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# WICCAN MARRIAGE AND AMERICAN MARRIAGE LAW: INTERACTIONS

by

JEANELLE CARDA

Under the Direction of Dr. Timothy Renick

## ABSTRACT

This project considers the ways in which Wiccan marriage and American marriage law interact with each other. The thesis examines certain aspects of the history of 20th-century American marriage law, the concurrent development of contemporary marriage ritual in Wicca, developing problems in this area, and possible solutions. In particular, the project focuses on the recognition of religious groups and their officials as they are authorized by state and federal law to perform marriages and how this process has affected Wiccan ritual.

**INDEX WORDS:** American marriage law, Bisexuality, Bricolage, Bricoleurs, Civil rights, Clergy, Community, Full Faith and Credit Clause, Federal, Handfasting, Heterotopia, Homosexuality, Identity, Legal entity status, Marriage, Minority groups, Neo-pagan, New religious movements, Pagan, Polyamory, Ritual, Same-sex marriage, Suspect classes, Tax exemption, Wicca, Wiccan, Witches

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by

JEANELLE CARDA

A Thesis Submitted in Partial Fulfilment of Requirements for the Degree of

Master of Arts

in the College of Arts and Sciences

Georgia State University

2008

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2008

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by

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December 2008

## ACKNOWLEDGEMENTS

I would like to acknowledge all those who have helped me on this journey. In particular, the help and attention given to me on this topic by my committee members, Drs. Renick, Herman, and McClymond. Their guidance has been invaluable in the process of crafting this project. Further, the help and advise of fellow colleagues including Ness Creighton, Kenny Smith, and Damien Williams. Their experience with producing this kind of project guided me towards making better decisions. Finally, I would like to acknowledge the loving care and understanding given to me by my husband Ryam Eros, who endured the hardship of living with a graduate student writing a thesis.

Finally, I would like to note that inspiration comes from many places. I owe my incorporation of the “Full Faith and Credit Clause” into this thesis from a friendly reminder given to me by the television show The West Wing. Had it not been for a brief mention of this clause in a single episode, my work would have been diminished.

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## I. A Narrative, Definitions, and an Introduction

Imagine a couple. This couple has met with their priest or priestess and has arranged to be “handfasted.” They go through the process of determining, with each other and with their spiritual leaders, whether this is the right choice to make. They decide on how long their handfasting is to last and they have a part in designing the ceremony. At the appointed time, on the appointed day, amid their community and family and under the eyes of their deities, they meet. They pronounce their intentions before this watchful gathering, they are blessed by their clergy, they have their hands bound together with a ceremonial cord, they exchange gifts or rings, they might sign a certificate, they kiss, and then perhaps they jump a broom. Leaving the ceremony, they go on to celebrate a feast in honor of their union. In the eyes of all witnesses present, human and otherwise, this couple is now united in matrimony.<sup>1</sup> According to American law, however, this may not be the case.

Scholars interested in new religious groups whose traditions, doctrines, and rituals lie outside of the norm must ask by what specifications does a person arrive at a legal marriage? Is it more than just a religious ritual? A marriage can be interpreted as a religious ceremony, different from religion to religion. However, the concept is complicated by its interaction with American law, which can be highly variable from state to state. A seemingly simple idea – being married – becomes something more convoluted. While the Wiccan couple in the above story may have

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<sup>1</sup> This description is a composite based on other descriptions of Neo-Pagan and Wiccan handfastings, too numerous to mention in their entirety, but including descriptions from: Raven Kaldera and Tannin Schwartzstein. *Handfasting and Wedding Rituals: Welcoming Hera's Blessing*. 1st ed., St Paul, MN: Llewellyn Publications, 2003.; Margot Adler. *Drawing Down the Moon: Witches, Druids, Goddess-Worshippers, and Other Pagans in America Today*. Revised and Expanded Edition. Boston, MA: Beacon Press, 1986.; and Anna Franklin. *A Romantic Guide to Handfasting: Rituals, Recipes & Lore*. 1st ed., St Paul, MN: Llewellyn Publications, 2004.



fulfilled all religious steps to being married, we must ask what challenges Wiccans seeking marriage face within the American legal system.

The narrative description above contains more than a few vague terms. In order to understand why American marriage law may not find the couple above to be legally united, we need to look more closely at central terms and what we understand those central terms to mean. Within Wicca the “couple” mentioned above are just as likely to be homosexual as heterosexual, and just as easily could be three or more people, as opposed to a pair. For Wiccan practitioners, this redefining of union between people is neither unusual nor aberrant.<sup>2</sup> Moreover, when you imagine a “couple” of people who identify themselves as Wiccans, standing before their community, you may think that the community comprises what the mainstream would recognize as a “congregation.” The image of a congregation itself seems to be easily defined, but the concept poses problems in the context of federal and state law. The parties to be married could be solitary practitioners who have no active religious community besides themselves, they could consist of occasional practitioners who are involved on an irregular basis with several different communities, or they could consist of active members of one or more community for the purposes of daily, weekly, monthly, or holiday practice.<sup>3</sup> We will discuss the significance of this more fully in section six.

This brings us to defining the act of “handfasting.” In the original tradition of the British Isles, which had been evolving for centuries before emerging in the 1600s and 1700s in a form approaching what we recognize today, handfasting was similar to a common-law marriage; it

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<sup>2</sup> Helen Berger, E.A. Leach, and L.S. Shaffer. *Voices From The Pagan Census: A National Survey of Witches and Neo-pagans in the United States*. Columbia, SC: University of South Carolina Press, 2003, 28-29.

<sup>3</sup> Adler, 1986.; Raymond Buckland. *Buckland's Complete Book of Witchcraft*. 2nd edition, revised and expanded, St. Paul, MN: Llewellyn Publications, 2005.; Ronald Hutton. *The Triumph of the Moon: A History of Modern Pagan Witchcraft*. Oxford and New York: Oxford University Press, 1999.; Starhawk. *The Spiral Dance: A Rebirth of the Ancient Religion of the Great Goddess*. 10th Anniversary Edition, San Francisco: Harper & Row Publishers, 1989.

was performed in front of a witness or two but not presided over by a member of the clergy or recorded in any clerical capacity.<sup>4</sup> The couple would stand together, joining hands in a figure eight pattern, at which point one of the witnesses would bind the wrists of the couple together and the couple would exchange vows, sealing them with a kiss. Over time, handfasting fell out of favor. It became considered like something of a betrothal, and eventually it was ruled illegal in England. In the 1950s, as the anti-witchcraft laws in England were repealed and the development of Gardnerian Wicca was taking place, practicing Neo-Pagans<sup>5</sup> began to search for a word that conveyed the act of marriage ritual without calling it marriage. English law at that time defined a marriage as a wedding ritual officiated by paid clergy, because the developing Wiccan groups did not have any paid clergy it was necessary to choose a different word for their union ritual. It was at this point that “handfasting” was brought into use in its new capacity as a term for Wiccan marriage, outside of English law. However, the term “handfasting” has also been understood to be employed to describe more than just common marriage. During the decade when the term “handfasting” came into regular use, the Gardnerian Wiccan practice itself recognized that one could be legally married to a spouse and also handfasted to a magical partner. However, through successive decades “handfasting” has become the popular term for the social or secular understanding of a wedding ritual in Neo-Pagan and Wiccan circles. This thesis will use the term

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<sup>4</sup> The following historical notes on handfasting owe their origins to the research of these authors. Kaldera and Schwartzstein, 2003, 7-9.; T.C. Smout. “Scottish Marriage, Regular and Irregular, 1500-1940.” *Marriage and Society: Studies in the Social History of Marriage*. Ed. R. B. Outhwaite, London: Europa Publications Limited, 1981, 204-36.

<sup>5</sup> I have elected here, and in the rest of this essay, to use the term “Neo-Pagan” when referring to pagans, Pagans, neopagans, Neopagans, NeoPagans, and Neo-pagans. The decision to capitalize or hyphenate any of these names is of some inconsistency among the academic community. I have chosen to use the word “neo” in order to differentiate between modern and ancient pagans, the hyphen is being used to show that there is a distinct time difference between Neo-Pagans and Pagans, and I have chosen to capitalize both words in order to establish this name as a proper noun and not a common noun.

in this popular capacity, but occasionally highlight points where using “handfasting” in the magical sense could be meaningful to practitioners, scholars, and law-makers.

Today, it is understood that the couple decides how long their handfasting is to last. A handfasting, by tradition, lasts for a year and a day. However, a couple may desire to lengthen the time of the bond. It could last for any length of time, including after death, and on into the following life. As I will discuss later in section five, the eclectic and syncretic nature of Wiccan practice means that elements from different cultural wedding rituals often show up in modern handfastings. However, some elements tend to be unique to Wiccan and Neo-Pagan celebrations. For instance, the couple could arrange to have their handfasting renewed each year, or even to leave the union open to allow others to join later. This is significantly different from what might be considered the mainstream American approach to marriage in which couples are bound “for life” – until death, or at least until divorce.

“Clergy” is also a term that we should discuss here. For the purposes of this essay, I will be defining Neo-Pagan and Wiccan clergy as a priest or priestess – a person who has been initiated and trained to the highest recognized level into his or her practice either through self-initiation or through the initiation practices of his or her chosen group. I have chosen to classify clergy as a practitioner who is recognized as having the authority to conduct ritual and lead others on their spiritual path. Such notions differ from coven to coven, but overall, covens tend to be non-hierarchical in their structure, and as such, it is possible that all practicing members of the coven might be considered clergy. Ronald Hutton asserts, “pagan witchcraft can have no congregations or audiences; everybody present at its workings must be an active participant.”<sup>6</sup> However, Sarah M. Pike holds that there is a growing trend among Neo-Pagans and Wiccans to

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<sup>6</sup> Hutton, 1999, 392.

recognize those who attend and participate as clergy and those who do not participate or who have not yet been initiated as part of a congregation.<sup>7</sup> Due to this conflict in defining clergy among covens, this paper shall employ the understanding of clergy outlined above unless otherwise specified.

