

Opinion: The Myth of Marital Protection: A Tale of Two Breakups

By Jaclyn Geller and Norman Greig

Of all the prejudices on behalf of marriage, perhaps none is so difficult to dislodge as the notion of wedlock as the great protector: the guarantor of legal and financial security. When Jaclyn Geller, one of the co-authors of this essay, published her 2001 critique of bridal culture, *Here Comes the Bride: Women, Weddings, and the Marriage Mystique*, she found that readers, interlocutors, reporters, and interviewers, alike, would return to the same question: isn't legal marriage necessary, to safeguard children and centralize assets, ensuring the smooth transfer of property from one generation to the next? Doesn't the contract, in some sense, protect families?

Jaclyn's answer was always, "no." Marriage propagandists have a radically limited notion of what family is: an American woman who marries a man she has known for two days in a Las Vegas ceremony suddenly has a "family," while she cannot classify her oldest nonbiological friends as such. People with nonbiological partners to whom they cannot extend health insurance, immigration assistance, hospital visitation rights, or any of wedlock's privileges, are certainly not "protected." And the isolated couple seems a precarious unit to shelter children. As sociologist Stephanie Coontz writes, "The notion that parental love and dedication should be the exclusive source of a child's emotional and material well being creates a fragile security. It means that any child is only one death, one divorce, one blood test away from having nothing."

Jaclyn would sometimes ask people to reflect on whether the marital household in which they had grown up provided real emotional protection. The vast majority said no. But, her interlocutors would persist, apart from the unmarried masses, and putting aside psychological issues, aren't married people and their offspring granted legal and financial protections? The answer, in a culture in which divorce is an option (and in which the divorce rate hovers at around 50%), is, again, no.

Norman Greig, a small businessman from New York's Hudson River Valley, is one of the myriad individuals who have learned firsthand, that matrimony does not deliver its alleged protections. Like many Americans he found himself entering a relationship with high hopes and exiting it to become disoriented within a labyrinthine legal system. Married for seven years, he subsequently spent nine years in State Supreme Court pursuing divorce and seven years in Federal Court dealing with the resulting bankruptcy. First, there were four years attempting to sort out marital assets followed by five years in both Federal and State Court, where a receiver scrutinized his business, an accountant validated the representation of his finances, and a law guardian monitored the interests of his son. These court-appointed experts finally produced no reports; their services were charged to the plaintiff and the defendant. The court also required both participants to hire second attorneys for the trial, since many divorce lawyers, who specialize in financial settlement, are unequipped to try cases. A year was then spent in Federal Court waiting for a decision from the State Court judge, while a new phalanx of attorneys disputed the prioritization and schedule of payments to Norman's wife and his business creditors. A final year was spent in Federal Court readjusting the mandated schedule of payments, since the legal process had consumed the very assets being sparred over.

One year into the proceedings Norman realized that formally truncating the relationship would be too expensive. In New York, where there is no "no fault" divorce, years can be consumed locating fault and assigning blame. According to Deirdre Bair, the author of *Calling it Quits: Late-Life Divorce and Starting Over*, New York has "laws so complex and convoluted that many lawyers agree it ranks first among the fifty states in throwing obstacles at couples who have every justified reason for wanting a divorce." As of 2006 a New York divorce can only be granted if both parties consent. Norman petitioned the court to withdraw his motion of divorce, hoping to be able to live separately from his spouse. (Traditionally in Europe such suspended marriage were referred to as "bed and

board” arrangements). His request was refused and the ongoing schedule of court dates continued.

Now divorced, Norman reflects on the past ten years, which have entailed two court systems, thirteen attorneys, four judges, three appraisers, and two accountants, all for a male, a female, and their biological child. It is unfortunate that the planning which takes place when two people separate, which should optimally entail rational determination, often occurs in the vitriolic atmosphere of courtrooms and legal chambers, when communication has broken down, both parties feel threatened, and the most personal aspects of a relationship are aired publicly. Those who endure legal divorce often feel scarred, but apart from the emotional residue, it is clear that no one was protected in this particular case. Norman’s son, who was to be the recipient of a farm that had been in the family for two generations, was deprived of this asset. The money Norman’s wife hoped to secure was lost in a quicksand of legal expenses. Pundits often observe that anger between spouses is beneficial only to a cadre of attorneys specializing in divorce litigation; ironically, on Norman’s side, even the last two lawyers did not benefit, as they had been appointed by the court, pro bono, to take the case.

Court officials themselves are not to blame. In general they seem to want to hear and dispense with cases as quickly as possible. Nevertheless, the system, in which all grievances must be heard, creates a space for personal vendettas and wrangling that consumes the very assets matrimony is supposed to protect. Once the process is sidetracked by allegations, the billable hours for legal professionals have no limit. In light of this one might wonder whether a legal contract itself can contain something as nuanced as a romantic relationship. Contracts are effective in managing that which can be quantified: a piece of land, a business undergoing incorporation. If love could be reduced to something this tangible, the system might function rationally. But a human relationship cannot be flattened into this type of compact: there are too many differing interpretations of events, too many shifting and mixed motives, too much that is elusive.

Because it took place in a fault state with “equitable distribution” criteria, the question hovering over Norman’s breakup was, “what is owed?” As it always does, answering this question entailed determining who had been technically “in the wrong.” In divorce, then, to create advantage, both parties must assert their respective innocence and their erstwhile partners’ guilt. By contrast, when Jaclyn ended a seven-year relationship, with the man with whom she had lived, in New York City, during her graduate student years, there was no public court martial to determine fault, and there was no theater. There was the sadness that comes with separation and the fear that accompanies change. But since Jaclyn and her partner had made no agreement with their society to be viewed as a hermaphroditic unit, and since they had never thought of themselves as “Mr. and Mrs. Attached to Each Other,” there was no legal battle. They had separate professional and personal identities and believed their time together did not obligate either one to the ongoing financial upkeep of the other. The benefit of an unmarried split may be that although each partner has private grievances, no system exists to encourage the reification and exaggeration of those complaints. While one or both parties might feel hurt, there is no legal incentive to claim “victim” status, so individuals are spared the embarrassment of personal disclosure and the debilitating expense of legal fees. And not having come together on the euphoric terms of “happily ever after” and “’til death do us part,” the end, while painful, can be less traumatic. One’s self-definition need not undergo fundamental disruption. Perhaps not coincidentally, Jaclyn and her ex-partner remain friendly to this day.

With the support of organizations like the Alternatives to Marriage Project more Americans are embracing the richness of unmarried life. Perhaps as a side benefit some will be spared the public distress of making that most private of terminations: the end of an intimate relationship between consenting adults. In the meantime, this brief tale of two breakups seems, at the very least, to complicate the idea of marriage as the great bulwark of social stability and economic security.

Jaclyn Geller is an assistant professor in the English Department at Central Connecticut State University, the author of *Here Comes the Bride: Women, Weddings and the Marriage Mystique*, and a regular contributor to the *Alternatives to Marriage Update*. Norman Greig is a second generation farmer and enjoys spending time with his son.

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