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Articles

***593 THE FIRST AMENDMENT, HOMOSEXUAL UNIONS, AND “NEWSPEAK”: HAS THE LANGUAGE SURROUNDING THE MARRIAGE DEBATE ALTERED THE NATURE OF MARRIAGE ITSELF, OR AFFECTED THE TRUTH OF THE ISSUES INHERENT IN ALTERNATIVE MARRIAGE DEMANDS?**[Lynne Marie Kohm \[FNd1\]](#)

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I. Introduction

The hottest trend among various governments, institutions, and universities is to proscribe opinion that might be offensive. [\[FN1\]](#) In a commitment to diversity, [\[FN2\]](#) this often means that speech, especially opinion, is severely limited. [\[FN3\]](#) Many institutions call this “hate speech.” [\[FN4\]](#)

***594** In the United States, the First Amendment [\[FN5\]](#) is primal to liberty and central to the Constitution itself, guaranteeing freedom of religion and speech. [\[FN6\]](#) It now encompasses much well settled law. [\[FN7\]](#) Or does it?

Is opinion that might offend protected by free speech concepts? In a commitment to diversity, is speech really free? Does the First Amendment still protect free speech? Professor Frederick Schauer of the John F. Kennedy School of Government at Harvard College wrote in his essay called, “The Exceptional First Amendment,” that in the United States, “all ***595** such speech remains constitutionally protected.” [\[FN8\]](#) Some prominent legal scholars, however, say the United States should reconsider its position on hate speech. Legal philosopher Jeremy Waldron wrote in The New York Review of Books in May of 2008 that “a liberal democracy must take affirmative responsibility for protecting the atmosphere of mutual respect against certain forms of vicious attack.” [\[FN9\]](#) Are these forms of “vicious attack” ever protected by free speech guarantees, or are they always “hate speech”? [\[FN10\]](#) Or have we developed a “Newspeak”?

Newspeak is a fictional language in George Orwell's novel 1984. [\[FN11\]](#) In the novel, Newspeak was the official language designed to meet the ideological needs of English Socialism, and it is “the only language in the world whose vocabulary gets smaller every year.” [\[FN12\]](#) Orwell included an essay about it in the form of an appendix in which he explained the basic principles of the language. [\[FN13\]](#) Because Newspeak is a greatly reduced and simplified vocabulary and grammar of the English language, it suits the totalitarian regime of the Party in 2050, whose aim is to make any alternative thinking—which is actually a “thoughtcrime,” [\[FN14\]](#) or “crimethink” in the newest edition of Newspeak [\[FN15\]](#)—impossible. [\[FN16\]](#) By removing any words or possible constructs that describe the ideas of freedom, rebellion, or even ***596** love, the Party has created a new lexicon to control peoples' lives. [\[FN17\]](#) One character says admiringly of the shrinking volume of the new language: “It's a beautiful thing, the destruction of words.” [\[FN18\]](#)

Opinion, or thought crime? Hate speech, or Newspeak? Hate crime legislation is indeed a most salient topic in the United States Federal Government, as legislative measures to define and expand hate crime definitions are now in

place to protect those with a same-sex or transgender orientation. [\[FN19\]](#) The fear apparent on the part of proponents of such legislation is that not changing the language would be appalling. “Left unchecked, crimes of this kind threaten to ruin the very fabric of America.” [\[FN20\]](#)

Could this new language reduce words like “husband” and “wife” to “Party A” and “Party B” to accommodate gender variations in marriage? [\[FN21\]](#) Or could it mean that “mother” and “father” must be eliminated, and the lexicon reduced to only the use of the word “parent”? [\[FN22\]](#) This Article suggests that such language reduction is a contemporary Western form of “Family Newspeak.” [\[FN23\]](#) And its use is already in full swing today.

Canada's various territories' Domestic Relations Codes have systematically substituted “spouse” for every word that included an inherent gender reference for a spouse, i.e., effectively removing the words “husband” and “wife” from Canadian family law. [\[FN24\]](#) California's Uniform Parentage Act has had all references to “putative father” replaced with “partner,” [\[FN25\]](#) by an intricate working of case law and court rules. [\[FN26\]](#) In *597 Massachusetts, marriage partners are no longer referred to as “husband” or “wife,” but rather as “Party A” or “Party B.” [\[FN27\]](#)

This Article asserts that a special type of Family Newspeak appears to be a highly effective tactic used to destroy any distinction between marital families and homosexual partnerships. Although marriage is a central target of homosexual rights litigation, there are other related areas where Family Newspeak is appearing. [\[FN28\]](#) This Article reveals that traditionally protected political and religious speech is being undermined through a new expanded Family Newspeak. Newspeak in 2010 is used to advance an expansive sexual agenda that not only will correspondingly infringe upon the First Amendment rights of others, but also is even now changing the lexicon of the English language. [\[FN29\]](#) Speak at your own risk. [\[FN30\]](#)

Though tension delicately and masterfully coexists between parts of the First Amendment, [\[FN31\]](#) this Article will focus on free expression and freedom of religion in the family law context and its tension with Family Newspeak. Part II of this Article sets forth how marriage is affected by Family Newspeak. It discusses alterations in Canada's family law code and American state codes where marriage has been altered in some way by state statute or case law. Parenting concepts are also affected by Family Newspeak, and this process is detailed in Part III. Part IV sets forth *598 additional general examples of how every individual must follow Family Newspeak to avoid being charged with hate crimes and other allegations. This results in people of faith becoming prime targets when expressing contrary views. Part V considers the evidence of additional cultural changes, and how Family Newspeak is further fostered by popular media outlets and the content-based characterization of speakers. In Part VI, this Article concludes that once the lexicon of family form is surrendered in law and speech, the language battle becomes a war on the family itself.

The very fabric of family is altered by Family Newspeak. These concerns and how they relate to family law and the First Amendment reveal an almost entirely new language on marriage, parenting, and family in 2010, [\[FN32\]](#) creating a climate suitable for a culture limiting liberty.

II. Marriage

Marriage and the First Amendment converge in the religion clauses, [\[FN33\]](#) but free expression regarding marriage is emerging as a new conundrum as linguistic changes regarding marriage and its definition have already occurred in various nations. Canadian marriage law was altered in 2002, [\[FN34\]](#) and marriage was redefined statutorily in 2005 to include same-sex couples. [\[FN35\]](#) In effect, the procreative link between marriage and children was eliminated, along with the right of children to know their parents. [\[FN36\]](#) The Netherlands redefined marriage in the same way in 2001, Belgium in 2003, and Spain and South Africa in 2005. [\[FN37\]](#)

*599 It is apparent that the Commonwealth of Massachusetts considered at least some of these changes when its highest court redefined marriage in 2003 in *Goodridge v. Department of Public Health*. [\[FN38\]](#) This redefinition resulted from lack of textual linguistic clarity in Massachusetts marriage laws. [\[FN39\]](#) In turn, that legal redefinition

changed public education in Massachusetts as well. The Superintendent of the Boston Public Schools, Thomas W. Payzant, issued a memorandum to the Boston School System in May of 2004 clarifying that the Goodridge holding was an “historic moment in our Commonwealth and in our country,” which “has had, and continues to have, a profound impact on our civil life and discourse.” [\[FN40\]](#) Indeed, Goodridge effectively restricted speech in public schools, evidenced by Payzant's concern over “inappropriate speech” in schools, urging administrators, teachers, parents, and students to act promptly on any incidence of intolerance based on perceived sexual orientation. [\[FN41\]](#)

The use of any language to disagree with an expanded view of marriage is not tolerated in Boston Public Schools. [\[FN42\]](#) Judicial rulings have been made that require public education materials to promote expanded views of marriage as obligatory diversity. [\[FN43\]](#) This result required that there be no tolerance for differing opinions. [\[FN44\]](#) These expanded notions of marriage and family are taught to school children as curriculum, [\[FN45\]](#) without regard to *600 critical thought. [\[FN46\]](#) In Lexington, Massachusetts public schools use a diversity program curriculum for grades kindergarten through fifth grade that includes a component on “What is a Family?,” referencing the merits of same-sex headed families. [\[FN47\]](#) It is based on materials prepared by the Human Rights Campaign, which identifies itself as a “civil rights organization working to achieve lesbian, gay, bisexual and transgender equality.” [\[FN48\]](#) An expanded notion of marriage and corresponding family law has been effectively institutionalized in Massachusetts as a result. Similar effects are foreseeable for other states that have expanded marriage for same-sex pairs. [\[FN49\]](#)

