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## **NEW JERSEY ABOLISHES THE DEATH PENALTY—IS LEGAL MARRIAGE NEXT?**

**Justice Harry Lee Anstead\***

As the calendar turns to the new year of 2008, two important legal issues remain the subject of debate among legal scholars and commentators: the death penalty, which affects relatively few but nevertheless attracts media attention, and the changing American family, which affects millions but goes largely unnoticed except in legal journals.

### **THE DEATH PENALTY**

In early December 2007, New Jersey became the fourteenth state to eliminate death as a punishment for premeditated murder or any other crime.<sup>1</sup> New Jersey's action was the most recent in a series of events that many commentators have suggested may eventually lead to the disappearance of the death penalty in American law.

Perhaps the most notable of recent events concerning the death penalty took place in Illinois, where the courts overturned a significant number of convictions and death sentences. The governor expressed great concern and appointed a commission to study the state's death penalty law and process. The commission's recommendations later served as the basis for the wholesale revision, but not abolition, of the state's death penalty laws. However, based upon a perception that the process of determining a capital defendant's guilt and punishment was unreliable, the governor eventually reduced the death sentences of all Illinois death row inmates.

In the meantime, a task force of the American Bar Association examined the application of death penalty laws

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\* Justice, Florida Supreme Court.

1. Assemb. Bill 773, 212th Leg., available at [http://www.njleg.state.nj.us/2006/Bills/A1000/773\\_I1.PDF](http://www.njleg.state.nj.us/2006/Bills/A1000/773_I1.PDF).

throughout the nation.<sup>2</sup> Ultimately, the ABA recommended that all death penalty states impose a moratorium on executions in order to carefully scrutinize death penalty law.

Much of the debate over the reliability of the death penalty process centers around cases where the courts vacated capital convictions or death sentences based on new evidence. In many instances, previously unavailable scientific evidence demonstrated that blood or semen located at the scene of the crime belonged to a third party and not the defendant, as previously believed. The scientific community showed that DNA testing was reliable enough to prove to a reasonable certainty the source of the blood or semen donor. Convicted defendants around the country continue to assert claims of wrongful convictions based on such evidence, and hardly a month goes by without another long-imprisoned defendant being released from death row because of DNA evidence.

The U.S. Supreme Court has also rendered significant decisions affecting the impact of the death penalty. In a series of rulings, the Court outlawed the imposition of the death penalty on juvenile defendants<sup>3</sup> and those who were mentally disabled at the time of the offense.<sup>4</sup> Contrary to many state death penalty schemes, the Court also mandated that juries, not judges, determine the existence of aggravating factors that are utilized to support the imposition of death as a penalty in a particular case.<sup>5</sup> The Court is currently considering the legality of the procedures for administering the penalty by lethal injection.

With all of this activity questioning the continuing reliability of the death penalty, many anti-death penalty interest groups and some commentators have suggested that the time is ripe for the United States to join the rest of the civilized world in renouncing the use of death as a punishment. In fact, the chances for abolition are slim or none. How could this be?

The reality is that public opinion polls show continuing

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2. Press Release, Am. Bar Ass'n, ABA Study: State Death Penalty Systems Deeply Flawed (Oct. 29, 2007), *available at* [http://www.abanet.org/abanet/media/release/news\\_release.cfm?releaseid=209](http://www.abanet.org/abanet/media/release/news_release.cfm?releaseid=209).

3. *Roper v. Simmons*, 543 U.S. 551 (2005).

4. *Atkins v. Virginia*, 536 U.S. 304 (2002).

5. *Ring v. Arizona*, 536 U.S. 584 (2002).

support for the penalty<sup>6</sup> and, perhaps more importantly, American politicians continue to enthusiastically embrace the penalty as a virtual litmus test for electibility, especially in state legislatures that control death penalty law. Presidential politics provide an excellent example of this phenomenon. For example, the current candidates in the 2008 Republican primary have all been eager to demonstrate their strict views on law and order, or their opponents' lack of a strict view on the issue. The Democrats have been quieter, but that could change after the primaries. One need only look back a few years to the Bush-Dukakis contest and the Willie Horton ads, as well as Michael Dukakis' hesitant response to a death penalty question during the debates.<sup>7</sup> Subsequently, candidate and Governor Bill Clinton was alleged to have allowed a mentally disabled defendant to be executed during his first presidential campaign rather than face being labeled soft on crime.<sup>8</sup> And our current President Bush was obviously eager during one of his first presidential debates to let the voters know that Texas, where he served as governor, had an effective antidote for alleged racist killers: execution.<sup>9</sup>

No, Virginia, the death penalty is safe and secure in the United States. In American politics, New Jersey's action represents the exception and not the rule, and hardly the beginning of a trend.