The purpose of this essay is to provide a more complete and comprehensive examination of the ways that the Wiccan and Neo-Pagan communities interact with American law in the context of marriage. Over the course of this essay, I will explore the increasingly complex interactions between Wiccan marriage practice and American marriage law, highlight the ways in which these interactions may be producing tensions within currently active communities, and postulate likely changes to these communities that observers may witness in the future. Of course the reach of this project will be unable to encompass all the variations of Wiccan and Neo-Pagan communities in America, but it is this author's hope that this thesis serves as an overview to approaching more detailed projects concerning this subject matter.

In sections two and three, I will look at the legal ramifications of marriage law in the United States as it pertains to states' rights and the ways in which individual states recognize marriage as legal. I will then examine the ways in which American federal and state governments recognize minority groups – including suspect classes, quasi-suspect classes, legal entities, and tax exemptions. After that, I will examine some the avenues of recognition by which Wiccan groups can attain the rights and privileges of traditional religions.

Having covered the essential aspects of the legal landscape, I will consider, in sections four, five, and six, some of the recent and future developments in the relationship between Wicca – as an evolving religious movement – and American law. I have divided this part of my

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<sup>7</sup> Sarah M. Pike. *New Age and Neopagan Religions in America*. Columbia Contemporary American Religion Series. New York: Columbia University Press, 2004, 156.

discussion into three distinct sections: “Changing the Face of Practice,” “Social Identity and Shifting Practice,” and “Full Faith & Credit, Political Activity, and Clergy.” In “Changing the Face of Practice,” I will look at the choices that a Wiccan couple makes when entering a union and the ways in which these choices shift if the couple is polyamorous, homosexual, or bi-sexual. In “Social Identity and Shifting Practice,” I will examine heterotopia, bricolage, and liminality among Wiccans and speculate on the ways in which these phenomena will affect Wiccan marriage in the future. Finally, in “Full Faith & Credit, Political Activity, and Clergy,” I will explore the ways in which political activity might shape practice for Wiccans in the future, including problems with the Full Faith and Credit Clause of the U.S. Constitution, tensions between politics and spirituality, and issues regarding the application of laws for clergy. Finally, in section seven I shall reflect on the ways that Wicca interacts with American marriage law and highlight some of the salient ways that Wiccans are growing and changing in response to this interaction.

## II. Marriage and Law in the United States

While marriage as a union has its own spiritual and social connotations, in the United States, like most modern nations, it also has legal ramifications. Those marrying legally in the U.S. gain a number of benefits and rights inapplicable to unmarried citizens. These benefits can be far ranging. A legally married citizen has the right to file a joint income tax return, thereby attaining a tax discount. She may inherit, without a will and tax implications, a share of her spouse’s estate after death. She may receive the social security, Medicare, and disability benefits of her spouse during his lifetime and after his death. She may also gain insurance at a discount

cost through her spouse's employer. Additionally she may retain power of attorney, without a standing will, for her spouse, should he become incapacitated.<sup>8</sup>

Issues of legality in marriage vary from state to state, even though the benefits of legal marriage can be of a federal nature and will carry over if the couple changes state residency. Furthermore, what makes a marriage legal can differ from county to county within a given state. In addition to any documentation needed by the state, one county may require supplementary documentation, or proof, that another county does not. A good example of this would be the requirements imposed upon any marriage officiant performing unions on the island of Manhattan. They must be registered with the office of the Ordinary Clerk on Manhattan in order to perform a legally binding ceremony, but that same officiant elsewhere in the state of New York need not be registered or provide any proof of viability in order to sign a marriage license as binding.<sup>9</sup>

Other states have taken up the issue of defining who should be considered a legal officiant. Tennessee, for example has chosen to explicitly define "persons who may solemnize marriages" as

All regular ministers, preachers, pastors, priests, rabbis, and other spiritual leaders of every religious belief, more than eighteen years of age, having the care of souls.... Who has not been convicted of a felony or... removed from office.... And must be ordained or otherwise designated in conformity with the customs of a church, temple, or other religious group organization; and such customs must provide for such ordination or designation by a considered, deliberate, and responsible act.<sup>10</sup>

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<sup>8</sup> Findlaw.com. Marriage Rights and Benefits. MN and CA: Owned and operated by Thomson Reuters Business, 2005, last updated 2008, <http://www.Findlaw.com>.

<sup>9</sup> Domestic Relations Law 11 and 11-B, of the Consolidated Domestic Relations Laws of New York, <http://public.leginfo.state.ny.us>.

<sup>10</sup> Marriage License. (Web page) 2007; Tennessee Code Annotated "36-3-301. Person who may solemnize marriages." Available from: [http://www.rutherfordcounty.org/countyclerk/marriage\\_license.htm](http://www.rutherfordcounty.org/countyclerk/marriage_license.htm).

Obviously, this policy has implications concerning who may officiate, since it is, in its brevity, ambiguous. To make use of this code, one would have to have a clear sense of what it means to have “the care of souls,” to define the extent to which a candidate would have to prove ordination or designation, and to determine who gets to decide what constitutes a deliberate and responsible act. The vague nature of the Tennessee marriage code may be intentional – giving all groups the freedom to organize as they see fit – or it may be unintentional. The extent to which such vague wording can help or hurt a religious group depends solely on circumstance, as Carol Barner-Barry discusses in her own work, *Contemporary Paganism*, and as I will examine her argument in detail later in this essay.<sup>11</sup> A section of the same Tennessee code addresses Quakers specifically, who may solemnize their marriage to each other in the presence of their congregation without an officiant, but it does not specifically address many of the other religious movements with atypical hierarchies and structures, or the lack thereof.

The practice of specifically recognizing the marriages of particular, individual religious groups as legal, despite the differences those groups may pose in contrast to social norms, is not uncommon. In Georgia we see in 1849 a specific legal recognition of Jewish marriages as valid, but it was not until 1866 that “marriage heretofore performed by ministers of African descent” was recognized as legal.<sup>12</sup> Later, we will see how the law differentiates between different minority groups. Recognition by statute is also sometimes used to define which marriages are not considered legal. An excellent example is the marriages performed by those licensed by certain online religious groups, such as the Universal Life Church. These are held to be invalid by some specific state laws in the U.S. This poses an interesting dilemma. Take as an example a couple

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<sup>11</sup> Carol Barner-Barry. *Contemporary Paganism: Minority Religions in a Majoritarian America*. New York: Palgrave Macmillan, 2005.

<sup>12</sup> Karen Handle. *Documenting Marriages in Georgia: Colonial Period Through the 20th Century*, Ed. T.G. Archives. The Georgia Archives: Morrow, GA, 2007.

wishing to be married by an ordained minister of the Universal Life Church (ULC). Georgia marriage law does not make any provisions against ULC marriages, and in Georgia any marriage between non-state-residents is legal as long as the license is signed and submitted in the same county as the marriage is performed.<sup>13</sup> Given these facts, it would seem that there is no reason for a Tennessee resident, employing a ULC minister, not to get married in Georgia and then return home with an apparently legal marriage. However, Tennessee may have, on its books somewhere, a statute like Georgia has, specifically stating, “marriages solemnized in another state by parties residing in Georgia have the same legality as if solemnized in Georgia, [however] residents cannot evade any of the provisions of marriage law by going into another state for the marriage ceremony.”<sup>14</sup> Regarding this clause, one might wonder what reason a state would have for enforcing such a provision, and whether it would apply to all instances in which it appears that a couple is attempting to avoid the regulations of their own state of residence. For instance, the city of Las Vegas requires no waiting period of a couple seeking a marriage license. However, waiting periods in other states can be between 24 hours and five days in length.<sup>15</sup> Yet the city of Las Vegas grants thousands of marriage certificates a year to out-of-state residents and these marriages are not challenged for validity.<sup>16</sup> At this time there have been no marriages challenged in Georgia or Tennessee for exploiting this loophole or the loophole with regard to the ULC. It remains to be seen whether a heterosexual couple, married legally in their own state in a union of a particularized faith like ULC, remains legally married if they change their state residency. In terms of benefits, the couple, legally married in one state and recognized on a

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<sup>13</sup> Handle, 2007.

<sup>14</sup> Handel, 2007. Section 1668 was added to GA Code concerning Valid Marriage in 1863.

<sup>15</sup> Legal Information Institute. Cornell University Law School. [http://topics.law.cornell.edu/wex/table\\_marriage](http://topics.law.cornell.edu/wex/table_marriage).

<sup>16</sup> Shirley B. Parraguirre. “Marriage License Information.” Clark County, Nevada: Clark County Clerk, 2008. [http://www.accessclarkcounty.com/depts/clerk/pages/marriage\\_information.aspx](http://www.accessclarkcounty.com/depts/clerk/pages/marriage_information.aspx).



federal level as being legally married, should retain the federal recognition of their marriage as valid even if the state they move to no longer recognizes their particular type of marriage. Under this understanding of the law, for the purposes of federal benefits at least, those couples should still be legally married if they move to a new state.