States have found that the language used in their constitutions makes a tremendous difference regarding the definition of marriage, as “while a small but growing number of states formally acknowledge same-sex relationships, others have amended state constitutional language to define marriage as between a man and a woman,” to insure that the word “marriage” will not be redefined in any other way. [\[FN50\]](#) Because many states have taken the opportunity to clarify the meaning of the word “marriage,” some other states have used the term “civil union” to grant similar rights and benefits to same-sex couples, [\[FN51\]](#) without altering the definition of *601 marriage. The United States Congress protected states' abilities to maintain their own definitions of marriage by enacting the Defense of Marriage Act (DOMA) in the face of other state rulings, acts, or records that might conflict with those of Congress. [\[FN52\]](#) Yet DOMA is threatened with repeal, which would effectively leave states defenseless in attempting to uphold their own definitions of marriage, and would potentially require them to expand and redefine the concept by mandate of federal law. [\[FN53\]](#)

Attempts to alter the nature of marriage itself, by deconstruction and reconstruction, are changing the culture of marriage and sexuality, expanding it beyond previously imagined relationship notions. [\[FN54\]](#) These efforts toward redefinition and expansion are designed to affect the truth of marriage, to alter it permanently. Alternative marriage demands have created a Family Newspeak in numerous contexts.

III. Parenting

Alterations to marriage inevitably result in alterations to parenthood definitions, rights, and responsibilities. Since the creation of rights for same-sex couples in marriage-like relationships, states have been encouraged to recognize the doctrine of the de facto parent by court rule, opinion, or statute specifically, [\[FN55\]](#) detailing how one qualifies for de facto parent status, as well as the rights and responsibilities associated with the status. [\[FN56\]](#) California has recognized the status in its court rules. [\[FN57\]](#) Other states *602 have rejected the de facto parenthood doctrine as against state public policy, particularly public policy that upholds the stability of marriage and natural parents' rights. [\[FN58\]](#)

The judicial alteration of California's Uniform Parentage Act [\[FN59\]](#) is a prime example of how attempts to alter marriage understandably and effectively also alter parenting. California is one of a handful of states [\[FN60\]](#) that uses the de facto parenthood doctrine, [\[FN61\]](#) meaning that a person is a parent “in fact” as opposed to a parent in law. [\[FN62\]](#) The terminology is most frequently used to grant parental rights and privileges to otherwise discarded or disregarded same-sex partners, as in the case of *Elisa B. v. Superior Court*, [\[FN63\]](#) which illustrates the results of the doctrine in a form of Family Newspeak.

In *Elisa B.*, the Supreme Court of California gender-neutralized the state paternity statute, effectively applying it to same-sex couples seeking child support of children born during the relationship but only naturally related to one partner. [FN64] Under this new analysis, partnership rights include parental rights and responsibilities to a partner's child, even if the partner never adopted or was otherwise related to the child. [FN65] The court ordered the amended application of California's adoption of the Uniform Parentage Act (UPA) for the case of *Elisa B.* to afford same-sex partners the same rights and responsibilities conferred upon a putative biological father via the *603 original UPA. [FN66] This result was possible under California law only because of [California Family Code § 297.5\(j\)](#), which reads, "Where necessary to implement the rights of registered domestic partners under this act, gender-specific terms referring to spouses shall be construed to include domestic partners." [FN67] This necessarily required that every reference to "father" be amended to "partner" in the California UPA and according to the California Domestic Partnership Registry in *Elisa B.* [FN68] and every case thereafter under the California Court Rules. [FN69]

One might observe that this language modification might signal that fathers are no longer necessary to parenting. State decisions like this also raise concerns of interstate recognition of judicial acts and records when a sister state does not ascribe to the amended lexicon with its host of new meanings. [FN70]

*604 To bring this host of new meanings to a uniform code is to repudiate the progress made through the states' participation in and adoption of the work of the Uniform Statutes Commissions. Effectively, this also affords one state court an anvil upon which breaks the lexicon of every other state reliant upon that uniform code, challenging the uniform code process itself.

The Uniform Statutes are the end product of a collaborative process among the states. [FN71] They balance and harmonize two concerns: (i) mutuality and (ii) state sovereignty. [FN72] Through these statutes a delicate balance has been struck. States enact legislation that endorses certain common definitions and legal principles in an area of law. [FN73] This ensures predictability of outcome within and among the states and reduces the incidence of one party manipulating the system to ensure an otherwise unjustifiable outcome. At the same time, under the contract theory of uniform codes, individual states have the autonomy to adopt any portion they wish and reject or modify any other portion. [FN74] Nonetheless, uniform codes are carefully drafted to consider state-by-state adoption of uniform standards rather than provide a means for one state to amend its uniform code to force another state to respect its uniqueness with full faith and credit. [FN75] When a state is forced to adopt the decision of a sister state that is *605 not based on the core legal values contemplated by uniform statutes, even under the guise of full faith and credit, that decision disrupts and threatens to destroy all that has been accomplished by the adoption of that particular uniform act. The result will be that decisions of individual trial courts will take precedence over the work of state legislatures and uniform code efforts, and will return jurisprudence to a pre-uniform act era of chaos.

With these language changes from "father" to "partner," the meaning and significance of the Uniform Parentage Act (UPA) is dangerously at issue. The UPA was adopted in its original form [FN76] by California [FN77] and several other states in the nation. [FN78] The core legal principle involved in the UPA is to set out a legally acceptable standard to embrace within family relationships that protects the legitimacy of the children of the family. [FN79] It was not enacted to indirectly legitimize the relationship of the parents. Yet that is indeed what the language changes made to the California UPA have done. With California's creation of its domestic partnership registry, the *606 interpretation of California's adoption of the UPA had to accommodate domestic partnerships and embody concepts never intended in the original Act. [FN80] Thus, when California based its ruling in *Elisa B.* on a newly conceptualized UPA analysis that deemed a same-sex partner a parent by analogy of presumed fatherhood, [FN81] the uniform concept was lost. This newly created concept is impossible for other states to apply unless they too ascribe to these language changes from *Elisa B.* Effectively, altering a uniform act in this manner uses a child as leverage to strong-arm a sister state into recognizing a completely foreign concept, [FN82] Family Newspeak in another form.

A court that allows the use of a child as leverage over a partner enables a severe perversion of the best interests of a child. Full faith and credit is intended to insure adherence to core rules of law accepted and applied among the states.

The legal issues raised in *Elisa B.* do not fall within this category of core rules of law. To accord them full faith and credit is to undermine the concept itself with potentially chaotic legal consequences. This analysis demonstrates that when the language of parentage is changed in statutory or case law, parenting is inevitably altered as a result.

A Canadian statute developed since the creation of same-sex marriage provides another example. [\[FN83\]](#) The Child and Family Services Act authorizes the government child welfare agency to repeatedly change a child's foster care placement if "in the child's best interests," regardless of any rights held by the natural parent. [\[FN84\]](#) Most significantly, Canada's Civil Marriage Act eliminates the category of "natural parent" across Canadian federal law. [\[FN85\]](#) In other words, parenthood having first lost its connection with marriage has subsequently lost its natural relationship to sexuality and childbirth and has become merely a legal construct. [\[FN86\]](#) Family Newspeak *607 actively changes family law, in Canada and elsewhere. This notion is also apparent in recent international family law. Based on the expanded notion of marriage internationally, [\[FN87\]](#) the European Human Rights Convention encourages courts to respect any family life the child has created with a foster parent, "even against the claims of parents to have a child returned to them." [\[FN88\]](#) This analysis led a Finnish court to deny natural parental rights. [\[FN89\]](#)

If these efforts have not altered the nature of parenting yet across the board, that objective remains in focus on the horizon. Academic conferences often focus on the objectives in altering parenting, as was particularly apparent in a recent public invitation to a scholarly conference on motherhood, intending to "deconstruct motherhood in the 21st Century." [\[FN90\]](#) Furthermore, these notions are apparent in populace attitudes that have been studied empirically, [\[FN91\]](#) validating that when language is used to expand meanings of parents, the nature of family is altered not only legally, but also culturally.