What in the world does all this death penalty talk have to do with legal marriage? Well, first, some background is important, but the bottom-line may look familiar.

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6. See, e.g., Gallup, Death Penalty, <http://www.gallup.com/poll/1606/Death-Penalty.aspx> (last visited Mar. 28, 2008) (reporting that sixty-nine percent of the individuals polled were for the death penalty, and twenty-seven percent were against it).

7. See Commission on Presidential Debates, *The Second Bush-Dukakis Presidential Debate* (Oct. 13, 1988), <http://debates.org/pages/trans88b.html>.

8. Bill Clinton supervised the execution of Ricky Ray Rector during the 1992 presidential campaign. See, e.g., Peter Applebome, *The 1992 Campaign: Death Penalty; Arkansas Execution Raises Questions on Governor's Politics*, N.Y. TIMES, Jan. 25, 1992, available at <http://query.nytimes.com/gst/fullpage.html?res=9E0CEED91F3EF936A15752C0A964958260>.

9. As governor, Bush presided over 152 executions. Sister Helen Prejean, *Death in Texas*, in 52 NEW YORK REVIEW OF BOOKS 1 (2005), available at <http://www.nybooks.com/articles/17670>.

## THE EVOLVING AMERICAN FAMILY

It is often said that the law is always playing catch-up. That is, society may change, but the law is usually slow to recognize those changes until long after they take place. For example, although drug use outside of alcohol and tobacco has evolved since the 1960s, the law has been slow to respond. More specifically, the initial legislative response to any use of marijuana was harsh and included severe criminal sanctions, including imprisonment. Over the years, however, society has become more tolerant of the use of small amounts of marijuana. But the law has been resistant to this tolerance, and not until the late twentieth century did state legislatures begin to lessen or rescind criminal penalties for the personal use of small amounts of marijuana. The law was slow to catch up with society's change in tolerance and in the meantime many lives were permanently altered.

Another example of the law lagging behind societal changes was demonstrated by the 2005 U.S. Census Report. The report stated that the proportion of households headed by married couples in the United States became a minority, dropping to a historic low of 49.7 percent.<sup>10</sup> The composition of the nuclear American family has now evolved from the classic couple entering into a marital relationship prescribed by state law to a *de facto* relationship existing outside the legal rules of marriage. The family may look the same, a couple and one or more children, but that couple has consciously chosen not to have the relationship legally sanctioned. Literally millions of people have chosen to personally tailor their intimate personal relationships to exclude the blessing of the government. And, while that choice may appear to have little impact initially, the consequences of its dissolution often play out with the same societal costs that are incurred when a legal marriage fails and the family dissolves.

The debate over what to do about *de facto* relationships is framed within an interesting social and legal history. It appears that the origins of the change in casual drug use and the changes in the marriage relationship are related to the same period in this country's history: the late 1950s and the

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10. Sam Roberts, *To be Married Means to be Outnumbered*, N.Y. TIMES, Oct 15, 2006, available at <http://www.nytimes.com/2006/10/15/us/15census.html>.

two decades thereafter. Perhaps the most dramatic events taking place during that time include the civil rights movement and the protests of the U.S. involvement in Vietnam. At the same time, many young people were reacting to the “establishment” that controlled the law and the perceived hypocrisy of their parents’ generation, especially regarding the use of alcohol, drugs, and extra-marital sex. Many young people felt that parents were preaching abstention while practicing indulgence, which led to a generational change towards tolerance of extra-marital sex and casual drug use.

Another aspect of this perceived hypocrisy was the rejection by many that a lasting and satisfying relationship was possible only if it was entered into with the legal blessing of the state. Young people were beginning to reject the concept that “a piece of paper,” i.e., a marriage license, was necessary to a successful relationship. Eventually, with a distinct push from a visible and influential celebrity community, young people began to see living together and having children outside the legal marriage relationship as a valid alternative to the legal norm of a marriage ceremony with all its trappings. After all, legal marriages obviously provided no guarantees of happily ever after, since a majority of those relationships ended in divorce.