I mentioned above that the law, both federal and local, has a particular way of differentiating minorities. Strasser, in his book *Legally Wed*, talks primarily about same-sex marriages, but his work concerning equality of protection and fundamental rights is pertinent to our conversation. In his work, he calls attention to the problem of defining and acknowledging what are known as “suspect classes.” Strasser defines suspect classes as “group[s] of individuals whom the Court recognizes as deserving special protection from our majoritarian political process because the group has a history of having been subjected to purposeful, unjustified discrimination, and also has a history of political powerlessness.”<sup>17</sup> A suspect class group deserves extra consideration when a law or ruling is made that may directly discriminate against it. These suspect classes are occasionally the reason why a statute may recognize, or provide provisions or clauses, for an individual group within a law affecting the population as a whole; such as the clause in the Tennessee marriage code that recognized the marriage of Quakers, in specific, as being legal.<sup>18</sup> Strasser also assembles, via case precedent, the criteria by which the Supreme Court determines if a group merits “suspect class” or “quasi-suspect class” status.<sup>19</sup> Amid these criteria and Strasser’s own accounts, religious affiliation, in general, constitutes a suspect class. However, getting back to our marriage law loop-holes, even Strasser is quick to

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<sup>17</sup> Mark Strasser. *Legally Wed: Same-Sex Marriage and the Constitution*. Ithaca and London: Cornell University Press, 1997, 26.

<sup>18</sup> Marriage License. (Web page) 2007; Tennessee Code Annotated "36-3-301. Persons who may solemnize marriages." Available from: [http://www.rutherfordcounty.org/countyclerk/marriage\\_license.htm](http://www.rutherfordcounty.org/countyclerk/marriage_license.htm).

<sup>19</sup> Strasser, 1997, 26-30. The term “Quasi-suspect class” is Strasser’s own term used to denote groups that are irregularly recognized as being a suspect class because they have not become established enough to merit full, consistent recognition.

point out that religion, along with the many other recognized suspect classes, faces a particular problem: that the application of scrutiny, even heightened scrutiny, is not consistent between courts.<sup>20</sup> Therefore, it should be entirely possible for any couple trying to marry, or otherwise trying to maintain their marriage as legal, to argue for equality of protection based on scrutiny of legislature passed concerning suspect classes, but not guaranteed that they would receive such protection due to the inconsistencies of the legal process.

In relating these themes to Wicca, we know that this religious group has standards for marriage that differ, in some cases dramatically, from the “normal” definitions of legal marriage in the United States. As a religion, Wicca is a member of a widely recognized suspect class. However, within Wicca we know that there exist at least two additional quasi-suspect classes, the first consists of gays, lesbians, and bi-sexuals, comprising a class based on sexual orientation, and the second contains those who practice polyamory, polygamy, and open marriages, creating a class based on social structure as much as on sexual orientation. I chose to use the “quasi” prefix for these groups because Strasser points out that the law fails to consistently recognize any of these groups as part of a suspect class. For our purposes it is important to we examine these quasi-suspect classes because we know, based on data collected by researchers like Pike, that within Wicca, sexuality is considered a religious element, pertaining specifically to both energy and Tantric workings, as well as The Great Rite, all of which may involve nudity, sexuality, or sex as part of their requirements in order to achieve efficacy, and that these practices may tie directly into issues of sexual orientation and social structure.<sup>21</sup>

We know that Wiccans, as a group, have several options for obtaining a legal marriage. The first option, if the couple consists of two heterosexuals living in-state, is simply to have a

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<sup>20</sup> Strasser, 1997, 23-25.

<sup>21</sup> Pike, 2004, 137, 141-142.

court officiate the marriage, sans any religious ritual elements. The second option is to have a handfasting that is solemnized by their priestess or priest and then to obtain a marriage license signed by a court official. The third option is to have a handfasting solemnized and a marriage license signed by their priestess. It is when the couple moves from state to state, this final option becomes less clearly legal. For instance, by 1863 in Georgia, any person “of any religious society or sect” could officiate a marriage legally, sign the license or certificate, and bind the couple.<sup>22</sup> Much like in Tennessee, where the term congregation has not been defined, the definition of what constitutes a religious society or sect in Georgia has not been defined for the purposes of marriage code.<sup>23</sup> As such, when the couple moves they could face problems of definition should they ever need to defend their marriage as legal.

While this may serve only to reiterate my original point, that the application of marriage laws differs from state to state, it also serves to give us an understanding of why the application of law is different from state to state. As Strasser points out, states’ rights allow states to maintain their own marriage laws, but the courts suffer from inconsistent scrutiny of statutes and definitions of suspect classes.<sup>24</sup> It is possible that the reason that particular laws are on the books is not that any one group is being discriminated against. Rather, it may be because the necessary level of vigilance with regards to the rights of minorities has not been maintained, the older laws have not been challenged for modern usage,<sup>25</sup> or a particular group has simply not yet brought its

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<sup>22</sup> Handel, 2007.

<sup>23</sup> Marriage License. (Web page) 2007; Tennessee Code Annotated "36-3-301. Persons who may solemnize marriages." Available from: [http://www.rutherfordcounty.org/countyclerk/marriage\\_license.htm](http://www.rutherfordcounty.org/countyclerk/marriage_license.htm).

<sup>24</sup> Strasser, 1997, 23-25. Handel, 2007.

<sup>25</sup> Robert A. Yelle. “Law’s Trouble with Images: Fetishism and Seduction from Athens and Jerusalem to Madison Avenue.” *Images in Law*. Eds. Anne Wagner and William Pencak, Burlington, VT: Ashgate Pub. Co., 2006, 270. Yelle reminds us that those making the law face a choice between embracing “the new media...” and mounting “a new iconoclastic reform... re-establishing severe boundaries on the permissible uses of images” if they are going to control the definitions being used. Through Strasser’s observations, we may see a point at which the choice has yet to be made and in the coming years we may see the outcomes of that choice.

case to the attention of the legislative or judicial branch of a given government. At this point, we should give our attention to the actual status of Neo-Paganism and Wicca in American law.

### III. Neo-Paganism and Wicca in American Law

When is a religion recognized as conferring civil-rights and privileges on its members? When does a religion have legal entity status? How does a religion attain legal entity status? These are large questions that I will touch upon briefly in this section. I will address the legal entity status of Neo-Paganism and, more specifically, Wicca – how it is legally recognized, to what extent, and under what conditions – so that I may later highlight the evolving issues being faced by this religious group as it develops in America.

James R. Lewis, in *Legitimizing New Religions*, primarily discusses religious believers legitimating their own religion to themselves, but he brings up an interesting point when he talks about legitimacy in terms of authority. According to Lewis, authority can be claimed through several different means, and one worth considering here is the ability to claim authority through identification with other, already accepted, legitimate authorities.<sup>26</sup>

The easiest way to approach questions of legitimacy, authority, recognition, and status is to examine the avenues by which Wiccan and Neo-Pagan groups have sought or may seek legal recognition and authority. As we have seen covering state marriage laws, what is legal in one state is often not legal in another, but far more often what is legal federally is legal in every state. When one thinks of defining a religion in terms of American law, one should not think about what designates a religion as a religion but who designates a religion as a religion. The United

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<sup>26</sup> James R. Lewis. *Legitimizing New Religions*. New Brunswick, NJ: Rutgers University Press, 2003, 10-15.

States assigns specific privileges to religious groups and organizations, and by assigning these privileges it seems to provide legitimacy. The first place to look is the IRS.

Unlike the laws concerning marriage recognition across the states, the tax codes and processes for attaining tax-exempt status are unified into a gathered set of documents, produced and managed by a single source, and divided only by the purpose or mission of the group seeking the status. One might assume that this could make things easier for religious organizations to attain tax-exempt status. However, the process is made complex, like many of the legal laws and statutes examined thus far, by issues of definition.

The IRS distinguishes between “churches” and “religious organizations.”<sup>27</sup> It specifically maintains a “church” to be “a place of worship.... [Including] conventions and associations of churches as well as integrated auxiliaries” and a “religious organization” to include “nondenominational ministries, interdenominational and ecumenical organizations.”<sup>28</sup> Attaining either of these statuses marks the group as being a 501(c) (3); a tax exempt organization. However, determining which of the above categories an applicant belongs in is more complicated. Barner-Barry cites Church of All Worlds (CAW) as a primary example of an instance in which the definition of what constitutes a “religious organization,” as opposed to a “church,” was challenged.

In 1970, CAW was granted the tax-exempt status of a “Religious and Educational Organization” by the IRS, but failed to obtain state tax-exempt status in Missouri until 1974 due to a state requirement that CAW “include as its primary purpose the securing of an afterlife.”<sup>29</sup>

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<sup>27</sup> “Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities Under the Federal Tax Law.” I.R. Services, Editor, 2007, Internal Revenue Services: United States.

<sup>28</sup> “Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities Under the Federal Tax Law.” I.R. Services, 2007

<sup>29</sup> Barner-Barry, 2005, 85-86.

Other religions, such as Judaism, were not held to this same requirement. Although the group was eventually granted tax-exempt status through the help of the American Civil Liberties Union, it stands as an example of how hard it can be to negotiate the different sets of requirements placed upon newly established religious groups seeking the same rights and privileges as more well-established religious groups. The 2007 version of the guidelines for gaining the tax-exempt status of a 501(c) (3) makes an effort to avoid the kind of absolute wording expressed in the case above. The IRS makes a point of reminding applicants:

The IRS makes no attempt to evaluate the content of whatever doctrine a particular organization claims is religious, provided the particular beliefs of the organization are truly and sincerely held by those professing them and the practices and rites associated with the organization's belief or creed are not illegal or contrary to clearly defined public policy.<sup>30</sup>

This statement offers a clear example of the principles to which the IRS claims to adhere. It attempts to leave the definition of religion purposely vague and to close opportunities for dispute. Any religious group may follow the rules, fill out the forms, and successfully complete the application in order to gain tax-exempt status. Once a group has tax-exempt status, it gains the rights and privileges of that status, which include, among other things, not paying state and federal property taxes on land used for temples, churches, or meeting houses.<sup>31</sup> Wiccans face some interesting problems here, since they are typically not interested in putting up buildings on the land they intend to use for spiritual practice, but they have been almost universally successful in defending their tax-exempt rights.<sup>32</sup> However, one might ask: what good tax-exempt status is beyond the privileges accorded to the group by the IRS? Tax-exempt status has a trickle-down

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<sup>30</sup> "Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities Under the Federal Tax Law." I.R. Services, 2007.