Family Newspeak is being used to deconstruct and expand rights, revealing that the inherent objectives involved in alternative marriage demands are to change the meaning of family. In this context real children can become unwitting, expendable pawns on a chess board of family law. Marriage and parenting are being dramatically affected by Family *608 Newspeak, and this phenomenon will in turn affect free speech and religious freedom.

IV. Newspeak Implications for Free Exercise of Religion

Steps have been taken by the United States Congress to create and expand a category of criminal responsibility for ideas, notions, and speech that disagree with homosexuality or other alternative forms of sexuality. [\[FN92\]](#) These laws effectively broaden the previous measure from ideas, notions, and speech motivated by the victim's race, color, religion, or national origin to those expressed because of gender, sexual orientation, gender identity, or disability. [\[FN93\]](#) These federal hate crimes proscribe previously outlawed behaviors, but they are criminalized now because of motive. [\[FN94\]](#) Some say such measures are "an effort to create a class of 'thought crimes,'" [\[FN95\]](#) ringing eerily of Orwellian Newspeak. [\[FN96\]](#) These measures carry vast potential to threaten religious freedom. [\[FN97\]](#)

The free exercise of religion, another aspect of the First Amendment, is indeed affected by Family Newspeak. This phenomenon is already evident in Canada, as indicated by a recent law suit where a Catholic magazine was charged with promoting hatred for expressing the Church's views on marriage and homosexuality. [\[FN98\]](#)

Catholic Insight, a Canadian magazine known for its fidelity to Church teachings, has been targeted by the Canadian Human Rights Commission for publishing articles deemed offensive to homosexuals.

*609 The commission has been investigating the Toronto-based publication since homosexual activist Rob Wells, a member of the Gay, Lesbian and Transgendered Pride Center of Edmonton, filed a nine-point complaint last February with the government agency in which he accuse[d] the magazine of promoting 'extreme hatred and contempt' against homosexuals. [\[FN99\]](#)

Directly targeting speech occurs in numerous forums in Canada, apparently, to curb the (religious) expression of beliefs that the nature of marriage is not homosexual. [\[FN100\]](#) "Despite assurance from politicians that Canadian faith communities would not be affected when the government legalized same-sex marriage, the number of complaints

against Christians have [sic] only increased since 2005” [\[FN101\]](#) When church leaders publically express the views of their religion that do not conform to the expansion of marriage toward homosexual approval, they are routinely investigated. [\[FN102\]](#) They sense that their “rights to freedom of religion and free *610 speech have been violated.” [\[FN103\]](#) A complaint is filed against the church leader for a criminal act of hatred because he or she has expressed a Biblical view of marriage, which is contrary to the Newspeak meaning of marriage as expanded toward homosexuality. [\[FN104\]](#) Therefore, describing the natural form of marriage is a speech crime in Canada, and “Canada’s human rights commissions are empowered by Canadian law to investigate allegations of offensive speech.” [\[FN105\]](#)

*611 Mexico is also experiencing a similar phenomenon regarding faith and speech, as “[t]he Catholic Church in Mexico has faced a violent reaction from homosexuals in the country who are upset over the Mexican bishops’ strong defense of natural marriage.” [\[FN106\]](#) When religious leaders have “spoken out strongly against Mexico City’s gay ‘marriage’ and homosexual adoption legislation,” in defense of “true marriage,” they have become “a source of controversy in society and within the family.” [\[FN107\]](#) Family Newspeak is being forced upon Mexican citizens and clergy alike. North American religious freedom has been diminished by Family Newspeak.

Perhaps this is why several orthodox Catholic and Protestant Christian church leaders and scholars in the United States gathered together to publish the Manhattan Declaration: A Call of Christian Conscience. [\[FN108\]](#) Fearing the dangers to religious liberty, the authors sought to clarify for Christians that laws that could be used to “compel religious institutions to participate in abortions, or to bless or in any way recognize same-sex couples,” infringe on personal expression, conscience, and free exercise of people of faith, [\[FN109\]](#) and to announce that signers of the manifesto “will not *612 cooperate with” such laws. [\[FN110\]](#) “Mr. George, the legal scholar at Princeton University, argued that the conscience clauses and religious exemptions were insufficient, saying, ‘The dangers to religious liberty are very real.’” [\[FN111\]](#)

These instances of making free expression a crime in the context of faith affect the truth of the issues inherent in alternative family demands, because the objective is not to provide equal rights and benefits to same-sex couples, but to permanently alter the nature and meaning of marriage, parenting, and family with a completely new lexicon, based on amended law to accommodate expanded family notions, thus ushering in Family Newspeak.

V. Other Newspeak Cultural Changes

These Family Newspeak changes resulting from modifications to marriage, parenting, and religious freedom toward a same-gender definition have altered the family law landscape. They have altered the cultural horizon as well.

In addition to the specific ways noted above regarding the Canadian experience, there are other ways in which Family Newspeak has affected Canadian culture in general. When citizens in Canada express their views on marriage and homosexuality in letters to the editor or other newsprint opportunities, they may be prosecuted for “hate speech.” [\[FN112\]](#) As an additional example, Quebec has released a new policy designed to combat homophobia, [\[FN113\]](#) setting out the government’s objectives toward full recognition of homosexual and transgender interests and modes of life. [\[FN114\]](#)

What is thus promulgated is no ordinary policy document, for it aims at the conversion, not merely of this or that piece of public *613 infrastructure, but of the psychological and moral and sexual infrastructure of a generation. It is not directed at creating a situation of legal equality—that, it proudly proclaims, has already been accomplished—but at creating “a society free of prejudice with regard to sexual diversity.” [\[FN115\]](#)

Cultural effects are visible in American states as well. When a private business in New Mexico refused private clients due to personal objections based on an expansion of marriage, the business was sued in open court. [\[FN116\]](#) When private citizens in California made campaign contributions to efforts upholding marriage, they were scrutinized legally. [\[FN117\]](#) Federal housing regulations for the United States are being studied and amended to provide special

protections for homosexual residents, [\[FN118\]](#) even though the extent of discrimination against such residents is unknown. [\[FN119\]](#) The changing lexicon is dutifully reported by the American press. “The department also announced that the regulations concerning HUD’s housing and voucher programs would clarify that the term ‘family’ also applies to lesbian and gay couples.” [\[FN120\]](#) These alterations in language and speech affect the culture and the very essence of the family and family law.

The legal challenges to California’s Proposition 8 [\[FN121\]](#) reveal another culture-affecting area of Newspeak-thought crimes. [\[FN122\]](#) Witnesses were *614 brought forth at the federal trial to determine the motives of voters. [\[FN123\]](#) Both supporters and opponents understood that the particular language used in the referendum and subsequent law would be critically important. [\[FN124\]](#) In California and other states, citizens understand their vulnerability for harassment due to non-conformity with a formidable opposition. [\[FN125\]](#)

“Newspeak” could very well be utilized in media and by governments in attempts to depict and label people who may choose to stand for a concept that is not desirable by those in power. It also can be useful in affording special rights and privileges that might promote homosexuality through the broad inclusion of conduct antithetical to homosexuality in what constitutes a violation under many anti-discrimination and hate crimes laws. [\[FN126\]](#) When a speaker’s motives are questioned, a culture of liberty is seriously challenged.

Altered language brings expanded and altered meanings. Nowhere is this more evident than in courtrooms and mainstream media outlets, which are *615 reshaping culture toward expanded views of marriage and parenting; this is effectively limiting religious freedom and reinforcing a culture that requires one to condone in action, speech, and thought such family law expansion.

VI. Conclusion

Family Newspeak has become a reality under which one’s thoughts and actions that are not in conformity with expanded views of sexuality can be criminalized. Despite all these observations and analyses, no legal amendments or language alterations can ever authentically change the nature of marriage, as it is ontological and by design. [\[FN127\]](#) Neither can such changes truly affect parenting concepts and realities. These are not mere social constructs to be deconstructed with language. Rather, they are timeless ontological facts.