So, we find ourselves in 2005 with the majority of households in the U.S. existing outside the legal marriage framework provided by the states. With this dramatic turn of events, it is logical to ask if the law has now caught up with society, as it has done to varying extents regarding the personal use of marijuana. But the answer appears to be a rather resounding “no.” In fact, the vast majority of states still has marriage and divorce laws that look pretty much like they did in the 1970’s. Oh, there have been some changes, like no-fault divorce, but the statutory law is essentially unchanged in the vast majority of states. In the eyes of state legislators at least, legal marriage is still as American as apple pie, despite the fact that millions of American *de facto* marriages, and the families created, are dissolving at the same high rates endemic to legal marriages. Shouldn’t the health of the American family, legal or *de facto*, be of enormous concern to our policy makers in the state legislatures? Isn’t the American family the cornerstone of our

society? Where is the concern?

While hardly acknowledging the dramatic shift reflected in the 2005 census, the courts, still bound by the laws passed by the legislature, have had to respond to situations when family issues end up in court. The courts have to take the cases presented, whether they involve traditional legal marriages or not. And if one thing is clear, it is that when humans have relationships problems, which courts will inevitably have to solve, will naturally follow.

One of the first reported cases involving this new de facto marriage relationship involved one of the “celebrities” previously mentioned. In *Marvin v. Marvin*,<sup>11</sup> the California Supreme Court faced a de facto “wife” who claimed that she was promised extensive benefits in exchange for entering into a relationship with the actor Lee Marvin. To a legal community used to quiet and conservative courts maintaining the status quo, the court somewhat surprisingly held that the female partner may have a valid claim based upon implied contract principles, despite the lack of a legal marriage relationship. *Marvin* sowed the first seeds of the judicial response to defining legal rights that may grow out of a de facto relationship.

Six years after the *Marvin* decision this writer, while serving as a judge on one of Florida’s intermediate appellate courts, was faced with a somewhat similar case, although it arose in a probate setting after the death of one of the partners to a de facto relationship. Following *Marvin* and distinguishing case law, the Fourth District Court of Appeals held in *Poe v. Levy* that valid legal claims based on contract principles could not be denied solely because they arose out of a de facto living arrangement that included sexual relations.<sup>12</sup> We discussed *Marvin* as well as a conflicting Illinois Supreme Court decision<sup>13</sup> that rejected *Marvin* in favor of strict adherence to traditional marital law premised on the establishment of a legal marriage.

Since *Poe*, there have only been a few Florida decisions discussing *Marvin*, and none of those have been by the Florida Supreme Court. However, there have been a number

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11. 18 Cal. 3d 660 (1976).

12. 411 So.2d 253 (Fla. Dist. Ct. App. 1982).

13. *Hewitt v. Hewitt*, 394 N.E.2d 1204 (1979).

of cases around the country that have either approved the *Marvin* approach,<sup>14</sup> or, like Illinois, rejected it in favor of a strict adherence to the concept of legal marriage and the traditional American family.<sup>15</sup> In fact, many of the judicial opinions rejecting the *Marvin* approach often contain rhetoric not only praising traditional legal marriage as the cornerstone of American society, but also warning that a recognition of rights for couples in de facto relationships would undermine that cornerstone.

*Marvin*, of course, was limited by its facts and to the issue of one partner promising support or other compensation to the other. As demonstrated by the 2005 census, today the de facto relationship once discussed in *Marvin* as an exception now reflects the majority of relationships. Based upon the numbers, it would not seem extreme to characterize this change in our culture as truly revolutionary. Those few young people who disdained a “piece of paper” as the route to happily-ever-after in the mid-twentieth century have turned into countless millions who are doing it their way in the twenty-first century.

In the face of this substantial trend, you might expect a reaction from state legislatures, the primary policy makers on family law and relationship issues. There has been some peripheral activity. In Florida, for example, a recent law provides for a termination of alimony to a former spouse who enters into a de facto marital-like relationship with another.<sup>16</sup> However, for the most part legislatures have ignored this trend and continue to pass legislation based on the assumption that they only have to deal with the traditional legal marriage and the problems arising there from. For the most part, there has been more legislative activity on de facto relationships outside of the U.S. than within it. Canada, the

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14. See, e.g., *Cook v. Cook*, 691 P.2d 664 (Ariz. 1984); *Boland v. Catalano*, 521 A.2d 142 (Conn. 1987); *Kinkenon v. Hue*, 301 N.W.2d 77 (Neb. 1981); *Hay v. Hay*, 678 P.2d 672 (Nev. 1984); *Kozłowski v. Kozłowski*, 403 A.2d 902 (N.J. 1979); *Dominguez v. Cruz*, 617 P.2d 1322 (N.M. Ct. App. 1980); *Small v. Harper*, 638 S.W.2d 24 (Tex. Ct. App. 1982); *Kinnison v. Kinnison*, 627 P.2d 594 (Wy. 1981).

