Articles

What Does Bristol Palin Have to Do with Same-Sex Marriage?

By June Carbone*

Introduction

BRISTOL PALIN MAY BE EVERY parent’s nightmare. At the time presidential candidate John McCain chose her mother, Sarah Palin, the then-governor of Alaska, as his 2008 vice presidential running mate, Bristol was seventeen, unmarried, and pregnant.1 The Palins quickly announced that Bristol was engaged to the father, Levi Johnston, but that relationship broke up before the marriage (though after the election).2 Bristol gave birth to a son, Tripp, and, as a single parent, has become a well-paid spokesperson for the abstinence-only cause.3

The answer to the question: “What does Bristol have to do with same-sex marriage?” should be “nothing,” but it may also be “everything.” Arguing “nothing” is straightforward. As columnist Steve Blow wrote in the Dallas Morning News:

When opponents talk about the “defense of marriage,” they lose me. James Dobson’s Focus on the Family just sent out a mailer to 2.5 million homes saying: “The homosexual activists’ movement is poised to administer a devastating and potentially fatal blow to the

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2. Id.
traditional family.’ And I say, “Huh?” How does anyone’s pledge of love and commitment turn into a fatal blow to families?4

Responding to Steve Blow, Dr. James Dobson of Focus on the Family explains that:

The legalization of homosexual marriage will quickly destroy the traditional family.

. . . [W]hen the State sanctions homosexual relationships and gives them its blessing, the younger generation becomes confused about sexual identity and quickly loses its understanding of lifelong commitments, emotional bonding, sexual purity, the role of children in a family, and from a spiritual perspective, the “sanctity” of marriage.5

Blow and Dobson talk past each other, and the differences between them illustrate the cultural chasm at the center of the modern family debate. The first of their differences in perspective is the sense of urgency they bring to the issue. Dobson frames the discussion in terms of the “destruction of the traditional family;” Blow does not see how the issue of same-sex marriage has any effect on his traditional and seemingly secure marriage. These differences in perspective reflect the changes affecting the country as a whole. The “traditional” family of biological mother, father, and child is in crisis. Divorce rates have leveled off near their historic highs,6 non-marital births are close to forty percent and continuing to rise,7 and, with the Great Recession, marriages fell to a record low in 2009.8 Yet, these changing family patterns do not affect everyone equally. The college educated middle-class’s divorce and non-marital births rates, which rose with those of the rest of the country in the seventies and early eighties, have fallen back to the levels of the mid-sixties. In contrast, divorce and non-marital birth rates for the rest of the country have continued to rise. Sin-

5. Id. at 47.
gle-parent families have become a marker of class. In those communities where unintended pregnancies and single-parent births are widespread, concerns about the moral fabric of the society are far more pointed and immediate.

Second, the ways in which Blow and Dobson frame their concerns reflect different assumptions about the source of family values and practices. When Blow cannot imagine how gay marriage might affect his commitment to his wife, he is describing a marital ideal that attributes the vitality of the relationship to the strength of the commitment between the two adults. In this world, a marriage between two adolescents, with or without a child, can only be as strong as the partners themselves. Dobson, in contrast, sees marriage as a state-sanctioned and societally-sanctioned institution that derives its meaning from collective notions about the importance of sexual purity, the role of children, and spiritual sanctity. The duty of young couples is to order their sexuality and childbearing in accordance with powerful spiritual norms. And those norms, not the individuals by themselves, determine marriage’s strength as an institution. Hence, Dobson’s perception of same-sex marriage as a threat: If gays and lesbians are free to depart from eternal (and, indeed, God-given) prescriptions for family life, why can’t young people like Bristol and Levi also choose to define the terms of their relationship on whatever basis they like? And if Bristol and Levi’s relationship in fact rests on no more than their individually crafted terms, how can it possibly survive the inevitable tensions that best young relationships?