<sup>31</sup> "Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities Under the Federal Tax Law." I.R. Services, 2007.

<sup>32</sup> Barner-Barry, 2005, 84-86.

effect; it contributes to wider acceptance and legitimacy. Having tax-exempt status links any new religion to the IRS, the government agency that eventually gets involved in the affairs of all citizens and organizations. In turn, federal privileges through the IRS become state privileges. Tax-exempt status goes a long way towards helping a group, and even individual practitioners, attain legal entity status in terms of religion.

Legal entity status is often taken for granted with regard to individuals; it is easy to assume that every person has legal entity status. However, such assumptions are misguided. Legal entity status requires recognition by a government that a given individual is actually a citizen with legal rights and privileges, and this has historically been withheld from certain racial and ethnic groups and, more recently, so-called “terrorists.” Attaining this status for a group is not a matter of determining citizenship; instead as W. Cole Durham Jr. points out, attaining legal entity status for a group is a matter of not only precedent but also of fighting for recognition.<sup>33</sup> One of the initial ways for religious movements in the United States to establish their case for legal entity status in the state and federal courts is to attain or hold legal recognition with the IRS. Since the IRS purportedly does not judge the validity of a religion, but merely assigns tax-exempt status, it provides a foothold by which new religious groups may attain precedent. We should not forget how important precedent is to our legal system. If the several groundbreaking cases regarding the practice of Wicca in state and federal prisons in America have taught us anything, it is that precedent is key to winning legal recognition and legal rights as a religion and as a religious practitioner, and it is also the means by which groups may build legal recognition as well. Establishing precedent, however, takes time. An example is the case of *Marsh v. Granholm* (2007), which, by the end of its history, addressed the issue of to what degree the

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<sup>33</sup> W. Cole Durham Jr., “Recognizing Religious Communities in Law.” *The Review of Faith & International Affairs*. 2007, 5(3), 27-40.

prisoner Marsh could practice Wicca under The Religious Land Use and Institutionalized Persons Act (RLUIPA).<sup>34</sup>

The case was initiated in 1983 when David Marsh (a/k/a Jason K Mithrandir) claimed that his rights under RLUIPA had been violated.<sup>35</sup> His assertion was initially that he should be allowed to conduct group rituals outside, maintain the sanctity of his sacred objects, celebrate the central tenants of his religion via life-affirming heterosexual union, and conduct his rituals using a sacred ritual knife known as an athame.<sup>36</sup> This case was not brought to a resolution until 2007, at which time a number of compromises were reached including the right to practice ritual eight times a year with a group.<sup>37</sup> In between those years a number of other key cases were brought before the courts including *Dettmer V. Landon* (1985) in which the District Court of Virginia, along with the 4th Circuit Federal Appeals Court, recognized that Wicca, outside of the penal system, was legally a religion.<sup>38</sup>

In this case the plaintiff Herbert Daniel Dettmer, a prisoner in the Powhatan Correctional Center in State Farm, Virginia, was requesting many of the same ritual tools as David Marsh, including incense, candles, and a hooded robe, but was not asking for group ritual outdoors or the use of an athame. At the resolution of this case it was determined that although Wicca was a religion entitled to First Amendment protection and Dettmer's religious beliefs were sincerely

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<sup>34</sup> Marsh v. Granholm, et al. (2007), Case no. 2:05-cv-134, Hon. Robert Holmes Bell, US District Court for the Western District of Michigan, Northern Division, August 21, 2007. <http://www.websupp.org/data/WDMI/2:05-cv-00134-111-WDMI.pdf>.

<sup>35</sup> Marsh v. Granholm, et al. (2007), 1, 4. Specifically RLUIPA states "No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution... even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest."

<sup>36</sup> Marsh v. Granholm, et al. (2007), 1-2. An Athame is "a blunted and unsharpened ceremonial dagger."

<sup>37</sup> Marsh v. Granholm, et al. (2007), 5-7.

<sup>38</sup> *Dettmer v. Landon* (1985), 617E Supp. 529, District Court of Virginia, Federal Appeals Court, 4th Circuit.



held, that Dettmer's requests for practice could not be accommodated due to prison security concerns.

These various statuses – tax exempt, legal entity, suspect class – are all designations under which a religion can define and defend itself as a religion. Through these means, a practitioner or a group may push for equal treatment under the law. Although none of these statuses are easy to obtain (in the case of both tax-exemption and legal entity) or easy to maintain (in the case of suspect classes) they are routes that have been tested and have been effective for some groups. While our laws, as Strasser points out, are often not uniformly enforced, it is worth noting, as Barner-Barry does, that all one needs are deep enough pockets and the will to prosecute.<sup>39</sup> The sentiment is indicative of what is most necessary if a religious group is seeking governmental recognition: the active will to be so recognized. Neo-Pagans and Wiccans who win their court cases do so not only by means of established precedent or by creating new precedent but also by using the attained statuses of the collective union of practitioners all over the country. Since Wicca is decentralized and non-hierarchical, it is surprising how collective and connected practitioners can be when making an effort to stand up for their political rights. Berger points to statistics that support a notion of non-involvement among Neo-Pagans, even a sense of fear about being identified as Neo-Pagans, but she also shows an array of statistics to support the conclusion that this is a religion experiencing not just membership growth, but growth in the area of political and social involvement as well.<sup>40</sup> Barner-Barry also offers plenty of evidence for the cooperation of disparate Neo-Pagans on the behalf of those entangled in legal battles.<sup>41</sup> It would be foolish to expect any newly formed group, religious or otherwise, to avoid seeking the rights

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<sup>39</sup> Strasser, 1997, 23-25; Barner-Barry, 2005, 95.

<sup>40</sup> Berger, 2003, 53-55.

<sup>41</sup> Barner-Barry, 2005.

and privileges available to already established groups in the United States. Especially since those groups are likely to consist of members coming from religious groups that already enjoy such privileges.<sup>42</sup> I believe that it will be evident, not only from this essay but from the work done by other scholars and authors, that Wiccans are going to persist in seeking and achieving legal equality. However, the movement is also going to continue growing and changing, and this will inevitably present problems to those looking for legal recognition. As Catherine Wessinger concludes, “theology is constantly being adjusted in response to events within the groups; events in society, and interactions that believers have with non-believers,”<sup>43</sup> so too may we conclude that the society and the non-believers with which Wicca interacts will also change. If the United States faces a religious group, like Wicca, known for rapid change and development, and it is willing to recognize it legally to any degree, both lawmakers and participants will likely find ways to make legal statutes cohesive and to address the problems of decentralization, solitary practice, and lack of doctrine or hierarchy. This begins to hint at the sorts of implications facing those working with the legal status of handfasting, in particular, as well as the problems being confronted by those who practice Wicca, in general.

#### IV. Changing the Face of Practice

It is commonly recognized by practitioners of Wicca, even among the diverse sects, that a traditional “handfasting” lasts only a year and a day.<sup>44</sup> Further, as I discussed in the introduction,

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<sup>42</sup> Berger, 2003.

<sup>43</sup> Catherine Wessinger. “New Religious Movements and Conflicts with Law Enforcement.” *New Religious Movements and Religious Liberty in America*. Eds. Davis and Hankins, Waco, TX: Baylor University Press, 2002, 135.

<sup>44</sup> Franklin, 2004, 6. See Also: Rev. Dr. Kendra Vaughan Hovey. *Handfasting: A Pagan Guide to Commitment Rituals*. Ed. Arin Murphy-Hiscock, Avon, MA: The Provenance Press, 2008, 4.; Kaldera and Schwartzstein, 2003, 7-9.; Mary Neasham. *Hand-fastening: A Practical Guide*. England: Green Magic, 2003, 17.; and Kate West. *Handfasting: The Pagan Wedding*. Pagan Rites of Passage Series. England: Mandrake Press Ltd., 2008, 8.

this ritual is often held outdoors, on private land, and often involves certain standard ceremonial elements such as a sacred fire and the calling of corners (e.g. invoking the elements of earth, air, fire, and water at the beginning of a ceremony). However, if the small but growing number of books on the subject of handfasting is any indication, the flexibility of this ritual is an accepted fact. Any Neo-Pagan receiving a handfasting faces several currently recognized choices when entering this union. Some of those choices have already been made for her based on which coven she belongs to and which elements of practice her priestess and priest recognize as important for a handfasting. For instance, if she belongs to a coven that practices skyclad,<sup>45</sup> then she, her future mate, and all attending, are as a matter of spiritual necessity apt to be naked for her wedding day. Or she may belong to a group that does not own any of its own private land or any outdoor space large enough to host a handfasting, at which point she may have to decide to hold it indoors or to borrow private space from an outside party.

However, some of these decisions place the person getting married and the group hosting the union in potential opposition to the legal statutes of the state in which the group is located. For instance, indecency laws prohibit nudity in public; this includes nudity on private land if those who pass by can witness it. Another relatively simple conflict involves burn laws. During specific times of the year, many states' burn-laws prohibit the building of outdoor fires, regardless of the purpose. In addition, any Wiccan being handfasted must make a decision about the length and thereby the legality of her handfasting. On the one hand, she can choose to stay traditional and have this union last the designated length of a year and a day, treating it as a religious ritual and not legalizing it civilly. Alternatively, she can have her priest or priestess sign

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<sup>45</sup> George D. Chryssides. *Exploring New Religions*. New York, NY: Continuum, 1999, 388. The use of "skyclad" to denote practicing ritual naked comes from Gardnerian Wicca but the term originates from the Digambara school of Jainism.

the marriage license legalizing the union and choose to have the handfasting last until she and her partner become divorced or deceased. Additionally, she could obtain her marriage license at the county courthouse, employing a civil union to serve as her legal marriage, and then have a separate handfasting performed by her coven before or after the civil union. Finally, there is another option that I shall discuss in the “Social Identity and Shifting Practice” section of this work. For now, let us simply discuss these first three alternatives.