Newspeak may no longer be the fictional language in George Orwell’s novel 1984. [\[FN128\]](#) Indeed, many institutions, states, and nations are experiencing it, and even ushering it in. As “the only language in the world whose vocabulary gets smaller every year,” [\[FN129\]](#) it is being used to effectively redefine and reorganize family law and the family. Family Newspeak is a greatly reduced and simplified vocabulary and grammar of the English language, whose aim is to neutralize the family’s original design. The objective is apparently to make any alternative thinking regarding notions of the nature of marriage, parenting, and free exercise illegal and subject to both civil and criminal penalties. Effectively, Family Newspeak makes any form of critical thinking about homosexuality a “thought crime.” [\[FN130\]](#)

“It’s a beautiful thing, the destruction of words.” [\[FN131\]](#) Or is it? The destruction of words in this context appears to be an attempt to destroy marriage, parenting, religious freedom, and family, all to prohibit opinion that might be offensive. The lexicon of family law, or Family Newspeak, has become a war on the family itself. The language surrounding the marriage debate has not altered the nature of marriage or parenting. It has, however, revealed the truth of the issues inherent in alternative marriage demands as a strategy to entirely deconstruct the family itself.

[\[FNd1\]](#). John Brown McCarty Professor of Family Law, Regent University School of Law. This Article is part of the Liberty University Law Review’s Symposium entitled, “First Amendment Freedoms and Homosexual Rights: Can They Truly Co-Exist?” of which I was honored to be a participant, and I express my gratitude to Liberty’s law school for approaching such important substance in law. Copyright 2010 Lynne Marie Kohm. All rights reserved.

[FN1]. See, e.g., Freedom of Speech, Stanford Encyclopedia of Philosophy (first published Nov. 29, 2002, substantive revision Apr. 17, 2008), <http://plato.stanford.edu/entries/freedom-speech/> (last visited May 15, 2010) (assessing “the argument that speech can be limited because it causes offense rather than direct harm”); Giving Oral Expression “Free Rein”: Implications of Diversity of University Hate Speech Codes, *Ethnic Stud. Rev.* (Apr. 30, 1997), <http://www.encyclopedia.com/doc/1P3-881127341.html> (last visited May 15, 2010). See also, e.g., Canada, where the popular weekly magazine Maclean's published “Why the Future Belongs to Islam,” an excerpt from Mark Steyn, *America Alone* (2006). The Canadian Islamic Congress (CIC) found the article injurious to its “dignity, feelings and self-respect” when the article traced the historic rise of Islam around the world. Kate Lunau, Canadian Islamic Congress Launches Human Rights Complaint Against Macleans, Nov. 30, 2007, http://www.macleans.ca/article.jsp?content=20071130_111821_7448 (last visited May 15, 2010). “Maclean's is ‘flagrantly Islamophobic’ and ‘subjects Canadian Muslims to hatred and contempt,’ according to a CIC statement.” Barry Artiste, Canada: Islamic Congress Sues Maclean's Magazine, *NowPublic*, Dec. 18, 2007, <http://www.nowpublic.com/crime/canada-islamic-congress-sues-macleans-magazine> (last visited May 15, 2010).

[FN2]. “‘Diversity’ means more than just acknowledging and/or tolerating difference.” College of Liberal Arts and Sciences, Iowa State University, Notes from the Dean on Diversity, <http://www.las.iastate.edu/about/diversity/definition.shtml> (last visited May 15, 2010); see also University of Kansas Medical Center's Human Capital Management Diversity Initiative, <http://www2.kumc.edu/hr/diversity/didefinition.html> (last visited May 15, 2010).

[FN3]. See Gerald Ulemen, *The Price of Free Speech: Campus Hate Speech Codes*, Markkula Center for Applied Ethics, Santa Clara University (2008), <http://www.scu.edu/ethics/publications/iie/v5n2/codes.html> (last visited May 15, 2010).

At Emory University, certain conduct that is permissible off campus is not allowed on campus. Specifically, some speech and behaviors are prohibited in Emory's version of what are derogatorily labeled “politically correct” codes but are more commonly known as hate speech codes. Emory's code begins with its definition of banned behavior.

Discriminatory harassment includes conduct (oral, written, graphic or physical) directed against any person or, group of persons because of their race, color, national origin, religion, sex, sexual orientation, age, disability, or veteran's status and that has the purpose or reasonably foreseeable effect of creating an offensive, demeaning, intimidating, or hostile environment for that person or group of persons.

There were approximately 75 hate speech codes in place at U.S. colleges and universities in 1990; by 1991, the number grew to over 300. School administrators institute codes primarily to foster productive learning environments in the face of rising racially motivated and other offensive incidents on many campuses.

Id.

[FN4]. Regulation of Fighting Words and Hate Speech, Exploring Constitutional Conflicts, 2001-2007, <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/hatespeech.htm> (last visited May 15, 2010).

[FN5]. U.S. Const. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”).

[FN6]. See Zachary Larsen, *The Egalitarian First Amendment: Its History and a Critique on the Grounds of Text, Rights, Negative Liberty, and Our Republican Constitutional Structure*, 31 *N.C. Cent. L. Rev.* 53 (2009) (noting the First Amendment as once the center of liberty, now the center of “negative liberty”).

[FN7]. See *The Heritage Guide to the Constitution* 302-18 (Edwin Meese III, Matthew Spaulding & David Forte eds., 2005) (discussing the case law relying on the First Amendment).

[FN8]. Frederick Schauer, *The Exceptional First Amendment* (2008).

[FN9]. Jeremy Waldron, *Temperamental Justice*, N.Y. Rev. Books, May 10, 2007.

[FN10]. Hate speech may be defined as bigoted speech attacking or disparaging a social or ethnic group or a member of such a group. Floyd Abrams, *Hate Speech: The Present Implications of a Historical Dilemma*, in Jane Duncan, *Between Speech and Silence: Hate Speech, Pornography and the New South Africa* (1996); see also Samuel Walker, *Hate Speech: The History of an American Controversy* (1994).

[FN11]. George Orwell, 1984 (Signet Classic 1984) (1949).

[FN12]. *Id.* at 46.

[FN13]. *Id.* at 246-56.

[FN14]. *Id.* at 27.

[FN15]. Orwell refers to a violation of Newspeak as a “thought crime,” *id.* at 46, and even Congressional representatives could recognize this concept when they saw it in action in the United States Senate recently on a hate crimes bill passed by the Senate. See David Stout, *Senate Votes To Expand Hate-Crime Protection*, N.Y. Times, Oct. 23, 2009, at A18.

Opponents argued to no avail that the new measure was unnecessary in view of existing laws and might interfere with local law enforcement agencies. Senator Jim DeMint, Republican of South Carolina, said he agreed that hate crimes were terrible. “That’s why they are already illegal,” Mr. DeMint said, asserting that the new law was a dangerous, even “Orwellian” step toward “thought crime.”

Id.

[FN16]. Orwell, *supra* note 11, at 25-27, 246-56.

[FN17]. *Id.* at 246-47.

[FN18]. *Id.* at 45-46, 248.

[FN19]. See Carl Hulse, *House, 281-146, Votes To Define Anti-Gay Attacks as Hate Crimes*, N.Y. Times, Oct. 9, 2009, at A1, available at <http://www.nytimes.com/2009/10/09/us/politics/09hate.html> (last visited May 15, 2010).

[FN20]. *Id.* (quoting Representative Susan A. Davis, Democrat from California, a leading supporter of the legislation).

[FN21]. See *infra* notes 24, 27.

[FN22]. Cf. *infra* notes 55-56.

[FN23]. This term is used hereafter throughout this Article to bring terminology to the lexicon changes in family law.