Finally, the two views, if not the actual exchange between Blow and Dobson, reflect different approaches to the issue of family reconstruction—differences that in turn reflect different attitudes about the role of the state. Those who see family formation as a matter of individual choice tend to favor supplying seventeen-year-olds with access to contraception, training their own children to manage the lengthy period between sexual maturity and readiness for family formation, empirically testing the effectiveness of proposed government interventions, and leaving moral choices to the privacy of the bedroom. In short, they tend to be “modernists,” who prize autonomy, equality, and tolerance in the public square. Those who see the family, in crisis, however, are also more likely to view family formation as a moral issue that is an appropriate subject of state action. They are more

9. See infra Part II.A.
10. See Suzanne B. Goldberg, Sticky Intuitions and the Future of Sexual-Orientiation Discrimination, 57 UCLA L. Rev. 1375, 1396 (2010). (referring, for example, to the Institute for
likely to be traditionalists, who value a properly maintained hierarchical order and see the reaffirmation of moral authority as critical to an orderly society. These views, of course exist independently of the issue of same-sex marriage, and they interact with the larger political divisions in the United States, divisions that have become more intense over the last twenty years.11

The three elements that divide Blow and Dobson set the stage for the emergence of same-sex marriage as a cultural divisive and politically significant issue. Family change has increased the anxiety of some communities more than others. Those who are most threatened by the changes also tend to be the more traditionalist in their values orientation, and the perception of threatening cultural change tends to increase the perceived importance of traditional values. The expression of traditionalist values tends to correspond to a greater degree than in the recent past to partisan political identification. Same-sex marriage both symbolizes and sharpens these divisions, creating a climate ripe for political exploitation of the underlying differences.

This article will consider the ways in which cultural anxiety about the changing economy, class standing, and the family map onto the same-sex marriage debate. This article will start with a description of the nature of family change. The technocratic middle class, concentrated in urban areas and on the coasts, has adjusted to the long-term change in family roles and is doing quite well financially and culturally, with divorce and non-marital birth rates comparable to those of the mid-1960s—the period before the sexual revolution. Family conditions for America’s poor have stabilized with very high non-marital birth rates. For the middle group,12 divorce rates continued to climb through the 1990s while falling for the college educated and high school dropouts. And the most recent changes indicate that non-mari-

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12. Some scholars describe this group as what has historically been thought of as the “white working class,” that is, whites without degrees from four-year colleges whose income is in the lower-middle part of the income spectrum. See, e.g., Joan C. Williams, Reshaping the Work-Family Debate: Why Men and Class Matter 155–56 (2010). On family issues, as opposed to political issues, however, it should also be thought of as including what Williams refers to as the “settled working class,” regardless of race. Id. at 165. Williams argues that the cultural attitudes of this group are more easily described in terms of education than income. Id. at 155–57.
tal birth rates are continuing to increase for Latinas and whites without college degrees, transforming what had once been marriage-centered communities.\textsuperscript{13}

Second, this article will examine the relationship between anxiety about family change, traditionalism, and the growing culture divide about how to discuss—much less manage—family change.\textsuperscript{14}

Third, this article will examine the deliberate political manipulation of the anxieties underlying family change and the exacerbation of cultural differences.\textsuperscript{15}

Finally, the article will consider a central dilemma for the advocates of same-sex marriage. Opponents of same-sex marriage have used the issue to help solidify a broad-based conservative coalition. Does promotion of same-sex marriage ultimately depend on creating an equally broad coalition on the left or does the issue stand on its own? One of the ironies in the debate is that more tolerant attitudes toward sexual orientation are winning out even as the opposition to abortion (a culturally similar issue) seems to be strengthening.\textsuperscript{16} This article will maintain that the issue of fairness to gays and lesbians is compelling in ways that stand apart from the issue of family values more generally, and that the two components of the fight—fairness for gays and lesbians and more general opposition to hierarchy and rigid traditionalism—can and should operate independently. In the meantime, the issue of same-sex marriage is being used to obstruct what should be the true family debate; viz., the remaking of family relationships in an era of economic insecurity and growing inequality.