15. See, e.g., *Tarry v. Stewart*, 649 N.E.2d 1 (Ohio Ct. App. 1994); *Norton v. McOsker*, 407 F.3d 501 (1st Cir. 2005).

16. FLA. STAT. §61.14 (b) (West 2007) (“The court may reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and the award of alimony a supportive relationship has existed between the obligee and a person with whom the obligee resides . . .”).

United Kingdom, Australia and New Zealand all have legislation providing rights to couples splitting from a de facto relationship similar to those emanating from legal marriages.

Further, in one important way, state legislatures may have made dealing with the de facto relationship issue more difficult, by affirmatively acting to abolish common law marriage—a concept that had long been part of American culture, and that actually seems compatible with the current trend away from formal legal marriage. Today, the vast majority of states no longer recognize the legal concept of common law marriage, a marriage premised on the actions of the partners who treat themselves as married while not participating in a legal ceremony. Considering that at one time all states recognized such marriages, this change is quite dramatic. There is also a certain irony to this trend since, like ships passing in the night, it clearly preceded and failed to anticipate the current trend in de facto marriage relationships reflected in the 2005 census. Arguably, the demise of the common-law marriage occurred at just the wrong time, since its existence could have potentially provided a vehicle to convert de facto relationships into legal marriages.

The courts, unlike legislatures, have not had the option of ignoring the trend in de facto relationships. A court must confront the issue presented, whether it involves property rights, debt obligations, or child custody. In a case involving a de facto relationship, regardless of how the court treats the issues, the parties affected will be impacted in the same way as parties to a traditional legal relationship: someone will walk away vindicated, and someone will walk away aggrieved. In fact, domestic relations and family courts have their origins in equity and were among the first to be identified as therapeutic or problem solving courts. In addition, their success is usually measured by their perceived ability to deal with the broken or injured relationships brought to them. Suggesting that unmarried couples with serious issues to resolve cannot apply for help because they failed to participate in a brief legal ceremony is hardly therapeutic.

There are, of course, a number of traditional remedies available to members of a non-traditional relationship that parallel remedies available to a traditional family. Child

custody and support is one example. Virtually all states have strong public policies in favor of children and laws that back such policies. For example, either adult in a de facto relationship can initiate paternity or dependency actions in most states seeking legal sanction for a declaration identifying the parents of a child. In that same action, the court would also have the authority to determine custody and visitation rights, as well as support obligations of the parents to the child. In effect, although the father of a child born outside of the traditional legal marriage may face more difficulties, the court's approach to issues involving children is similar to the approach taken in a dispute arising out of a legal marriage.

Unfortunately, the same cannot be said concerning legal remedies on—mostly economic—issues facing the separating partners with the break-up of a non-traditional relationship. While state legislatures have drafted detailed sets of rules covering property rights and support obligations arising from the dissolution of legal marriages, no such set of rules exist for the de facto relationships. When those relationships end the parties are often left solely with the legal arrangements that already exist, such as property title or debt obligation. Any other claims must rest on the undeveloped law growing out of *Marvin* and other similar cases that creatively attempt to apply existing legal and equitable principles to fashion some relief.

With little response from the legislature, the question remains whether courts will be more responsive in recognizing rights growing out of those relationships, rights that have previously been limited to partners in a traditional legal relationship. As noted above, however, at least to date the response to these claims has been mixed, albeit limited. The American Law Institute, a progressive legal forum that has attempted to stay up with, if not ahead of, social trends, has advocated judicial recognition of marital-like rights for relationships that appear to meet the usual definitions of marriage except for the absence of formal legal sanction.<sup>17</sup> One state, Washington, appears to have embraced this

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17. See RESTATEMENT (THIRD) OF PROP.: PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION, 6.03, § 2.2.

concept even before its articulation by ALI.<sup>18</sup> That court has treated the relationships much in the way common-law marriages were once treated. That is, if the relationship looks and acts like a marriage the court has utilized existing marital law to address the problems presented, financial or otherwise. But the Washington approach represents a minority view. Even California, the birthplace of *Marvin*, has not gone so far.