[FN24]. *Equal Marriage for Same Sex Couples, Marriage Equality in Canada*, Jul. 1, 2006, <http://www.samesexmarriage.ca/equality/incanada.html> (last visited May 15, 2010). “The Miscellaneous Statutes (Domestic Relations) Amendment Acts amended the definition of ‘spouse’ in some 24 provincial statutes to treat same-sex couples equally with opposite-sex married couples, in areas including adoption, spousal support, inheritance rights, pensions, survivor benefits, and matrimonial property.” *Id.* Same-sex cohabitants are included in the new lexicon as well. “The definition of a common law relationship has been changed from a man and a woman co-habiting outside of marriage to two persons co-habiting outside of marriage.” *Id.*

[FN25]. See *infra* notes 59-69 and accompanying text.

[FN26]. See, e.g., [Elisa B. v. Super. Ct., 117 P.3d 660 \(Cal. 2005\)](#).

[FN27]. Commonwealth of Massachusetts, One-Day Marriage Designations, Jan. 18, 2010, http://www.mass.gov/Agov3/docs/one_day_marriage_designation.pdf (last visited May 15, 2010); see also MassResistance, This Is the Massachusetts Marriage License, Jan. 19, 2010, http://www.massresistance.org/docs/marriage/romney/mass_marriage_license.html (last visited May 15, 2010) (noting that “‘Husband’ and ‘Wife’ has [sic] been replaced by ‘Party A’ and ‘Party B’”).

[FN28]. For example, Family Newspeak changes educational curriculum, see *infra* notes 42-49, and prohibits free speech and free exercise of religion, see *infra* Part IV.

[FN29]. In Orwell's Newspeak, the English language, or “Old Speak,” was to be completely replaced by “Newspeak” by 2050 in Ingsoc, to incorporate English Socialism. Orwell, *supra* note 11, at 246.

[FN30]. The title of Constitution Day celebration in the Regent University Library on September 18, 2009 was “Speak at Your Own Risk,” to honor the First Amendment. See *Speak at Your Own Risk*, <http://regent-lawnews.blogspot.com/2009/09/speak-at-your-own-risk.html> (Sept. 16, 2009) (last visited May 15, 2010) (“The 5th Annual Constitution Day on September 17th addressed the issues of freedom of expression and new developments in first amendment interpretation.”); see also *Speak at Your Own Risk*, <http://regentfamilyrestoration.blogspot.com/2009/09/speak-at-your-own-risk.html> (Sept. 19, 2009) (last visited May 15, 2010).

[FN31]. See, e.g., The Heritage Guide to the Constitution, *supra* note 7, at 302 (discussing the mutual tension the Supreme Court of the United States has placed between the two religion clauses).

[FN32]. Orwellian theory in 1984 set the year 2050 as the target for language changes to be completed. Orwell, *supra* note 11, at 246-56.

[FN33]. See, e.g., The Heritage Guide to the Constitution, *supra* note 7, at 308 (discussing [Reynolds v. United States, 98 U.S. 145 \(1879\)](#), where the Supreme Court confronted polygamy, then required by the Mormon religion, and upheld the sanctity of marriage and the state's legitimate interest in regulating conduct related to marriage).

[FN34]. *Halpern v. Canada*, [2002] 60 O.R.3d 321, 456-57 (Can.) (expanding marriage to include same-sex pairs).

[FN35]. Lynn D. Wardle & Laurence C. Nolan, *Fundamental Principles of Family Law* 118 (2d ed. 2006).

[FN36]. *Halpern v. Att'y Gen.*, [2003] 65 O.R.3d 161, 199-200 (Can.). The point here is that since marriage in its new definition does not create children, children could have, e.g., two mothers, and have no right to know the identity of their fathers, or vice versa.

[FN37]. Wardle & Nolan, *supra* note 35, at 118. Wardle and Nolan add a discussion on the Universal Declaration of Human Rights and other multilateral international conventions and documents that define the right to marry as a basic human right, noting that:

The national constitutions or fundamental charters of more than 130 nations make specific reference to and guarantee special constitutional protections for “the right to marry” and/or the “fundamental” importance of marriage and the family, and some imply a definition. At least 32 nations have constitutional provisions that define

marriage as the union of a man and a woman.

Id. at 119.

[FN38]. [Goodridge v. Dep't of Pub. Health, 798 N.E.2d 941 \(Mass. 2003\)](#).

[FN39]. [Mass. Gen. Laws ch. 207, §§ 19-20](#) (2007). “Far from being ambiguous, the undefined word ‘marriage,’ as used in G.L. c. 207, confirms the General Court’s intent to hew to the term’s common-law and quotidian meaning concerning the genders of the marriage partners.” [Goodridge, 798 N.E.2d at 952-53](#).

[FN40]. Memorandum from Thomas W. Payzant to the Boston School System (May 13, 2004), as cited in Scott Thomas Fitzgibbon, *Some Observations on Same-Sex Marriage and Its Recognition* (May 2009) (unpublished manuscript, on file with author).

[FN41]. Id.

[FN42]. Id.

[FN43]. [Parker v. Hurley, 474 F. Supp. 261 \(D. Mass. 2007\)](#) (requiring public school curriculum to conform to [Goodridge](#)).

[FN44]. See Fitzgibbon, *supra* note 40.

[FN45]. Many schools in Massachusetts have chosen to include in their curricula books that promote homosexuality in ways that connect with children. For example, one such book is called *King and King*. “Publishers Weekly categorized *King and King*, a fairy tale in which a prince seeks a bride but falls in love with another prince, as appropriate for ages 6 and up.” Gay & Lesbian Advocates & Defenders, *Massachusetts, Marriage Equality, and Schools: A Fact Sheet for Marriage Equality Supporters*, <http://www.glad.org/uploads/docs/advocacy/schools-fact-sheet-ma.pdf> (last visited May 15, 2010).

[FN46]. The social consequences of legal developments promoting same-sex marriage in Massachusetts have affected educational practices, resulting in a “zero-tolerance policy” for speech that “may create a climate of intolerance,” effectively chilling discourse adverse to expanded notions of marriage, shutting out student disagreement or discussion, as well as parents who may object. See Scott Thomas Fitzgibbon, *Social Developments in Massachusetts and Elsewhere Ensnuing upon Same-Sex-Marriage Initiatives*, Oct. 14, 2005, <http://ssrn.com/abstract=869998> (last visited May 15, 2010).

[FN47]. See [Lexington Public Schools, Diversity Program, 2007, http://lexopen-gov.com/Documents/Diversity%20Curriculum%20-%20Kindergarten.pdf](#) (last visited May 15, 2010), cited in Fitzgibbon, *supra* note 40, at 5.

[FN48]. See *id.*; see also Human Rights Campaign Home Page, www.hrc.org (last visited May 15, 2010).

[FN49]. These states include New Hampshire ([N.H. Rev. Stat. Ann. §§ 457:1-2 \(2010\)](#)), Connecticut ([Kerrigan v. State, 957 A.2d 407 \(Conn. 2008\)](#)), Iowa ([Varnum v. Brien, 763 N.W.2d 862 \(Iowa 2009\)](#)), and Vermont ([Vt. Stat. Ann. tit. 15, §§ 5, 8 \(2009\)](#)).

[FN50]. Kimberly N. Chehardy, *Conflicting Approaches: Legalizing Same-Sex Marriage Through Conflicts of Law*, 8 Conn. Pub. Int. L.J. 131, 133 (2009).

[FN51]. Id. at 136 (“As opposed to marriage, four states have adopted civil union laws: California, New Hampshire,

New Jersey, and Oregon.”). Since the publication of Chehardy's piece in 2009, New Hampshire has converted its civil union statute to “same-sex marriage” ([N.H. Rev. Stat. Ann. §§ 457:1-2](#)), and New Jersey has considered doing the same but retains civil unions for same sex couples. At the time of the publication of this Article, litigation over California's marriage laws continues. See [In re Marriage Cases, 183 P.3d 384 \(Cal. 2008\)](#); *Perry v. Schwarzenegger*, No. 3:09-cv-002292 (N.D. Cal. 2010).

[FN52]. Defense of Marriage Act (DOMA), [Pub. L. No. 104-199, 110 Stat. 2419 \(1996\)](#) (codified at [1 U.S.C. § 7 \(2006\)](#), [28 U.S.C. § 1738C \(2006\)](#)).