\section*{I. Class and Anxiety}

The changing family sets the stage for consideration of same-sex marriage. At a time when society sought to channel sexuality exclusively into marriage for purposes of reproduction, same-sex marriage was unthinkable—and still is for a portion of the population. In our book \textit{Red Families v. Blue Families}, Naomi Cahn and I describe modern changes in understandings of the institution and the divisions the changes produced. Economic changes have remade the connections between the family and the economy and have increasingly made fam-

\begin{itemize}
\item \textsuperscript{13} See infra Part I.
\item \textsuperscript{14} See infra Part II.A.
\item \textsuperscript{15} See infra Parts II.B, II.C.
\item \textsuperscript{16} See infra notes 120–24 and accompanying text.
\item \textsuperscript{17} CAHN \& CARRBONE, \textit{Red Families v. Blue Families}, supra note 1.
\end{itemize}
ily life a marker of economic inequality. These changes involve four interrelated factors: (1) the change in the life patterns of the middle class, producing a new, successful, but hard-to-achieve family strategy; (2) the erosion of the male premium for working class men that once served as the foundation for marital stability; (3) the improvement of working-class women’s job opportunities, increasing women’s independence and dissatisfaction with less than ideal marital partners; and (4) what Bill Bishop has termed “the big sort,” that is, the increased likelihood that Americans live in communities of like-minded individuals, with the increased mobility of the college graduates, in particular, creating greater concentrations of wealth and accelerating political and family divisions.

A. The Remaking of the Middle Class

The information economy, which places greater emphasis on formal education and technological skills, has increased the payoffs for investment in human capital for women as well as men. To realize the gains from higher education, though, women need to avoid early marriage (or at least childbearing) that derails educational accomplishments. Moreover, over the last quarter-century, access to the best positions has increasingly required experience and expertise through graduate programs, internships, and job changes. These changes mean that for the most ambitious, the twenties have become a time of experimentation, growth, and the avoidance of permanent commitments as young adults change cities, specialties, and partners. During this lengthy transition to adulthood, abstinence is unrealistic, sexual exploration is a private matter, and contraception is morally as well as practically compelled. The sexual revolution, rather than celebrating license, prizes discipline in the preparation for family life.

18. See id. at 33–46.
20. Id. at 35–37.
The most recent studies indicate that these changes have produced a new—and very successful—family strategy. For the most ambitious men and women, family formation comes after emotional maturity and financial independence. The new “blue” family model prepares children to go off to college, manage intimate relationships that will not lead to childbirth for perhaps more than a decade, settle in a city far from home, and build professional, social, and sexual relationships without extended family support.

The results for the most elite part of the population have been striking. While cohabitation has increased and marriage rates have declined, marriage rates have declined least for college-educated women—who were once less likely than other women to marry. At the same time, divorce rates for college graduates have fallen significantly, and by the mid-1990s they were back to the levels of 1965, before no-fault divorce. Non-marital birth rates for the same group, which never exceeded ten percent, had fallen by the year 2000 and the relationship between age and marital success has changed appreciably. Teen marriages have always had a high risk factor, but the divorce rates for those in their early twenties and those in their late twenties did not differ significantly for much of the mid-twentieth century. Paul Amato reports that today they do. In 2000, likelihood of divorce decreased as the age at marriage increased, well into a per-

25. Bishop, The Big Sort, supra note 11, at 133 (observing greater mobility of college graduates).
28. Id. at 617.
29. See, in particular, notes 31 and 32, infra, and accompanying text.
30. See, e.g., Paul R. Amato et al., Alone Together: How Marriage in America Is Changing 78–79 (2007) [hereinafter Amato et al., Alone Together]; Booth & Edwards, supra note 6, at 68, 71 (summarizing literature and observing that age at marriage is the single best predictor of divorce); Barbara Dafoe Whitehead & David Popenoe, Essay, The Marrying Kind: Which Men Marry and Why, The State of Our Unions: The Social Health of Marriage in America 6, 19 (2004), available at http://www.virginia.edu/marriageproject/pdfs/SOOU2004.pdf; see also Amato & Rogers, supra note 6, at 620 (efforts to indicate why suggest that greater infidelity at younger ages is a significant factor); Larry L. Bumpass & James A. Sweet, Differentials in Marital Instability, 37 Am. Soc. Rev. 754, 775 (1972) (finding that the biggest drops in marital instability occurred as the woman’s age of marriage increased from the mid-teens to the late teens (a ten-point drop), and that marital stability continued to improve as women’s age at marriage increased from the late teens to the early twenties (five-point drop), and from the early- to mid-twenties (three-point drop)).
son’s thirties. In the 1960s, when half of female college grads were married by the age of twenty-three, waiting increased the risk that the good catches would be gone. Today, the more successful marry later, and they increasingly marry similarly successful mates. At thirty-two, unlike twenty-two, there are fewer illusions about career prospects, alcohol use, or sexual preferences. Studies show that both the selection effects (the greater tendency of the successful to marry similarly successful mates) and the increase in age itself are independent protective factors producing more stable unions.