The point here is not the legal nature of her union, but rather that she is faced with choice. The process by which her union becomes legal will not reflect wholly the traditions of her faith. Current laws do not allow for temporary marriages, regardless of the religious beliefs of the practitioners. Uniformly, state laws insist that if a couple receives a license to get married then separation of that union must be recognized as well, in the form of a divorce or annulment. The passage of time alone is not enough.

Even civil unions or common law marriages recognized by such states as Georgia require the parties entering into an “orally-contracted marriage” be rendered unable to “marry another without legal separation.”<sup>46</sup> If a Wiccan couple desires to attain the legal rights and benefits of a state and federally recognized marriage, they must conform to the law itself and change their own traditions. Strasser supports this need for conformity, noting:

The state has an interest in protecting the predictability of marriages, and the security and stability in marriages. Thus, the law will tend to be set up in ways that will favor the recognition and continuation of marriage and will disfavor its dissolution.<sup>47</sup>

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<sup>46</sup> Wendell S. Broadwell Jr.. "Marriage in Georgia." (Web page) 2008; Available from: <http://facstaff.gpc.edu/~wbroadwe/gamarriage.htm>. Georgia recently abolished the practice of recognizing common law marriage.

<sup>47</sup> Strasser, 1997, 129.

Several different author-practitioners, writing on the topic of the ritual itself, make concessions to this dilemma, suggesting that the couple adhere to the law but also agree to return after a year and a day to renew their vows before their community.<sup>48</sup>

Still, this cannot hope to address those practitioners who fall even further outside of the American law with regards to accepted religious practice. I speak here of same-sex unions and polyamorous unions. Within Wicca, homosexuality and bisexuality are not considered inappropriate, or even unusual.<sup>49</sup> Several sects of Wicca are made up of women-only covens, most notably the Susan B. Anthony Coven formed by Zsuzsanna Budapest and various covens formed by Starhawk. These covens belong to a sect of Wicca known as “Dianic,” often encompassing what is also known as “feminist craft.” They are unique in their approach to Wicca with the emphasis on the Goddess (often to the exclusion of the God), matriarchy, political activism for women’s issues, and the exclusion of men from ritual practice or membership in the coven.<sup>50</sup>

While almost all heterosexual couples<sup>51</sup> may attain a marriage license and be united by a legally recognized official, this is not true for homosexual couples outside of specific states.<sup>52</sup> It is certainly not true for polyamorous<sup>53</sup> couples, which, despite blessings from their own faith,

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<sup>48</sup> Franklin, Hovey, Kaldera and Schwartzstein, Neasham, and West.

<sup>49</sup> Berger, 2003, 140-145.

<sup>50</sup> Adler, 1986, 121-125.

<sup>51</sup> The most obvious exceptions of illegitimate marriages between heterosexual couples are marriages of couples who are related by blood, to varying degrees, depending on the state.

<sup>52</sup> Of note, Massachusetts and California. Additionally, if a couple is married in a country outside the United States that recognizes same-sex unions, those unions are also recognized as legally valid by the states of New Mexico, New York, and Rhode Island. Civil unions and registered partnerships are recognized by the states of Connecticut, The District of Columbia, Hawaii, Maine, New Hampshire, New Jersey, Oregon, Vermont, and Washington.

<sup>53</sup> Polyamory entered the Oxford English Dictionary in 2006, and is currently defined as “The fact of having simultaneous close emotional relationships with two or more other individuals, viewed as an alternative to monogamy, esp. in regard to matters of sexual fidelity; the custom or practice of engaging in multiple sexual relationships with the knowledge and consent of all partners concerned.” Berger comments that while over half of all pagans responding to her survey were in a stable relationship that only 0.4% of all respondents were in a “group marriage” (Berger 28).

may be faced with charges of bigamy. Polyamory is a relatively young concept in name and definition. Pike cites Morning Glory Zell with coining “polyamory” within the context of a class taught for the Neo-Pagan community Church of All Worlds. In Zell’s writing, these relationships are described as

[N]etworks of intimate friends who may or may not live together, and for whom the possibility of sexual involvement with each other is open. And essential to these communities is ‘sacred ritual’, because ‘Rituals work at a level of consciousness far deeper than the merely rational and verbal level.’<sup>54</sup>

Pike affirms this statement, employing the terms polyamory and marriage to imply not only “structured relationships with multiple partners at Neopagan festivals” but also “an extended family,” as well as a sacred ritual used “to initiate followers into the goddess’s mysteries as well as to ‘work magic,’” thereby expanding her own working definition to include not simply magical-sexual relationships but also social-sexual relationships.<sup>55</sup> Berger devotes some time to the sexual openness of Neo-Pagans in her book, *Voices from the Pagan Census*, and concludes that, statistically speaking, 11 percent of those responding to surveys are homosexual and 28 percent bisexual. She extrapolates from her data and interviews that “the sexual openness of Neo-Paganism has resulted in an acceptance of homosexual, bisexual, and transgendered individuals into the community and in experimentation with family forms.”<sup>56</sup> Most notably this acceptance has resulted in a growing interest in polyamory and Raven Kaldera and Tannin Schwartzstein suggest that polyamory is approached in opposition to “to promiscuity or mere

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<sup>54</sup> Frequently-Asked Questions re: Polyamory. (Web page) 2007; A Q and A session between Oberon Zell Ravenheart and The Order of the Mithril Star, RDG. Available from: <http://www.mithrilstar.org/Polyamory-FAQ-Ravenhearts.htm>. Occurring originally in the 1990 *Green Egg* article, “A Bouquet of Lovers.”

<sup>55</sup> Sarah M. Pike. *Earthly bodies, Magical Selves: Contemporary Pagans and the Search for Community*. Berkeley, CA: University of California Press, 2001, 35, 98.

<sup>56</sup> Berger, 2003, 141.

nonmonogamy” and “implies a high level of honesty, openness, communication, and agreement between partners over who may do what with whom.”<sup>57</sup>

Certainly, in their working definitions Pike and Morning Glory Zell suggest that the conceptual nature of a polyamorous arrangement is used, in part, for magical and hence religious reasons. Due to the eclectic nature of Wiccan groups, it is not inconceivable that practitioners, seeking a group that fulfills their spiritual and communal needs, would form a coven with the express purpose of supporting such marriage choices and lifestyles; I have not yet read of any meeting that specification. It is likely that such groups would choose to press their rights by claiming that polyamory and same-sex unions are central tenets of their religion. Complications arise from determining whether such practices can be made legal on the grounds of religious freedom. For groups facing the “legal handfasting” question, the act of getting married is not separate from the ritual of getting married, whether they choose to change the nature of their religious and ritual context or fight the legal system in an effort to retain particular conceptualizations of what is considered acceptable, even traditional. It would be fascinating to explore how individual groups are addressing this problem, but the project of doing so would require a great deal more attention than this essay can give. As I shall discuss in my next section, however, current scholarship suggests a tendency for Wiccan groups to evolve in order to address changing needs. So, moving beyond the problem of determining which current practices can be made legal on religious grounds, we may see future issues develop from the changing nature of Wiccan ritual and the development of Wiccan social identity and political activism. Indeed, this change is already in progress.

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<sup>57</sup> Kaldera and Schwartzstein, 2003, 147.

## V. Social Identity and Shifting Practice

The subject of Neo-Pagan identity – inherent, developed, and acquired – could fill a whole book. For our purposes, we must consider it here, however briefly, because the changing nature of secular and legal recognitions for Neo-Pagans and Wiccans, in marriage and in other aspects of social life, is bound to touch upon issues of identity, and these issues will ultimately offer additional choices for couples seeking union.

David Green introduces us to an unusual idea: Neo-Pagans thrive on the heterotopic nature of the post-modern world. They seek out “heterotopias,” a term appropriated by and from Foucault “to refer to sites of otherness ‘whose existence sets up unsettling juxtapositions through their strange and ambivalent composition.’” Heterotopias, according to Green, represent “uncertainty, ambivalence, or marginality” and are exemplified by not only locations but also texts and rituals.<sup>58</sup> Green’s idea is best summed up as follows:

On the one hand, late modern sociological theory predicts that, in an age of uncertainty, one acts to minimize feelings of ontological insecurity. Instead of denying uncertainty, however, Pagans appear to deliberately adopt, then, adapt it into cohesive spiritual paths and identities.... Pagans are bricoleurs who interiorize eclectic elements from a diverse range of sources. The theoretical equation of Paganisms and post-modernization is therefore tempting. However, whilst magical selves may be multiple, this multiplicity is made coherent by the embedding of identity within the dictates of spiritual traditions. Such traditions... are dynamic, reflexive, and existential. Thus, Paganisms are flourishing in globalised milieu, which, in the phraseology of Robertson simultaneously emphasise divergent forms of ‘intensification’ and ‘fragmentation’.... Thus, heterotopias transform uncertainty, commonly held as the origin of ontological insecurity, into spaces and texts where Pagan identities can stabilise and where insight and transformation become possible.<sup>59</sup>

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<sup>58</sup> David Green. “Opposites Attract: Magical Identity and Social Uncertainty.” *JSM: Journal for the Academic Study of Magic*. Vol. 1, Oxford, England: Mandrake of Oxford, 2003, 84.

<sup>59</sup> Green, 2003, 94. (Punctuation, spelling, and italics his.)