There also appears to be little cause to be optimistic about the state courts' future activism in this area. Courts are reactive institutions in that they are limited to considering or reacting only to the cases and issues brought to them by litigants. On the one hand, this may be good news for litigants because courts must act on claims asserted, either by granting or denying relief to the litigant bringing the action. But courts are very reluctant to change the status quo. Rather, judges look to constitutions, statutes and appellate case law already set out. And, while courts in most jurisdictions retain the authority to recognize rights under the evolving common law, most of the courts' activity has not been in the family law area.

Of course, one great exception to that rule has been the courts' recognition of common law marriage where, ironically, the trend has been legislative repeal. With the legislative repeal of common-law marriages, courts are naturally reluctant to revive the concept in some other manifestation for fear of being perceived as acting contrary to legislative intent. After all, legislators have the primary authority to declare public policy. And, to date at least, legislative public policy clearly favors the legal marriage relationship over the de facto relationship. Courts are not entirely free to ignore that policy.

Many social and legal commentators have also embraced this public policy favoring legal marriage as being a sound one for the future of society as well as the partners in the relationship, and especially their children. These commentators emphasize the positive and more lasting impact of the formal and public commitment to the future of the relationship made by the parties to a legal relationship.

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18. See, e.g., *Zion Construction, Inc. v. Gilmore*, 895 P.2d 864 (Wash. Ct. App. 1995).

Others express concern that legal marriages and their benefits to society may disappear if the same legal consequences are attached to *de facto* relationships.

It is important to note that courts have been more active in other aspects of family law, most notably in the area of procedure or organization. Most courts, for example, have been unhappy with the way the traditional adversarial model works in family law. Courts see the adversarial model as aggravating conflict in the especially sensitive and emotional situations presented by family law disputes, and have often expressed concern too that legal fees and costs take away from the already limited resources available to families now forced to support two rather than a single household. Court-sanctioned mediation has become a popular response to reduce the level of conflict. Most all states have also adopted some form of family court designed especially to aid in the resolution of disputes that involve children. These courts tend to combine divorce, paternity, domestic violence, dependency and delinquency cases all in one court division so that a single judge can attempt to respond to the many causes and effects present in the breakup that resulted in the need for outside intervention. These court responses in the family law area, however, have very little to do with changes in the substantive law governing the rights and responsibilities of a couple that chose to live together in a legally unsanctioned relationship.

One interesting aspect of the emergence of the *de facto* relationship as the majority model is the apparent lack of an identifiable interest group advocating for partners' rights in the state legislatures. As noted above, while legal commentators and family law scholars have been active in writing on all sides of the issue, state legislatures have largely ignored this trend. It appears that the parties to such relationships have not been able to sufficiently identify a shared common interest to pressure legislatures to pass laws for support rights, and other relevant issues. Instead, this seemingly "silent majority" has been content to accept their fate and walk away from relationships with whatever agreement they reached with their former partners about property rights, debt obligations, or other issues arising out of the relationships.

While the issue of the law to be applied to *de facto*

relationships has received little public attention despite the majority status those relationships enjoy, another battle over marital rights has dominated both the news and the political landscape. The issue of gay marriage has been confronted in many states, both in the courts and the legislatures. In contrast to the debate over de facto relationships, however, the primary issue in the gay marriage debate has been access to the legal sanction for marriage provided in state laws. In other words, gay couples have been vigorously advocating for their relationships to be legally sanctioned, unlike those heterosexual partners in de facto relationships who have chosen not to avail themselves of this available legal sanction. Hence, as a consequence of the vigorous and concerted advocacy by the gay community, there has been much more activity on the legal front on the gay marriage issue than on the de facto relationship issue.

The spirited debate over gay marriage may also have produced some side effects that could ultimately hamper efforts to have legislatures recognize marital-like rights for couples in a de facto marital relationship. Many state legislatures have passed so-called "defense of marriage" laws restricting legal marriage to heterosexual couples, and some states have adopted constitutional amendments barring gay marriage. The issue has also surfaced at the national level with proposals for a similar amendment to the federal constitution. Critically, many public officials, including state legislators, have embraced these laws and constitutional amendments. Consequently, in the midst of all this political rhetoric about "defending" legal marriage, it appears unlikely that the legislators from these same states would embrace legislation extending marital rights to those in de facto relationships. Like the rhetoric on the death penalty, support for the status quo of legal marriage is fast becoming another litmus test for electibility in many states. Rhetoric over reason is too often an easy choice in politics. Never mind the millions of couples that may suffer.