In this new system, investment in the human capital of young men and women pays off in greater financial success and greater relationship stability. Yet it requires training young people to manage autonomy as they attend universities farther from home and to negotiate longer periods on their own. Parents and neighbors in turn become more deferential to the choices of the financially independent and emotionally mature even if they would object vehemently to the same choices made by a seventeen-year-old or a twenty-year-old still living at home. In a cultural context that prizes autonomy, encourages tolerance, and emphasizes the importance of living up to one’s personally chosen values, acceptance of same-sex couples—together with greater non-marital cohabitation and more diverse family forms—follows as a matter of course.

B. Erosion of Working Class Male Income and Employment Stability

At the same time the new economy rewards those with the resources to garner graduate degrees and the discipline to avoid early childbearing, it has undermined support for traditional family formation practices. Akerlof, Yellin, and Katz describe the courtship patterns of working-class young couples in 1960 as sexual and brief, quoting a young man who explained, “If a girl gets pregnant, you

31. Amato et al., Alone Together, supra note 30, at 79.
married her. There wasn’t no choice. So I married her.'”35 Over the course of the 1950s, the shotgun wedding became so common that 30% of brides gave birth within 8 1/2 months of marriage—the highest figures since 1800.36 The community then expected the husband to support the family and the wife to stay with him so long as he did. Studies indicate that the more children a woman had under the age of five, the less power she had within a relationship and the less her ability to leave.37 The net result was that so long as the young husband could support the family, the pressures for the young wife to stay with him were considerable. A sexual division of labor that gave men income-producing opportunities unavailable to most women cemented family stability.

Today, both the male premium that allowed men to earn substantially more than women, and the decent-paying blue-collar jobs that allowed most husbands to support a family on his own are gone. The Journal of Economic Literature, for example, reports that that while wages across the population rose in lockstep through the 1960s, they began to diverge in 1970, with the top ten percent of the population enjoying a substantial increase in earnings that has accelerated since the 1980s, the middle stagnating, and the relative earning power of the bottom ten percent of males declining significantly over the last forty years.38 During the same period, investments in education have increased, with those holding advanced degrees earning 125% of what


they earned in 1973. In contrast, those without a high school diploma have lost ground, earning less than 80% of their 1973 wages by the mid-1990s.\textsuperscript{39} While the boom in the late 1990s improved earnings across the board, the Great Recession has eroded the gains. Even the middle group, which attended college but did not graduate, lost ground in the decade between 1985 and 1995,\textsuperscript{40} and the men in that group have disproportionately felt the effects of the recent economic downturn.\textsuperscript{41}

The traditional family depended on male ability to earn a “family wage.” The less education, expertise, and experience a husband has, the less likely that is to be true in the modern economy.

\textbf{C. The Rise in “Pink Collar” Opportunities}

Complementing the erosion of a male premium is an increase in employment opportunities for women and in women’s educational achievement. The modern economy has produced a substantial expansion in the service sector and in the type of health care, food service, child care, and administrative jobs that women have historically held.\textsuperscript{42} At the same time, women’s educational achievement and workforce participation has increased. Indeed, women’s accomplishments now outpace men’s. More women than men graduate from high school (61.5% to 59.8%), and women have become more likely than men to graduate from college (21.3% to 17.8%).\textsuperscript{43} Partly as a result, women’s occupational status now exceeds men’s. For those between the ages of 18 and 34, 40 percent of employed women hold professional, technical, or white-collar positions compared to 25 percent of employed men.\textsuperscript{44}


\textsuperscript{40} Fed. Reserve Bank of S.F., supra note 39.