[FN53]. Posting of Kate Phillips to The Caucus, Specter Calls for Repeal of Marriage Act, <http://thecaucus.blogs.nytimes.com/2009/10/27/specter-calls-for-repeal-of-marriage-act> (Oct. 27, 2009, 12:59 EST) (last visited May 15, 2010).

[FN54]. See, e.g., Sandra A. Miller, Love's New Frontier, *Boston Globe*, Jan 3, 2010, available at http://www.boston.com/bostonglobe/magazine/articles/2010/01/03/loves_new_frontier/ (last visited May 15, 2010) (describing the polyamory culture of Boston, Massachusetts in the wake of the legalization of same-sex marriage in that state).

[FN55]. Principles of the Law of Family Dissolution § 2.03(c) (2000). When a parent has “performed a share of the caretaking functions that was equal to or greater than that performed by the legal parent with whom the child primarily lived,” he or she is determined to be a de facto parent. *Id.*

[FN56]. *Id.* For a thorough analysis of the ALI's principle on de facto parenthood, see David M. Wagner, [Balancing “Parents Are” and “Parents Do” in the Supreme Court's Constitutionalized Family Law: Some Implications for the ALI Proposals on De Facto Parenthood](#), 2001 *BYU L. Rev.* 1175.

[FN57]. See [Cal. R. Ct. 5.502\(10\)](#) (2010) (“‘De facto parent’ means a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period.”).

[FN58]. See, e.g., [Stadter v. Siperko, 661 S.E.2d 494 \(Va. Ct. App. 2008\)](#) (clarifying a rejection of the de facto parent doctrine based on Virginia's constitutional protection of marriage).

[FN59]. [Cal. Fam. Code §§ 7600-7730 \(West 2004\)](#).

[FN60]. See [Ariz. Rev. Stat. § 25-415](#) (2010), [Cal. Fam. Code § 7611 \(West 2004\)](#), [Colo. Rev. Stat. § 14-10-123 \(2005\)](#), [Ind. Code § 31-9-2-35.5 \(2005\)](#), [Ky. Rev. Stat. Ann. § 403.270 \(West 2009\)](#), [Minn. Stat. § 257C.08 \(2007\)](#), [Or. Rev. Stat. § 109.119](#) (2003), [Wash. Rev. Code §§ 26.10.010-26.10.220](#) (2010).

[FN61]. [Cal. R. Ct. 5.502\(10\)](#). There is no statute or rule that defines and clarifies the concept of de facto parent, but judges make this decision based on case law, on a factual analysis and a case-by-case basis. *Id.*; see also Judicial Council of California, *De Facto Parent Pamphlet*, Jan 1, 2007, <http://www.courtinfo.ca.gov/forms/documents/jv299.pdf> (last visited May 15, 2010).

[FN62]. *Black's Law Dictionary* 448 (8th ed. 2004).

[FN63]. [Elisa B. v. Super. Ct.](#), 117 P.3d 660 (Cal. 2005).

[FN64]. *Id.* (attributing parental rights to a mother's lesbian partner).

[FN65]. *Id.* In the case, ex-same-sex lesbian partners were denying their own responsibility for child support for their ex-partner's child. *Id.*

[FN66]. *Id.* This result was achieved despite the lack of clear factual analogy between a “putative father” and a “partner,” and the impossibility of the same gender partner being a natural parent.

[FN67]. [Cal. Fam. Code § 297.5\(j\)](#) (West 2004).

[FN68]. [Elisa B., 117 P.3d at 666](#). The court stated:

We perceive no reason why both parents of a child cannot be women. That result now is possible under the current version of the domestic partnership statutes, which took effect this year. Two women “who have chosen to share one another's lives in an intimate and committed relationship of mutual caring” and have a common residence can file with the Secretary of State a “Declaration of Domestic Partnership.”

Id. (citations omitted). Additionally, using previous case law, the court stated:

[Subdivision \(d\) of section 7611](#) states that a man is presumed to be the natural father of a child if “[h]e receives the child into his home and openly holds out the child as his natural child.” The Court of Appeal in *In re Karen C.* held that [subdivision \(d\) of section 7611](#) “should apply equally to women.” This conclusion was echoed by the court in *In re Salvador M.*, which stated: “Though most of the decisional law has focused on the definition of the presumed father, the legal principles concerning the presumed father apply equally to a woman seeking presumed mother status.”

Id. (citations omitted).

[FN69]. [Cal R. Ct. 5.502\(10\)](#) (2010).

[FN70]. For a discussion of this phenomenon, particularly with regard to the case of [Miller-Jenkins v. Miller-Jenkins, 912 A.2d 951 \(Vt. 2006\)](#), cert. denied, [127 S. Ct. 2130 \(2007\)](#), and the related Virginia proceedings, [Miller-Jenkins v. Miller-Jenkins, 637 S.E.2d 330 \(Va. Ct. App. 2006\)](#), see Courtney G. Joslin, [Interstate Recognition of Parentage in a Time of Disharmony: Same-Sex Parent Families and Beyond, 70 Ohio St. L.J. 563 \(2009\)](#). See also Rena M. Lindevaldsen, [Sacrificing Motherhood on the Altar of Political Correctness: Declaring a Legal Stranger To Be a Parent over the Objections of the Child's Biological Parent, 21 Regent U. L. Rev. 1 \(2008\)](#), for a thorough analysis of this phenomenon of averting the biological parent's fundamental rights.

[FN71]. “The National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 117th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.” National Conference of Commissioners on Uniform State Laws, Uniform Law Commission, About NCCUSL, 2002, [http:// www.nccusl.org/Update/DesktopDefault.aspx?tabid=9](http://www.nccusl.org/Update/DesktopDefault.aspx?tabid=9) (last visited May 15, 2010).

[FN72]. *Id.* (follow “Introduction” hyperlink).

Once the Committee of the Whole approves an act, its final test is a vote by states—one vote per state. A majority of the states present, and no less than 20 states, must approve an act before it can be officially adopted as a Uniform or Model Act.

At that point, a Uniform or Model Act is officially promulgated for consideration by the states. Legislatures are urged to adopt Uniform Acts exactly as written, to “promote uniformity in the law among the states.” Model Acts are designed to serve as guideline legislation, which states can borrow from or adapt to suit their individual needs and conditions.

Id.

[FN73]. *Id.* This concept has worked well in various areas of family law as the uniform acts have brought uniformity to various concepts that affect children as they move from state to state with their parents. *Id.*

[FN74]. *Id.*

[FN75]. The Full Faith and Credit Clause requires states to give effect to the acts, public records, and judicial orders of other states. [U.S. Const. art. IV, § 1](#). The full faith and credit doctrine is subject to what is sometimes called the “public policy exception,” as the clause “does not compel a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.” [Franchise Tax Bd. v. Hyatt, 538 U.S. 488, 494 \(2003\)](#) (internal quotation marks omitted). In family court matters, however, Congress has required some state uniformity with federal statutes such as the Parental Kidnapping Protection Act, [28 U.S.C. § 1738A \(2006\)](#), which effectively requires the state where a child resides with his or her fit natural parent to submit its custody and parentage rules to a state with unique concessions favoring a different category of parent, namely de facto parents or statutory parental rights based in a civil union, such as has occurred in the Miller-Jenkins saga. See supra note 70.

[FN76]. See Unif. Parentage Act, 9B U.L.A. 295 (1973), available at <http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/upa7390.htm> (last visited May 15, 2010). The NCCUSL worked over the early part of the twenty-first century to develop an updated Act that would provide for new techniques in reproductive technology to protect children and their families. See Unif. Parentage Act, 9B U.L.A. 378 (amended 2002), available at <http://www.law.upenn.edu/bll/archives/ulc/upa/final2002.htm> (last visited May 15, 2010).

The most important uniform act addressing the status of the nonmarital child was the Uniform Parentage Act approved in 1973 As of December, 2000, UPA (1973) was in effect in 19 states stretching from Delaware to California; in addition, many other states have enacted significant portions of it. Among the many notable features of this landmark Act was the declaration that all children should be treated equally without regard to marital status of the parents. In addition, the Act established a set of rules for presumptions of parentage, shunned the term “illegitimate,” and chose instead to employ the term “child with no presumed father.”