That is not to say that interest groups will not emerge in support of marital-like rights. In *Marvin*, for example, the person bringing suit was a woman who alleged she had been wronged. Many of the cases that followed *Marvin* also involved women plaintiffs. It is possible that the issue could be framed as a gender problem. Under this scenario, a

powerful interest group of women's rights advocates could adopt the cause by suggesting that the lack of legal rules for the breakup of a de facto relationship result in disproportionate harm to the women involved. However, not a lot of hard data has been developed or cited to support such a contention.

There is also a question of whether the *Marvin* factual pattern has become somewhat outdated considering the variety of de facto relationships that have emerged. In addition to the apparent common desire for an intimate relationship, it would appear that both men and women are forming relationships primarily for mutual economic benefits, and are doing so in an endless variety of arrangements as to rights and responsibilities. In fact, the variations in these relationships may be a major stumbling block in the adoption of a set of uniform legal rules to govern the relationship and its dissolution. A young couple faced with significant living costs in a big city may find it convenient to live together in a single apartment, while otherwise keeping their financial lives completely separate. If they stick to this financial discipline, they may have little to dispute if they separate a few years later. On the other hand, an older couple facing the same financial challenges may commit to a longer term relationship and face different issues if the relationship is terminated unexpectedly by death. An endless list of factors may come into play in the relationship, including length, division of financial responsibilities, personal and real property ownership, children, insurance, and estate and retirement planning. In other words all the issues facing an individual in life may be carried over into a relationship. It is this endless variety of issues and arrangements that may also prevent the partners from forming a unified front or interest group in advocating for particular legal change. Of course, the same variety of issues also faces couples separating in a legal marriage.

A serious question also exists regarding how responsive the law should be when couples voluntarily choose not to enter into an available legal marriage relationship with all of the legal consequences attached. Does it make sense to develop a mandatory legal code for such persons when they intentionally chose to enter into a relationship without such a code? Having consciously chosen not to be bound by the

marital and dissolution law applicable to legal relationships, why would such persons want such a code imposed upon them? Further, having made such a choice, why should such partners not be held responsible for the consequences of not protecting themselves in case of a breakup? After all, even with legal marriage, planning for the future in all its possible forms is encouraged. In fact, premarital agreements—a remedy already in widespread use among legally married couples—may constitute a partial solution that does not require legislative sanction. Prenuptial agreements may work even better in *de facto* relationships than in legal marriages. The legal system generally, and courts in particular, look with favor upon voluntary agreements between adults. In addition, considering the endless variety of reasons couples enter into relationships, the flexible nature of a pre-relationship agreement may be ideal to capture the intent of the parties, both during the relationship and in contemplation of its dissolution.

#### CONCLUSION

One can speculate that all courts, much like Washington courts and the California Supreme Court, may ultimately be persuaded that the sheer force of numbers reflected in the 2005 U.S. Census Report requires a judicial response. The nature of such a response then becomes the question. Most legal commentators and scholars have pointed to the legal framework applied by other countries, similar to the set of draft principles adopted by the American Law Institute, to provide guidelines for courts to identify a relationship as a *de facto* marriage. And, as noted above, while no state high court has adopted the ALI draft principles, some state courts, like Washington, have already embraced similar principles. Based upon the limited response of the courts to date, however, it is far more likely that the parties to such relationships will have to continue to make do with traditional legal remedies creatively advocated to serve as a basis for relief.

We can safely assume that in today's political atmosphere neither the death penalty nor legal marriage is in any serious danger. But while the debate over what to do when unmarried couples decide to separate may not be capturing the headlines in the way the death penalty does,

with millions of lives affected the debate is not likely to go away. The question is whether legislators will continue to ignore the trend toward de facto marital relationships while proclaiming support for legal marriage, or whether there will be some serious legislative effort to deal with an issue whose time appears to have arrived. Only time will tell. One thing is certain, however, the myriad of problems created when couples in de facto relationships separate will inevitably be brought to the courts for resolution. Who knows whether somewhere out there a draft opinion is already circulating that provides a wise and comprehensive resolution to this vexing issue.

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