\textsuperscript{44} Id.
Women’s greater opportunities and achievements—together with the decline in working-class male wages—increase the importance of two-career families. Yet, the percentage of parents who report that dual-parent employment interferes with family life has increased substantially since 1980, and the divorce rate of those reporting economic distress has more than doubled in the last twenty years, even as the marital stability of the better-off has improved.45 Analyzing this data, Paul Amato concludes that:

[D]ual-earner arrangements are linked with positive marital quality among middle-class couples and with negative marital quality among working-class couples. Although the additional income provided by working class wives helps . . . their families, these financial benefits come with a steep price in the form of greater marital tension, low job satisfaction, and a desire [to] . . . decrease their hours of employment or return to . . . homemaking.46

This new family structure increases the dissatisfaction of working mothers at the same time that it undermines the norms of dependence that often locked unhappy couples into marriage.47 The result is increased working class divorce rates and, over the last decade and a half, more non-marital births as working women have become pickier as the supply of attractive mates diminishes.

D. The Big Sort

Greater interstate mobility has concentrated the class-based effects of these economic and social changes. Studies indicate that the college-educated middle class is more mobile than those without college degrees. Journalist Bill Bishop reports that “only 19 percent of young people with only a high school degree moved between states, but 45 percent of those with more than a college education” made such a move.48 Those with the most education are, in turn, attracted to cities and states that offer the best job opportunities. With the tech

45. Amato et al., Alone Together, supra note 30, at 107. The percentage of men reporting that their employment conflicted with family life rose from just under 25% to about 45%; the percentage of their wives reporting a conflict rose from approximately 17% to just under 30%. Id. The percentage of husbands observing that their wife’s job created tensions rose from just over 10% in 1980 to over 20% in 2000, while the wives’ reporting interference from their own job rose from about 22% to about 34% in the same period. Id.
46. Id. at 139; see also id. at 168 fig.5.9, 173 (discussing the effect of mothers’ employment on working-class marriages).
47. Amato finds that the happiest couples tend to be either dual-career couples with satisfying jobs and egalitarian attitudes toward marriage or traditional couples where the husband earns enough to permit the wife to work part time. Amato et al., Alone Together, supra note 30, at 139.
48. Bishop, The Big Sort, supra note 11, at 133.
boom, the Boston Corridor, Silicon Valley in California, the area around Washington, D.C., and the Research Triangle in North Carolina have all become centers of innovation attracting highly educated—and mobile—workers. During the same period, the concentration of college graduates has become much higher in dynamic cities, such as Austin, Texas, rather than in rural areas, as compared to rustbelt cities such as Cleveland, Ohio. Family-oriented couples in turn have become more likely to choose locales with affordable housing, churches, and community activities that reflect their personal preferences. The increasing concentration of those with similar resources and perspectives magnifies geographic disparities in wealth and family structure.

The cumulative result of these changes is that family form has become a marker of class and culture. Divorce rates, for example, plateaued during the 1990s. But the overall numbers obscure the fact that divorce rates declined substantially for those with college degrees while continuing to rise for the rest of the population. During the same period, non-marital birth rates fell for the top and bottom quartiles of American women, while increasing for the middle. The wealthiest and most liberal parts of the country—the Northeast, California, and part of Virginia and upper Midwest—saw teen birth rates fall substantially over the last twenty years, but the rates have declined far less in the poorest parts of the country, particularly in the South and the plains.