Id.

[FN77]. California Uniform Parentage Act, [Cal. Fam. Code §§ 7600-7730 \(West 2004\)](#).

[FN78]. See Unif. Parentage Act, 9B U.L.A. 378 (amended 2002).

[FN79]. National Conference of Commissioners on Uniform State Laws, supra note 71.

[FN80]. California Uniform Parentage Act, [Cal. Fam. Code §§ 7600-7730 \(West 2004\)](#).

[FN81]. See [Elisa B. v. Super. Ct., 117 P.3d 660, 664-67 \(Cal. 2005\)](#).

[FN82]. This is precisely what is happening in the case of [A.K. v. N.B., No. 2070086, 2008 Ala. Civ. App. LEXIS 316 \(Ala. Civ. App., May 23, 2008\)](#), reh'g denied, 2008 Ala. Civ. App. LEXIS 821 (Ala. Civ. App. Nov. 21, 2008).

[FN83]. Child and Family Services Act, R.S.O. 1990, ch. C.11, § 61(6) (2009) (Can.).

[FN84]. Id.

[FN85]. Dep't of Justice (Can.), Civil Marriage Act, Feb. 2005, http://www.justice.gc.ca/eng/news-nouv/nr-cp/2005/doc_31376.html (last visited May 15, 2010).

[FN86]. Institute for American Values, *The Future of Family Law: Law and the Marriage Crisis in North America* 39 (Dan Cere, Principal Investigator, 2005), available at http://www.marriagedebate.com/pdf/future_of_family_law.pdf (last visited May 15, 2010). Marriage has been defined throughout time as the sanctioned union between a man and a woman for life, the traditional conjugal view. The close relationship or companionate model attempts to mimic that conjugal design with similar functions, in a completely new and different form. See generally id.

[FN87]. Recall that the Netherlands redefined marriage to include same-sex partners in 2001, Belgium in 2003, and Spain and South Africa in 2005. Wardle & Nolan, *supra* note 35, at 118.

[FN88]. *L. v. Finland*, 2000 Eur. Ct. H.R. 176, available at <http://www.bailii.org/eu/cases/ECHR/2000/176.html>.

[FN89]. *Id.*

[FN90]. E-mail from G. Kristian Miccio, Associate Professor of Law, Sturm College of Law, University of Denver, to Diane Bales (Jan. 15, 2010, 06:53 EST) (on file with author). This conference coordinator sent out a mass e-mail with this invitation:

Register for the Motherhood Conference early and take advantage of a reduced registration fee. Join scholars and advocates from across the U.S., Canada, Israel, the U.K., Ireland and Argentina as we celebrate and deconstruct motherhood in the 21st Century.

.....
G. Kristian Miccio, LL.M, J.S.D., Associate Professor of Law, Sturm College of Law, University of Denver.
Id.

[FN91]. Norval Glenn & Barbara Dafoe Whitehead, *Nat'l Fatherhood Initiative, Mama Says: A National Survey of Mothers' Attitudes on Fathering* (2009), available at <http://216.235.198.211/Document.Doc?id=128> (last visited May 15, 2010).

[FN92]. Hulse, *supra* note 19 (“The House voted . . . to expand the definition of violent federal hate crimes to those committed because of a victim's sexual orientation, a step that would extend new protection to lesbian, gay and transgender people.”).

[FN93]. *Id.*

[FN94]. *Id.* (“Republicans criticized the legislation, saying violent attacks were already illegal regardless of motive.”).

[FN95]. *Id.* “‘The idea that we're going to pass a law that's going to add further charges to someone based on what they may have been thinking, I think is wrong,’ Mr. Boehner said.” *Id.* It is also noteworthy that the measure was attached to an essential \$681 billion military policy bill. *Id.*

[FN96]. Orwell, *supra* note 11, at 7, 246-56 (Newspeak clarified to include thought crimes).

[FN97]. Representative Mike Pence of Indiana said the measure “could inhibit freedom of speech and deter religious leaders from discussing their views on homosexuality for fear that those publicly expressed views might be linked to later assaults.” Hulse, *supra* note 19.

[FN98]. Pete Vere, *Canada's Human Rights Beef with Catholics*, Feb. 5, 2008, <http://www.zenit.org/article-21689> (last visited May 15, 2010).

[FN99]. *Id.*

[FN100]. *Id.* (“The complaint against Father de Valk is just one of several complaints against Christians that Canada's human rights commissions have investigated in recent years.”).

[FN101]. *Id.*

Christian groups have a losing record before Canada's human rights tribunals for alleged discrimination. In November 2005, the British Columbia Human Rights Tribunal ordered a Knights of Columbus council to pay two

lesbians \$1,000 each in damages, plus legal costs, after the council declined to rent their hall to the couple for a same-sex marriage ceremony.

In 2000, the Ontario Human Rights Commission fined Scott Brockie, a Protestant print-shop owner, \$5,000 for declining to print, on moral grounds, homosexual-themed stationary [sic]. The same tribunal fined London, Ontario, \$10,000, plus interest, in 1997 when Mayor Diane Haskett declined to proclaim a gay pride day for the city. Id.

[FN102]. Canadian Press, Calgary Bishop Defiant About Gay Marriage Views, Mar. 31, 2005, http://www.ctv.ca/CTVNews/Canada/20050331/calgary_bishop_050330/ (last visited May 15, 2010).

Bishop Fred Henry wrote a pastoral letter to his parishioners last January condemning same-sex marriage. A column based on the letter was also published in the Calgary Sun newspaper. "Since homosexuality, adultery, prostitution and pornography undermine the foundations of the family, the basis of society, then the State must use its coercive power to . . . curtail them in the interests of the common good," Henry wrote.

The letter and column prompted two complaints against Henry to the Alberta Human Rights Commission. Id. (alteration in original).

[FN103]. Id.

"Those that support same-sex marriage want to shut the churches out of this important debate," the bishop said.

"Those who favour same-sex marriage have been given a full opportunity to state their views on the issue. But now they are saying anyone who speaks out against same-sex marriage is discriminating against homosexuals." Id.

[FN104]. Id.

In her complaint, Carol Johnson of Calgary said she was alarmed by Henry's remarks.

"I believe the publication of Bishop Henry's letter is likely to expose homosexuals to hatred or contempt," wrote Johnson.

"These remarks are particularly dangerous when made by a person in a position of trust and authority."

A second complaint from Norman Greenfield was received by both Henry and the commission on Tuesday. Stephen Lock, regional director of Egale Canada, a gay rights lobby group, said he doesn't dispute that Henry has an obligation to represent the views of his church, including on same-sex marriage.

But Lock said lumping homosexuality in with things like pornography and prostitution is going too far.

"When anyone starts calling for the coercive power of the State to suppress or curtail any legal activity, that's really oppressive to be saying stuff like that," Lock said.

Id.

[FN105]. Vere, *supra* note 98.

Once any one of the commissions has completed its investigation, it may then pass the case along to its respective human rights tribunal for adjudication. In British Columbia, individuals bring their complaints directly to the British Columbia Human Rights Tribunal.

The process favors the complainant over the accused, claim Father de Valk and other Christian critics of the commissions and tribunals. There is no cost to the one who files a complaint, and the commission provides legal support to the complainant. In contrast, the accused must pay his legal costs.

Additionally, contrary to the English legal tradition, there is a reverse onus requiring the accused to prove his or her innocence. "There's a presumption of guilt," said Bishop Fred Henry of Calgary, who himself was subject to two complaints before the Alberta Human Rights Commission in 2005 after publishing a pastoral letter defending the traditional definition of marriage earlier that same year.

"I really feel that we are into a crisis situation here where we are experiencing a trumping of religious freedom," said Bishop Henry.

Id.