In terms of the problems being faced by Wiccans and other Neo-Pagans who are seeking recognition and equal treatment under the law, this ability, posited by Green, can create new complications.

To begin, there is a strong movement among Neo-Pagans to become recognized; there is talk of creating a paid clergy and fixed foundations, and of course, various Neo-Pagan organizations over the years have sprung up to address issues of cohesiveness and uniformity.<sup>60</sup> Such actions would seem to be in contradiction not only with the idea of heterotopia as outlined by Green but also, if Green's observations are true, between and even within groups who are seeking recognition and those who are seeking heterotopia. For, if a group solidly reinforces and associates its identity with otherness – if it does not simply build upon heterotopia, but is made up of heterotopic norms – it would seem contradictory for it to seek what could be identified as the status quo. Given that there is a well-recognized history of Wiccans and Neo-Pagan groups favoring secrecy, valuing individuality and flexibility, and preferring not to be aligned with popular culture or popular conceptions of witchcraft,<sup>61</sup> I feel that Green's observations concerning the use of heterotopia and bricolage point to an evolving dichotomy between the heterotopic and the mainstream, which may be the source of tensions that Wiccans will feel in the coming years as they make the choices regarding marriage.

As the religion becomes more recognized and mainstream, it could be hard to maintain the tendency toward being bricoleurs, as well as the desire for heterotopic space, ritual, and text. Even if Green believes that these characteristics are intrinsic to the movement, there is not much yet known about how individual Neo-Pagans, many coming from different religious backgrounds before becoming Neo-Pagan, tap into those portions of their identities. Yet this very same trend

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<sup>60</sup> Hutton, 1999, 371-372. In particular, The Pagan Federation.

<sup>61</sup> Hutton, 1999.

towards recognition could also spark the creation of new groups who seek the avoidance of this recognition. Practitioners could end up seeking disparate agenda. However, most Neo-Pagan groups, and Wiccan covens in particular are uniquely suited to addressing this kind of issue. The typical structure of covens allows for new covens to form from out of old coven members who are seeking different experiences or simply more room to develop.<sup>62</sup> The result is that we could see a trend among Wiccan and Neo-Pagan groups to split along these lines with all the attendant friction that such a distinctive split would entail. What might not be as obvious are the negative aspects that the tendency towards bricolage and heterotopia could engender.

Groups that favour heterotopic settings could find themselves cut off from the resources that more mainstream groups are developing such as legal recognition, benefits, and status. They could also find that being less associated with the mainstream groups makes them less approachable to non-believers because their very differences make them still more foreign than those groups that have gone mainstream and uniform. Moreover, at least from an academic perspective, the favoring of a heterotopic development pattern may leave a group less easy to study and understand. The groups that show a strong tendency towards bricolage would also face similar challenges, since both outsiders and academics would find it harder to form a central and lasting constructed image of the group. This in turn might leave the casual observer asking if any given group is truly deserving of its classification as Wiccan or Neo-Pagan, since their growth and change leave them different each time they are observed.

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<sup>62</sup> Amber K. *Coven Craft: Witchcraft for Three or More*. St. Paul, MN: Llewellyn Worldwide, 1998, 296.; Isaac Bonewits. *Bonewits's Essential Guide to Witchcraft and Wicca*. New York, New York: Kensington Publishing Corp., 2006, 76. Amber K describes the creation of a new coven from an old coven as the process of "hiving." "Hiving occurs when a second- or third-degree initiate, with the blessing of their coven leaders, leaves the coven to create a new offshoot." According to Isaac Bonewits the process of hiving is not always done with the blessings of the former coven, at which point the process of former members leaving to form a new coven illegitimately is known as "stealing a copy of the Book of Shadows."

Earlier, I discussed options for creating legality in Wiccan marriage unions. I discussed how a couple could avoid creating a legal union altogether, get a civil union at the court house sans religion, or choose to have a union performed which meets the legal requirements while simultaneously involving as much of their religion as is possible. I mentioned but did not delineate a fourth option. This option is best discussed here because it involves the notion of heterotopia and the tendency toward employing bricolage. However, I also want to mention this fourth option because I think that it is representative of the tension between Neo-Pagan identity that is based on heterotopia, and developments that will thrust Neo-Pagan movements, like Wicca, more clearly into the mainstream.

The Wiccan couple attempting legal marriage could choose to fold the sense of other into their marriage ritual. Perhaps, faced with going mainstream in order to acquire the rights and privileges of other married couples, they could seek other paths for acquiring such; you do not have to be married in order to declare another person as your legal beneficiary after death, for instance, or to limit such declarations to a year and a day. You need only sign contracts. How this would manifest in the ritual of marriage itself has yet to be seen or studied, though we might see a hint of it in the presence of texts offered by Kaldera, Schwartzstein, Franklin, and others who specialize in providing ready made, customizable ritual from which potential couples and covens can work. If the sense of the heterotopic is important – nay, if it is inherent, as Green believes – then the developing community as a whole, but at least the couple, will face that tension. On the one side, for both the community and the couple, there may be a desire to attain the same rights and privileges as the mainstream secular community, and, on the other, there may be a natural tendency to want to fold syncretically some new element of political and secular marriage into their original ritual without formally conforming to the secular mainstream vision.

One group may end up choosing to retain that marginality, that liminality, despite whatever limitations it may impose in the pragmatic sense of the marriage-act where another group may end up developing away from the bricolage tendency. Hutton, who did the Neo-Pagan community a considerable service by writing his history, *Triumph of the Moon*, hints at the tension between going mainstream and staying heterotopic, but he also offers some other insights into the reasons why Wiccan and Neo-Pagan identity is likely to change in the coming years.

While Hutton's work concentrates primarily on Great Britain, he spends the last several chapters of his book talking about American Neo-Paganism and about his own conclusions regarding modern witchcraft in general.<sup>63</sup> Hutton talks about core tenets, provided by The Pagan Federation,<sup>64</sup> which he observes could "also characterize not only every other variety of modern Neo-Paganism, but some varieties of Hindu and Shinto beliefs and many tribal religious systems.... They leave room for a very wide span of beliefs, let alone practices, of a sort quite large enough to characterize separate religious systems." He adds to these additional characteristics, most notably that modern witchcraft "is eclectic and protean."<sup>65</sup> He concludes, "The basic format of modern pagan witchcraft can therefore contain a rich kaleidoscope of cultural borrowings from all over the globe, fashioned according to the tastes of the person or group working within it."<sup>66</sup> This certainly echoes Green's findings, giving one the sense that such observations are not unique to Green.

If Wicca and Neo-Paganism are created, as it were, out of Green's "globalised milieu" and they draw from it constantly, as Hutton would attest, then we are likely to see an evolution of

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<sup>63</sup> With intimate, on-the-ground fieldwork involving the development and practices of over 26 different covens, he is uniquely qualified among researchers to offer some of the insights that he does.

<sup>64</sup> The Pagan Federation, founded in 1971, has its own website at <http://www.paganfed.org/>.

<sup>65</sup> Hutton, 1999, 398.

<sup>66</sup> Hutton, 1999, 399.

Wiccan belief and practice based on heterotopic identification. Hutton observes, “one of the most impressive qualities of modern American culture is that it is so self-critical; it is hard to find an ideological position taken up by one citizen of the United States that is not ably contested by another.”<sup>67</sup> As much as Wiccans and Neo-Pagans possess the traits and characteristics witnessed by Green, Hutton, and others, they are also Americans. The structuring that allows groups to “hive” not only satisfies the need of Wiccan groups to express and explore the growth of differing opinions, but it also satisfies the American characteristic observed by Hutton. From his observations I would posit that hiving is good for the development of Wicca because his historical analysis shows that Wiccans developed from out of the culture around them and continued development depends on This is different in some ways from Green’s observations because it seems that Hutton is taking more about cultural-borrowing than about bricolage. Cultural borrowing, as we shall see, is more about consciously making dissimilar or distinct elements from different places work for one agenda or practice.

Wendy Leeds-Hurwitz attributes the concept of bricolage and its popularization to Claude Lévi-Strauss and his 1966 book *The Savage Mind*. She defines the act of bricolage as “the bringing together of previously used signs into new (and unexpected) combinations,” or “cultural recycling.”<sup>68</sup> She thinks bricolage is the very concept which builds a ritual, and that it is through wedding ritual in particular that “every member of a culture has [the opportunity] to make an original creative contribution to the group.”<sup>69</sup> This definition more closely matches Hutton’s observations than Green’s. From these three authors we might observe that

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<sup>67</sup> Hutton, 1999, 369.

<sup>68</sup> Wendy Leeds-Hurwitz. *Wedding as Text: Communicating Cultural Identities Through Ritual*. Mahwah, NJ: Lawrence Erlbaum Associates, 2002, 180.

<sup>69</sup> Leeds-Hurwitz, 2002, 180.

So with a group such as Wicca that has been recognized as being a community made up of bricoleurs, it would seem that even the marriage ritual itself is consistently and constantly in flux, whether it is being adapted to, or is itself transforming, the culture around it.<sup>70</sup> From the first known private Wiccan marital ceremony in the Gardnerian Hertfordshire coven in 1960, to the marriage of Maxine Morris to Alex Sanders in a publicly covered Alexandrine ceremony in 1965, to the handfastings of today, we see a steady development of Wiccan marriage. Hutton notes:

[T]here is no marriage ceremony in the 1950s Book of Shadows, but Gardner's own last version of the Book, preserved with his papers in Toronto, does have one. Along with distinctive Gardnerian elements, it contains two [elements] which were to become common in later Pagan wedding rites; that the couple was bound together by one hand, and that they swore to be true to each other only as long as love for each other truly remained in their hearts.... [N]ot until the 1980s did Wiccan marriage ceremonies begin to be standardized in anything like a common form, and this was largely due to the influence of published texts.<sup>71</sup>

It is important to note that the legal recognition of these unions also developed over time. The union of Maxine and Alexander Sanders “was also distinguished by the fact that it stood on its own; the legal, registry office, wedding did not follow for a couple of years.”<sup>72</sup> Yet it did follow – for what reasons, I cannot say, but surely the couple must have seen in the registry marriage something that their religious union had left out.