E. Conclusion

Family change has occurred at different times, with a different overall impact for different parts of the country. For the most prosperous and liberal parts of the country, family stability and happiness have increased. For the poorest Americans, concentrated in urban

49. See id. at 131.
50. See Steve Sailer, Value Voters, AM. CONSERVATIVE, Feb. 11, 2008, available at http://www.amconmag.com/article/2008/feb/11/00016/. See Andrew Gelman et al., Red State, Blue State, Rich State, Poor State: Why Americans Vote the Way They Do 170 (2008) [hereinafter Gelman et al., Red State, Blue State] ("Republicans do better among married voters, who are more likely to end up in more affordable states that also happen to be more culturally conservative.").
51. McLanahan, supra note 27, at 612.
52. Id. at 612 fig.3.
centers, marriage has effectively disappeared. For Americans in the middle, particularly those in what have historically been marriage-centered communities, divorce rates have continued to rise. Over the last decade and a half, non-marital birth rates also have increased substantially for white women in their early twenties and, even more recently, for Latinas throughout their twenties. These changes threaten marriage as the foundation for childrearing in the parts of the country most committed to traditional values.

Part of what determines whether families feel they have adjusted to these economic and social changes is their flexibility in embracing new roles. In Alone Together, Amato addresses the dilemma at the core of family stability: Why, with greater ability to enter and leave marriage, has overall marital happiness remained about the same? His answer is that those who have redefined marriage using terms that husband and wife share are happier, whether they are a dual-career couple that shares egalitarian values or a deeply traditional couple that attends church together and remains committed to a gendered division of family obligations. Those couples, however, who would prefer traditional roles but find that the wife has to work to support the family, those couples who face economic distress, and those couples with divergent expectations about family life are very unhappy and more likely to divorce than they were a generation ago.

Accordingly, family anxiety is high throughout America, but with very different effects across class and geography.

II. Family, Traditionalism, and Politics

The fact that families are changing, that they are doing so in different ways for different parts of the population, and that these changes are causing different rates of anxiety in different groups, does not explain why these differences have become political. Nor does it explain why these changes frame the dispute over same-sex marriage or why the dispute is so intense.

The key to understanding the relationship between socio-economic change and same-sex marriage lies in two factors. First, cultural anxiety increases the appeal of traditionalism. Second, political differences, as they have developed over the last two to three decades,
track the rhetoric and worldviews of traditionalist versus modernist divisions. Combined, these factors inflame passions, making it harder for the two groups to talk to each other. This is particularly true within the context of a political system designed to call attention to divisive “wedge” issues and to institutional approaches that obstruct rather than promote compromise.

The political role of same-sex marriage accordingly begins with the reemergence of traditionalism as a partisan force, as well as the overlap between traditionalism, conservative ideology, geographic division, and political rhetoric. American political parties in the middle of the twentieth century were not particularly ideological, and their partisans did not starkly divide along traditionalist versus modernist lines. Today, however, they do, and these divisions correspond to divisions much deeper than those of party loyalty itself.

A. Traditionalists Versus Modernists

A variety of studies chart “values preferences”—individual preferences for types of values irrespective of content. These studies do not use a common vocabulary or definitions, nor do they agree on where the values come from. What they do find, though, is that basic political orientations account for a considerable degree of the difference in viewpoints, and that today political parties are more aligned with these basic viewpoints than they were in the immediate past. Traditionalist versus modernist views also help frame positions on same-sex marriage.

In a meta-study of political attitudes, John Jost describes conservative versus liberal views this way: “Conservatives consider people to be inherently unequal and due unequal rewards; liberals are egalitarian. Conservatives venerate tradition and—most of all—order and authority; liberals believe planned change brings the possibility of improvement.” Jost concludes that the prevalence of “liberal” traits, such as

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58. I am using the terms in their ordinary sense: traditionalism referring to those who believe in following tradition and modernism indicating a willingness to change in accordance with modern conditions. As I will indicate below, however, these terms may also be defined in terms of conservative versus liberal political preferences; cognitive biases such as a preference for hierarchy, order versus equality, and openness to change; and fundamentalist versus secular orientations toward religion.

