males at risk for AIDS. In West Hollywood when the city decided to provide health coverage to its employees' domestic partners, no insurance company would underwrite the business. The city had to resort to self-insurance. So far that has resulted in a drop in costs, but it has not yet encouraged leading insurance companies to consider offering domestic-partnership plans.

The other major objection is a moral one. Social conservatives object to policies they see as sanctifying homosexuality and further threatening the traditional family. John R. Quinn, the Archbishop of San Francisco, was in the forefront of the fight against the proposal on that city's ballot last week to provide certain domestic-partnership rights to municipal workers. He called the idea a "serious blow to our society's historic commitment to supporting marriage and family life."

The domestic-partnership movement, says David Blankenhorn of the Institute for American Values, a Manhattan-based group that studies family issues, "just misses the whole point of why we confer privileges on family relationships." As Archbishop Quinn argues, "The permanent commitment of husband and wife in marriage is intrinsically tied to the procreation and raising of children." Despite

Do you think marriages between homosexual couples should be recognized by the law?

Yes 23%

No 69%

Not sure 8%

Do you think homosexual couples should be legally permitted to adopt children?

Yes 17%

No 75%

Not sure 8%

the emergence of women in the workplace and changes in the traditional structure of family dependency, it is still necessary for most families to share rights and benefits in order to raise children and remain financially secure.

Thomas Stoddard of Lambda counters that "history by itself cannot justify an unduly limited definition of family, particularly when people suffer as a result." Yet even within the gay-rights movement, there is some disagreement about the goal. Paula Ettlbrick, the legal director of Lambda, argues that the campaign for domestic partnership or gay marriage is misdirected because it tries to adopt traditional heterosexual institutions for gays rather than encouraging tolerance for divergent life-styles. "Marriage, as it exists today, is antithetical to my liberation as a lesbian and as a woman, because it mainstreams my life and voice," she says.

The public seems to be tolerant of the notion that gay couples should be allowed more of the rights now accorded to married couples. In a TIME/CNN poll conducted by the firm of Yankelovich Clancy Shulman, 54% agreed that "homosexual couples should be permitted to receive medical and life-insurance benefits from their partner's insurance policies." Yet there is little support for gay marriages: 69% said such arrangements should not be made legal, and 75% felt that gay couples should not be allowed to adopt children.

Despite this public resistance, legalizing some form of marriage for gay couples is probably the logical outcome of the drive for domestic-partnership rights. "Given the fact that we already allow legal gay relationships," writes Andrew Sullivan in the *New Republic*, "what possible social goal is advanced by framing the law to encourage those relationships to be unfaithful, undeveloped and insecure?" Marriage involves the obligation to support each other both in sickness and in health and to share financial benefits and burdens. It implies, at least in theory, a commitment to a long-term and monogamous relationship. The advent of the AIDS epidemic increases the stake that all of society has in promoting such relationships, for gays as well as straights.

Domestic-partnership rights and legal gay marriages, therefore, can be justified to the extent that the couples involved profess a willingness to accept the mutual financial obligations, community-property rights and shared commitments to care for each other that are the basis of family life. With this broader goal in mind, it makes sense for society to allow—indeed to encourage—domestic partners both gay and straight to take on all the rights as well as the responsibilities of marriage. —*Reported by Melissa Ludtke/Boston, Jeanne McDowell/Los Angeles and Andrea Sachs/New York*