That combination of a ritual marriage followed by a registry marriage is one option still open to Wiccans in America today – one means of simultaneously achieving the status and privilege of secular marriage while also differentiating the ritual marriage as providing its own benefits. Leeds-Hurwitz concludes, “the ability to find appropriate ways to combine two or more

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<sup>70</sup> Green, 2003, 75-94.

<sup>71</sup> Hutton, 1999, 325-326.

<sup>72</sup> Hutton, 1999, 325.

cultures demonstrates the ability to cope successfully with cultural diversity on an individual level.”<sup>73</sup> Hutton would concur: “Modern witches are not people who have lost anything, or been left in a situation of relative disadvantage. Rather, they have impressed me as people who have an unusual degree of enterprise and of control over their own lives, and demand even more from them, extending this pattern by asking more of religious life than most people do.”<sup>74</sup>

Pike, on the other hand, sees problems with such cultural borrowing, holding “issues of cultural identity and the appropriation of other cultural idioms” are problematic and will continue to be problematic.<sup>75</sup> She references tensions between Native American groups<sup>76</sup> and individual Neo-Pagan practitioners – created over the appropriation of Native American traditions and rituals by Neo-Pagans and New-Agers – as being just one of several instances of the negative consequences of cultural borrowing – of bricolage. Pike seems to feel that the habit of cultural borrowing while simultaneously maintaining a distinct otherness from that which is borrowed has been the cause of previous problems among the Neo-Pagan community, and that this borrowing trend is likely to continue to pose issues. At least one of which may come in the form of covens and groups forming along the split between those who culturally borrow headed into the mainstream and those who more typically exemplify the trait of bricolage who attempt to avoid the mainstream. Some of her interview subjects, however, paint the future in a more practical light, saying, “[A] tool is a tool is a tool. The question isn’t who invented it, it is DOES IT WORK FOR YOU???”<sup>77</sup>

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<sup>73</sup> Leeds-Hurwitz, 2002, 225.

<sup>74</sup> Hutton, 1999, 403.

<sup>75</sup> Pike, 2004, 166.

<sup>76</sup> In particular the Wintu of Mount Shasta as depicted in the film, *In The Light of Reverence*, released in 2001.

<sup>77</sup> Pike, 2004, 166. Quoted by Pike from her work *Earthly Bodies, Magical Selves* (2001), which was in turn taken from an conversation Pike had with an interviewee named A. Lizard and first recorded in *Pagan Digest*, issue #7, April 1992. [Caps are in the original.]

This prioritizing of utility over origin is a running theme in Wicca and Neo-Paganism. It is reflective of the inherent heterotopic and bricolage identity traits identified by Green and the tendency of cultural borrowing affirmed by Hutton and Pike. Whether the majority of Wiccans will embrace some kind of fourth option for marriage union, affirming this heterotopic tendency, is unknown. It is also unknown how much of this identity set will affect mainstream culture and laws as Wiccans evolve in the future. However, as we shall see, Wiccans are actively engaging in political activity reflective of their values.

## VI. Full Faith & Credit, Political Activity, and Clergy

As there are tensions between Neo-Pagan identity and mainstream practice for the sake of marriage, there are also tensions between political activity, the application of the law, and marriage practices of Neo-Pagans. In this section I will be looking at the ways in which the tensions surrounding political activity might shape practice for Wiccans in the future, including interconnected problems between the application of the Full Faith and Credit Clause, tensions between politics and spirituality, and issues regarding the application of group laws to the solitary practitioner.

Political activity by religions and religious practitioners has been a bone of contention not only for the IRS, which has various bylaws in place prohibiting the funding or support of political candidates,<sup>78</sup> but also for differing Wiccan sects, some of which see political activity as a necessary and inevitable outgrowth of their religion and others which see political activity as hindering inward spiritual seeking. Where marriage is concerned, a lot of political activity centers on one particular clause in the United States Constitution, The Full Faith and Credit

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<sup>78</sup> Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities Under the Federal Tax Law, I.R. Services, 2007.



Clause. In the introduction to *The Full Faith and Credit Clause: a Reference Guide to the United States*, Jack Stark notes, “somewhere in that welter of tertiary material is the answer to almost every question that one could ask about constitutional law. The problem is finding the answer that one wants. The difficulty of locating useful guidance is exacerbated by the bifurcation of most constitutional scholarship into two kinds,” namely large and small issues.<sup>79</sup> I mention this not because it offers an excuse for a lack of a complete and comprehensive understanding of Constitutional law on the part of this scholar, but because I think it offers a useful explanation for why practitioners, politicians, and scholars are still struggling with a clause that was first included in the Articles of the Confederation, was ratified in the original United States Constitution, and has been acted on ever since.

While it would seem that the First Amendment is at the heart of church and state issues, the Full Faith and Credit Clause goes specifically to the heart of recognizing legal marriages across state lines. This clause, above all others, is likely to be the most important to Neo-Pagans getting married in the coming decades. As Wiccans seek legal entity status, recognition in U.S. courts, tax exemption, and all other forms of secular affirmation and protection, they will repeatedly come up against this clause, especially with regards to the issues facing this group in terms of marriage. The clause itself is very brief:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.<sup>80</sup>

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<sup>79</sup> W.L. Reynolds and William M. Richman. *The Full Faith and Credit Clause: A Reference Guide to the United States Constitution*. Westport, CN: Praeger Publishers, 2005, xii-xiii.

<sup>80</sup> The United States Constitution, Article 4, Section 1, “Each State to Honor All Others.”

The clause's implementation, even its understanding, is far more complex. To begin, the application of this clause affects those who are attempting legal same-sex unions and polyamorous unions. In this sense we may understand that if one state specifically makes laws regarding the legality of same-sex unions or polyamorous unions, that other state governments must respect those laws. Much like the legal officiant issue discussed in section two, concerning the Universal Life Church, the Full Faith and Credit Clause also means that citizens cannot circumvent the laws of their state of residence. However, if a couple were to obtain a legal same-sex union in another state, and then change their residency to a state that does not recognize same-sex unions, they should still be entitled to the benefits of that union in their new state of residence.<sup>81</sup> Just as common-law unions are recognized across state lines if a couple changes residency, so too same-sex unions may be recognized.

Efforts on the part of the Neo-Pagan and Wiccan communities as a whole are likely to be stymied by this clause as well. As those efforts may center primarily on the legal recognition of their clergy as well as on the legal recognition of their marriages, Wiccans face issues of uniformity. Because the recognition and ordination of clergy is different from group to group, it is that much more complicated to get clergy recognized from state to state, and unlike the example of the couple above who changed residency, recognition of clergy is not as easy to negotiate because it is not an issue with binary choices. For example, while a law might recognize Wiccan clergy as being legally capable of ordaining marriages, it might be unclear as to which practitioners are really considered Wiccan, which groups' methods really qualify as ordination, and whether solitary practitioners who are self-ordained count at all. In states like

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<sup>81</sup> This example would take several years to achieve because the couple would need residency in the first state prior to marriage, and then they would need to acquire residency in the second state after marriage.

Georgia where the laws governing who can officiate a marriage are relatively vague<sup>82</sup> it could be just as easy as simply signing the license in the good faith that the officiant qualifies.

Additionally, Wiccans will face added tensions because of ongoing debates in these communities about the place politics should have within the religious and social activities among their members.

Berger, in her 2003 survey, offers a comprehensive look at the political practices of contemporary Neo-Pagans. 70.9 percent of Wiccans surveyed are registered to vote, with 44.5 percent of them being Democrats and the remaining percentiles divided between Independents, Republicans, and Green Party members. Berger concludes from her research that Neo-Pagans are involved in political activities and that “the participation of Goddess Worshipers in these political activities helps to dispel the notion that Goddess Worship results in women becoming apolitical.”<sup>83</sup> For our purposes these numbers also help to establish that a large portion of self-identified Neo-Pagans are registered voters, with a majority favoring the Democratic party but a not insignificant number being supporters of other political parties. There is a difference, however, between being registered to vote and being active politically. Pike asserts that there is a tension within the Neo-Pagan community between the religious and political, as well as divergent views as to the place of politics within Wiccan communities.

Pike holds that at least one view of Neo-Pagan thinking includes the understanding that, as personal healing takes place, world improvement must be implemented. At the same time she notes, “Such beliefs do not necessarily lead to social and political activism.”<sup>84</sup> Her own research

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<sup>82</sup> “The license shall be directed to any judge, including judges of state and federal courts of record in this state, city recorder, magistrate, minister, or other person of any religious society or sect authorized by the rules of such society to perform the marriage ceremony” O.C.G.A. § 19-3-30, part C.

<sup>83</sup> Berger, 2003, 121, 95. Here Berger is using “Goddess Worship” as a category that Wiccans and Neo-Pagans belong to collectively, regardless of gender.

<sup>84</sup> Pike, 2004, 37.

reveals that Neo-Pagans participate in a wide range of political activities, demonstrating that practitioners can be political without being activist. Still, she later goes on to state, “Neopagans are more likely to become involved in religious freedom campaigns because they are more likely to be targeted for persecution” and as such “have established national networks to advocate for religious freedom, organize for environmental causes, and spread information about social and political issues.”<sup>85</sup> From Pike’s perspective one might conclude that divergent opinions about politics among Neo-Pagans have a lot to do with the way in which a given group or practitioner defines political activity and the reasons for which one might be politically active. This might explain why we have not seen examples of Neo-Pagans as a whole actively working for legal change on a single given law. Then again, perhaps because Neo-Pagans can be political without being activist, they are participating in ways which are not obvious to casual observation. A good example of this might be the voter registration data collected by Berger, which seems to imply that three out of four Neo-Pagans are registered voters.<sup>86</sup> Since voting is largely an anonymous activity, a greater amount of data would have to be collected in order to see the exact issues for which Neo-Pagans are political without being activist. Scholars might also benefit from data collection in regards to Neo-Pagan participation with non-profit organizations, donations, and charity volunteering.