59. Bishop, The Big Sort, supra note 11, at 82 (explaining that historically, political loyalty did not correspond to church membership).

openness to change, versus "conservative" ones, such as the veneration of tradition, is a major factor in political loyalties and that the party realignment that has occurred over the last twenty-five years in accordance with these values belies earlier claims that we had reached the "end of ideology."61

The Cultural Cognition Project at Yale maintains that the traits that determine values orientations can be characterized in terms of different orientations toward risk.62 The cultural cognition researchers use what they term a "parsimonious framework for classifying individuals' cultural values"63 to create two intersecting axes: "hierarchy-egalitarianism," and "individualism-communitarianism."64 Hierarchs tend to favor the distribution of goods and benefits in accordance with a well-established system that may be based on wealth, gender, ethnicity, or lineage; egalitarians prefer equality in the distribution of rights and benefits.65 Communitarians believe that the needs of the collective take precedence over those of the individual, and the collective should secure the conditions for individual flourishing; individualists believe that each person should be responsible for his or her

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2. Kahan, et al., Second National Risk, supra note 62. Cf. Shalom H. Schwartz & Lilach Sagiv, Identifying Culture-Specifics in the Content and Structure of Values, 26 J. CROSS-CULTURAL PSYCHOL. 92, 93–94 (1995) (using ten values). In contrast, many researchers refer to the "big five" of personality profiles: openness, conscientiousness, neuroticism, extraversion, and agreeableness. Openness tends to the factor that best predicts liberal political views. See also Jost, supra note 60, at 662 ("There is now the possibility of explaining ideological differences between right and left in terms of underlying psychological needs for stability versus change, order versus complexity, familiarity versus novelty, conformity versus creativity, and loyalty versus rebellion.").


4. Id.
own well-being without societal assistance or interference. The Cultural Cognition Project posits that individuals view empirical data—"Is global warming real?" "Does gun control increase individual safety?"—through cultural lenses in which the observer interprets new information in terms of preexisting beliefs. Individualists, who are culturally primed to think of security in terms of individual efforts, for example, are more likely see their safety enhanced by their ability to keep a gun under the bed than by state action to remove the gun from a potential assailant.

An innovative group of political scientists attempted to test whether these cultural or political orientations might be inherited. These researchers compared identical and fraternal twins on a series of political questions and found that genetics accounted "for approximately half of the variance in ideology, while shared environment including parental influence accounts for only 11%." In attempting to map political attitudes onto our genes, they described conservatives as typified by "a yearning for in-group unity and strong leadership." Those farther to the political right were suspicious of other groups and experienced "a desire for clear, unbending moral and behavioral codes" that also included a belief in the importance of punishing anyone who violated this code, "a fondness for systematization (procedural due process), a willingness to tolerate inequality (opposition to redistributive policies), and an inherently pessimistic view of human nature (life is 'nasty, brutish, and short')."

The political scientists describe liberals, when confronted with the same issues, as displaying "tolerant attitudes toward out-groups, [and] a desire to take a more context-dependent rather than rule-based approach to proper behavior." Those farther to the political left also demonstrated more empathy and less emphasis on strict punishment for violations of moral and behavioral rules, "an inherently optimistic view of human nature (people should be given the benefit of the doubt)," along with "suspicion of hierarchy, certainty, and

66. Id.
69. Id. at 164; see also John R. Alford & John R. Hibbing, The Origin of Politics: An Evolutionary Theory of Behavior, 2 PERSP. ON POL. 707 (2004).
70. Alford, Funk & Hibbing, Political Orientations, supra note 68, at 164.
71. Id. at 164–65.
72. Id. at 165.
strong leadership (flip-flopping is not a character flaw),” and intolerance of inequality.73 Same-sex marriage falls along these fault lines as advocates emphasize equality, disdain for the association of marriage with patriarchy, and greater support for personal autonomy in the construction of family.74

Similar traits can be used to characterize religious practices, with more conservative and fundamentalist congregations gaining membership at the expense of more liberal churches over the last half century.75 James Hunter, for example, characterizes moral worldviews in terms of the desire for an “external, definable, and transcendent authority.”76 He observes that:

Such objective and transcendent authority defines, at least in the abstract, a consistent, unchangeable measure of value, purpose, goodness, and identity, both personal and collective. It tells us what is good, what is true, how we should live, and who we are. It is an authority that is sufficient for all time.77

Hunter contrasts traditionalists with religious modernists who “resymbolize historic faiths according to the prevailing assumptions of contemporary life.”78 Both may be religious and, indeed, both may attend the same churches, but they approach the importance of faith in different ways.