[FN106]. Patrick B. Craine, Mexico Catholic Church Faces Violent Reaction for Defending True Marriage, Jan. 12, 2010, <http://www.lifesitenews.com/ldn/2010/jan/10011208.html> (last visited May 15, 2010). In response, the Archdiocese of Mexico has denounced what the bishops have labelled [sic] anti-Catholic "intolerance." "The insults and accusations against the Catholic Church and its ministers have multiplied in recent days, not only from several politicians of the Federal District, but also among many analysts and media commentators, who have expressed the degree of intolerance that has been reached in Mexico," the Archdiocese stated yesterday. Id.

[FN107]. *Id.* (“The Archbishop of Guadalajara, Cardinal Juan Sandoval Iniguez, has also commented, saying that the approval of same-sex ‘marriage’ is regrettable. Further, said the Cardinal, homosexual adoption ‘is the most absurd thing, because it is seriously damaging to the adopted child, as it completely distorts his capacity of identity.’”). The Mexican experience duplicates the Canadian experience, echoing the thoughts expressed above. See *supra* notes 34-36 and accompanying text.

[FN108]. Manhattan Declaration: A Call of Christian Conscience, Nov. 20, 2009, <http://www.manhattandeclaration.org/the-declaration/read.aspx> (last visited May 15, 2010).

[FN109]. Laurie Goodstein, Christian Leaders Unite on Political Issues, *N.Y. Times*, Nov. 20, 2009, at A22.

[FN110]. *Id.*

[FN111]. *Id.* An opponent of the manifesto agreed that likely points of controversy “could involve religious groups that provide social services to the public. Such organizations could be obligated to provide social services to gay people or provide spousal benefits to married gay employees.” *Id.*

[FN112]. *Boissoin v. Lund*, File 0801 07613, 2009 A.B.Q.B. 592 (Dec. 3, 2009), available at http://www.albertacourts.ab.ca/jdb%5C2003-%5Cqb%5Ccivil%5C2009%*2009abqb0592.pdf (prosecuting as hate sp eech for letter to a newspaper on homosexuality).

[FN113]. Groupe de Travail Mixte Contre L'homophobie, De L'egalite Juridique a L'egalite Social-Vers Une Strategie Nationale de Lute Contre L'homophobie (2007), <http://www.justice.gouv.qc.ca/english/publications/rapports/pdf/homophobiea.pdf> (last visited May 15, 2010).

[FN114]. See Douglas Farrow, The Government of Quebec Declares War on a ‘Homophobic’ and ‘Heterosexist’ Populace, Jan. 20, 2010, <http://www.ccr.ca/doc/Farrow%20article%20for%20upload.pdf> (last visited May 15, 2010).

[FN115]. *Id.* (quoting the policy itself, *supra* note 113).

[FN116]. *Elane Photography, LLC v. Willock*, No. CV-2008-06632 (N.M. 2d Jud. Dist. Ct. Dec. 11, 2009), available at <http://www.scribd.com/doc/24425459/Elainte-Photography-LLC-v-Vanessa-Willock-N-M-2nd-Dist-2008-06632-Dec-11-2009> (last visited May 15, 2010) (regarding a wedding photographer's religious objection to same-sex ceremony).

[FN117]. *Perry v. Schwarzenegger*, No. 09-17241 (9th Cir. Dec. 11, 2009) (compelling disclosure of Proposition 8 campaign information and donors).

[FN118]. See Kevin Freking, Housing Regs To Add Protections for Gays, *Associated Press*, Oct. 22, 2009, available at <http://abcnews.go.com/Politics/wireStory?id=8884432> (last visited May 15, 2010) (“Officials said the Fair Housing Act, which prohibits discrimination in the sale and rental of homes, doesn't specifically cite gays and lesbians when it comes to the groups protected. The department wants to make sure that gays, lesbians, bisexuals and transgender people are treated the same as everyone else when it comes to eligibility for housing programs.”).

[FN119]. *Id.* (“The extent of such discrimination is unknown, but HUD Secretary Shaun Donovan said it undoubtedly exists.”).

[FN120]. *Id.*

[FN121]. The California Marriage Protection Act, [Cal. Const. art. I, § 7.5](#), which was immediately effective upon its passage according to Cal. Const. art. XVIII, was at once challenged in *Perry v. Schwarzenegger*, No. 3:09-cv-002292 (N.D. Cal. 2010), which is still ongoing.

[FN122]. See Orwell, *supra* note 11, at 27 (“Thoughtcrime does not entail death; Thoughtcrime IS death.”).

[FN123]. Edwin Meese, III, *Stacking the Deck Against Proposition 8*, N.Y. Times, Jan. 11, 2010, at A17.

The entire premise of this litigation is disquieting—that traditional marriage is nothing but “the residue of centuries of figurative and literal gay bashing,” as David Boies, a lawyer for the plaintiffs, has written. . . .

. . . .
But most disquieting for supporters of traditional marriage is a series of pretrial rulings issued by Judge Vaughn R. Walker that have the effect of putting the sponsors of Proposition 8, and the people who voted for it, on trial.

Id.

[FN124]. See, e.g., Jessica Garrison, *Gay Marriage Foes Challenge Ballot Wording*, Jul. 28, 2008, <http://www.azcentral.com/news/articles/2008/07/28/20080728gaymarriagecalif0728-ON.html> (last visited May 15, 2010); *Lawsuit Filed To Challenge California Ballot's ‘Inflammatory’ Rewording of Marriage Amendment*, Cath. News Agency, Aug. 1, 2008, <http://www.catholicnewsagency.com/new.php?n=13415> (last visited May 15, 2010); see also *Proposition 8: Words Matter*, <http://www.beyondhomophobia.com/blog/2008/09/18/proposition-8-words-matter> (Sept. 18, 2008, 12:00 PM PST) (last visited May 15, 2010).

Briefly stated, past studies suggest that at least some voters might be influenced by how the ballot measure is worded—somewhat less likely to support a proposition framed as banning marriage equality, somewhat more likely to support one that is framed as simply defining marriage as the union of a man and a woman.

Opponents of marriage equality apparently understand the importance of wording, and they’ve gone to court about it.

Id.

[FN125]. See, e.g., Adam Liptak, *Court To Rule on Right to Privacy for Referendum Petition Signers*, N.Y. Times, Jan. 16, 2010, at A13, available at <http://www.nytimes.com/2010/01/16/us/politics/16scotus.html> (last visited May 15, 2010).

[FN126]. See, e.g., Hulse, *supra* note 19.

[FN127]. See Lynne Marie Kohm, *Marriage by Design*, in *Marriage and Same-Sex Unions: A Debate* 81 (Lynn D. Wardle, Mark Strasser, William C. Duncan & David Orgon Coolidge eds., 2003); Lynne Marie Kohm, *Reply to Arthur S. Leonard*, in *Marriage and Same-Sex Unions: A Debate*, *supra*, at 78.

[FN128]. See generally Orwell, *supra* note 11.

[FN129]. *Id.* at 46.

[FN130]. *Id.* at 27; see also Hulse, *supra* note 19.

[FN131]. Orwell, *supra* note 11, at 45.

The primary focus of marriage is religious in nature to many people. In the current declining popularity of religion in Britain, such an institution is simply not representative of the majority beliefs. British society is too diverse now to have a moral consensus that goes beyond small groups. Facebook. Twitter. Pinterest. Email. Related Debates: Forced marriage should be banned. Do half of all marriages really end in divorce? It's probably the most often quoted statistic about modern love, and it's a total buzz kill, in line with saying that half of all new shoes will give you hammertoes or that 50% of babies will grow up to be ugly. Now the divorce stat is coming under scrutiny and not just because of its unromanticity. "It's a very murky statistic," says Jennifer Baker, director of the marriage- and family-therapy programs at Forest Institute, a postgraduate psychology school in Springfield, Mo. She's often erroneously credited with a The marriage debate is not about homosexuality, but about marriage. Upholding the truth about marriage doesn't deprive anyone of the joys of companionship, as many supporters of same-sex marriage suppose. In What Is Marriage? Man and Woman: A ... Marriage is the human good that marriage law should foster is rather a union of persons at every level (mind, heart, and body) and for the whole of life, inherently oriented to family life. Properly understood, such comprehensive union requires a man and a woman. The common good depends on enshrining this conjugal view of marriage in law; the argument for redefining marriage contradicts itself, and embracing it would harm the common good in definable ways.