Together Pike and Berger give us a complex picture, allowing us to understand that there are multiple expressions of the political in Neo-Pagan culture and multiple means by which Neo-Pagans seek to express their needs. Those expressions and needs are the reasons that Kenneth D. Wald and Allison Calhoun-Brown caution us that we must acknowledge and take seriously the efforts of new religious movements like Wicca. In their work, *Religion and Politics in the United*

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<sup>85</sup> Pike, 2004, 164.

<sup>86</sup> Berger, 2003, 121, 95.

States, they explain, “although the number of participants in other faith traditions in the United States is small, numbers are not the only way to influence politics. Interest group activities by religious minorities in legislatures and especially in courts have long helped define the limits of establishment and free exercise for all in the United States.”<sup>87</sup> Wald and Calhoun-Brown remind us that not only do small, emerging religious groups affect politics and legal statutes in the United States, but the participation process also serves to bolster religious identity.

One of the needs that apply directly to the issue of marriage for which Neo-Pagans may eventually become political, if not activist, is the issue of legally recognized clergy. The legal recognition of clergy is inherently linked to the Full Faith and Credit Clause in the same way that legally recognized marriages are: the ordination of clergy members may be challenged legally along state lines and according to state laws and will vary from state to state. As such, just as one marriage may not be valid from state to state a member of the clergy who is recognized as legally able to perform weddings in one state may not have the same designation in another.

As numerous authors have mentioned, and Adler and Hutton have set out to prove, Neo-Pagans tend to be decentralized and non-hierarchical in their organization of covens and of other groups formed for worship. This non-hierarchical tendency leaves Neo-Pagans and Wiccans without ordained clergy in the Jewish or Christian sense of the position, i.e., clergy who have been trained in a standardized format through an authorized organization or agency, and who receive a stipend or payment for their services to the community. While the presence of Cherry Hill Seminary and other Neo-Pagan-friendly institutions have allowed for the official ordination of Neo-Pagan clergy through what might be considered “traditional” means, Berger has pointed out that more than half of all practicing Neo-Pagans are what is know as “solitaries.”

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<sup>87</sup> Kenneth D. Wald and Allison Calhoun-Brown. *Religion and Politics in the United States*. Lanham, MD: Rowman & Littlefield Publishers, Inc, 2007, 310.

A “solitary” is a practitioner not affiliated with any set group or coven for the purposes of regular worship, someone who can be recognized as a religious leader in her own right. The eclectic nature of Neo-Paganism lends itself to rapidly changing, easily evolved transformations in both belief and dogma, and, as such, any given practitioner, failing to find a group accommodating her spiritual needs, may separate and practice alone until such time as they desire to join another group.<sup>88</sup> Others might recognize such solitary practitioners as falling into Robert C. Fuller’s category of “spiritual but not religious.”<sup>89</sup> However, Fuller defines that category as being comprised of members of the population who do not self-identify as any particular religious faith, whereas the “solitary” of Berger, Hutton, and Adler self-identifies as being Wiccan, Pagan, or Neo-Pagan. Therefore, while the “spiritual but not religious” practitioner may have legal issues because she is not part of any organized religious group, the solitary practitioner of Wicca faces a slightly different set of problems since she believes she belongs to an organized group, but is simply an individual practitioner. These solitary practitioners, without a community either by choice or by circumstance, may be recognized by their religious peers as having just as much authority to officiate a marriage as any priestess currently working with a coven.<sup>90</sup> Few, if any, state laws that recognize clergy for the purposes of performing marriage would agree – largely on the basis of defining “congregation” and “ordination.”

The trouble in developing a standardized clergy, however, goes further. A substantial portion of the growing Neo-Pagan movement is opposed to the concept of paid clergy under the

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<sup>88</sup> Berger, 2003, 4, 12.

<sup>89</sup> Robert C. Fuller. *Spiritual but Not Religious: Understanding Unchurched America*. New York: Oxford University Press, 2001, 1-12.

<sup>90</sup> Buckland, 2005, 79-96, 137-156.

premise that paying for spiritual guidance is morally or ethically wrong.<sup>91</sup> Naturally, Barner-Barry is quick to point out that “lack of ordination can be a problem when the issue of ordination arises in a legal or governmental context and the official involved is looking for an excuse to discriminate against a non-traditional religion.”<sup>92</sup> Most Neo-Pagan groups, as Adler and Hutton would bear out, have their own means of recognizing clergy with authority to perform actions such as leading ritual and officiating marriage. Gardnerian groups, in particular, have an easily understood hierarchy allowing even those unfamiliar with Wiccans to recognize who has authority for such actions. Other groups and solitary practitioners may not have this. The status of ordained clergy, the means by which they are awarded authority, and their role in the community only become a problem, as Barner-Barry points out, when a government official, state or federal, fails to recognize the validity of the religion and the means by which it goes about recognizing its own clergy.

Barner-Barry notes there are several non-political options open to Neo-Pagan clergy seeking legality. The first would be to have the officiant also become a Notary Public; the position is relatively easy to obtain, and in many states Notaries may grant legal marriages. As I mentioned above, for obtaining legal entity status, Neo-Pagans may also incorporate as a church or religious organization, thus acquiring tax-exempt status and granting their clergy official recognition. This would, of course, not be an option for “solitaries.” Barner-Barry notes, “Most pagans reject such subterfuges on the grounds that they should not be required of non-traditional religious groups.”<sup>93</sup> One problem, she points out, is that Neo-Pagans are deeply disadvantaged in such circumstances; newly-formed Christian groups may incorporate without going through

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<sup>91</sup> Barner-Barry, 2005, 101.; Starhawk, 1989, 55-56.

<sup>92</sup> Barner-Barry, 2005, 101.

<sup>93</sup> Barner-Barry, 2005, 104-105.

official lines, and the marriages performed by their clergy, and the activities of their clergy in general, are recognized as just as legal and legitimate as well-established Christian groups. She believes that in the future, when American society has become more pluralist, legal battles will be fought over whether or not it is acceptable to show favoritism to any one religious group. In rebuttal to critics, she points out that our laws and our legal system were put in place so that changes could be made to meet the needs of all citizens.<sup>94</sup>

Wald and Calhoun-Brown conclude that the expression of needs through politics is important. By examining that expressions on the part of Wiccans in terms of legalizing and legitimating clergy what may be taken away is a sense that the identity and social structure of Wiccans and Neo-Pagans is as much a part of their political process as it is a part of their practices. The negotiation going on between the law and Wiccans involves not only complexities from application of law but also complexities from the use of politics in this group. While many Wiccans may be registered voters who actively establish networks and are involved in issues of religious freedom, they are also interested in world-healing through self-healing and in being political, at times, without being activists.

## VII. Concluding Remarks

Hutton notes, “pagan witchcraft challenges social and religious norms by its very nature, but its identity as a mystery religion automatically insulates it from any direct impact upon the outside world.”<sup>95</sup> Through my examinations of Wiccan marriage, I believe I have found evidence to challenge the second portion of his statement. Through evolving religious marriage practices, political activity and social change, Wiccans are far from insulated; though they may seek to

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<sup>94</sup> Barner-Barry, 2005, 101-105.

<sup>95</sup> Hutton, 1999, 404.



maintain or build their own heterotopic norms. Their own attempts at recognition and efforts at equal treatment have established a dialogue between Wiccans and American law. I feel this is significant to the research that may be done on these communities in the future. While older records of these communities may have given us a picture of religious practitioners who are “in the broom closet,” so to speak, there is new evidence to suggest that this may become less true over time. The interactions that Wiccans and Neo-Pagans have with American law over the issue of marriage suggest that at least some practitioners of these religions are actively seeking to assert their rights or to establish new ones. While this paper handles more closely the ways in which Wiccan interaction with law has changed or may change Wicca, I feel that a closer examination of American law may reveal that the law itself is changing. I do not believe that the Wiccan negotiation of the law is a one-way street. Over time Wiccans, in their practice as well as their identity, have been affected, and will continue to be affected, by changes made. It seems reasonable to assume that we may see similar, but not equal, changes in the law as well.

Over the course of this exploration, we have seen that there are a number of options by which Wiccans may attain legal recognition in America, and a number of pathways by which they may obtain legal marriages. We have also seen that none of these pathways are wholly in keeping with the current identity and belief systems of Neo-Pagan communities. I believe we will see Wiccans negotiate these pathways, creating new precedent and establishing new forms of recognition, in the years ahead. For the researcher, this could constitute the need for a whole new understanding of this religion’s structure and doctrines.

We have seen some evidence that future practitioners may evolve their own marriage practices in order to accommodate the laws, such as using non-political methods for legalizing and legitimating clergy. Others may seek further changes in laws and politics in order to create

more options that are religiously acceptable. Barner-Barry was paraphrasing Stanley Feldman when she said, “it is not that people are inherently antisocial, but rather... they need to be guided by a set of socially validated norms and rules that lead them to behave appropriately in society. Appropriateness, however, can be seen differently by people with different social and cultural backgrounds.”<sup>96</sup> As the sets of rules and norms employed by Wiccans interact with those set up currently by state and federal governments, American notions of what is appropriate with regard to marriage may evolve as well.

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<sup>96</sup> Barner-Barry, 2005, 115.

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