

*Marriage Equality's (Bastard?) Children:  
Thoughts on Civil Unions, Domestic Partnerships, Designated Beneficiaries...*

*Plenary Session: Family Options and Law  
AALS Workshop on Shifting Foundations in Family Law  
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Little noticed during the almost-concluded struggle for same-sex marriage equality has been a spotty but significant development: the establishment and subsequent flowering of several new forms of legally recognized relationships. These novel legal creatures take several names: domestic partnerships; civil unions; reciprocal beneficiaries; and designated beneficiaries. They were all created through compromises struck between those who opposed same-sex relationships and those who favored them. Now that marriage equality is likely at hand, will some or all of these continue to exist – perhaps even flourish – or will they spiral down into one of history's many oubliettes?

The question is more urgent than has generally been recognized, and a proper understanding of these legal relationships can lead to policy that stands to be helpful to many different kinds of families, including those whose relationships are still not recognized or protected by law. Once the verities and astonishing list of prerogatives of marriage are called into question by the demands of same-sex couples, the critical project doesn't end with the creation of new statuses. A necessarily quick survey of these statuses shows how they quickly came to transcend their origin in marriage compromise, and suggests a possible future in which the law continues to evolve to support the kinds of relationships that people are actually in – a category that is neither defined nor limited by marriage.

My presentation will focus on the three most significant of these new legal statuses: domestic partnerships; civil unions; and designated beneficiary agreements. I will briefly explain the origin of each, trace their development, and offer both predictions and suggestions for their future. The presentation will be highlighted by a focus on particular couples who have chosen these statuses, including quotations, summaries, and an audio clip or two (my technological prowess permitting). But the presentation will also consider families who have not been helped by these developments, either because they don't live in the "right" state, or because no legal status yet exists that would fully respond to their needs.

The laws should be reappraised and amended, supplemented, or discarded, as appropriate. New ones might be called for, drawing on the experiences of the current crop of statutes – especially the Designated Beneficiary Agreement Act in force in Colorado, which is the most useful of the lot. As lawmakers and lobbyists dig into the details, they should be sensitive to demographics, heedful of a rich diversity of voices, and responsive to the complexities of an ever-evolving nation.