Notre Dame professor David Campbell maintains that in assessing the role of religion in politics, it is traditionalism rather than either denomination or church attendance that explains political loyalties. The American National Election Survey, for example, identifies “traditionalist” versus “modernist” voting patterns in accordance with four statements that emphasize openness to change and attitudes toward family values:

[Notes]

73. Id.
74. See, e.g., Nancy D. Polikoff, Ending Marriage as We Know It, 32 Hofstra L. Rev. 201 (2003); Nancy D. Polikoff, Equality and Justice For Lesbian and Gay Families and Relationships, 61 Rutgers L. Rev. 529, 552 (2009) (“The Right’s anti-LGBT position is only a small part of a much broader conservative agenda of coercive, patriarchal marriage promotion . . . all of which disproportionately impact poor, immigrant, and people-of-color communities. The purpose is not only to enforce narrow, heterosexist definitions of marriage and coerce conformity, but also to slash to the bone governmental funding for a wide array of family programs.”).
76. James Davison Hunter, Culture Wars: The Struggle to Define America 44 (1991) (emphasis omitted) [hereinafter Hunter, Culture Wars].
77. Id. at 44.
78. Id. at 44–45 (emphasis omitted).
The world is always changing and [moral values should adjust to those changes].

(2) The newer lifestyles are contributing to the breakdown of our society.

(3) We should be more tolerant of people who choose to live according to their own moral standards, even if they are very different from our own.

(4) This country would have many fewer problems if there were more emphasis on traditional family ties.79

These statements link the traits associated with conservative/liberal political divisions (tradition/change) with differences in values such as a preference for unchanging, externally-derived standards versus tolerance and autonomy. Campbell observes that in predicting political outcomes, “it is clearly traditionalism that makes the difference.”80 During the 2004 presidential election, for example, only 24% of the top quartile of modernists voted for George W. Bush, compared to 84% in the highest quartile of traditionalists.81 When Campbell compared the level of traditionalism among evangelical and mainline Protestants, he found that, irrespective of denomination, “eighty-nine percent who scored in the highest quartile of moral traditionalism voted for Bush.”82

Joan Williams examines many of the same divisions, but she does so through the lens of class and its role in the creation of culture. She observes that among the working class, the critical distinction is between what she calls “hard living” and “settled living” types.83 The hard-living types live closer to the edge, are more likely to abuse alcohol and drugs, have less stable family lives, and have more erratic work histories.84 The settled-living working class, who may be from the same families and neighborhoods, distinguish themselves from their hard-living neighbors by their adherence to the “right” values. Michèle Lamont observes that:

Morality is the structuring principle in the worldviews of American workers, black and white. Through it, they define who they are and, perhaps more important, who they are not. It is also important in maintaining a sense of self-worth and dignity. In particular,

80. Campbell, supra note 79, at 65.
81. Id.
82. Id.
83. Williams, supra note 12, at 164. Williams attributes the term to Howell’s Hard-Living on Clay Street, JOSEPH T. HOWELL, HARD-LIVING ON CLAY STREET (1972).
84. Id. at 165.
hard work, personal integrity, and traditional morality allow workers to put themselves above others and help them compensate for their low socio-economic status.85

In a world where living up to the right values may be critical to self-worth and family well-being, values are more likely to be seen as externally-derived, absolute, and unchanging over time, i.e., traditionalist rather than modernist in expression. Lamont observes that “[h]igh school graduates generally uphold more rigid moral norms than college graduates; they are less supportive of freedom of choice and self-expression, especially in the area of sexual morality, divorce, [and] abortion.”86

The working class often sees the role of religion in exactly such terms. Lamont quotes a man from Rahway, New Jersey, who explains that his goal is to raise his three daughters to:

. . . believe in God, and you know, all the rights and wrongs, no grays. I don’t believe in gray. . . . Believe in God and believe in parents. Must have two parents in the family. I don’t believe in divorce. Without religion, there’s nothing. Without religion or some sort of background, we would have anarchy, total breakdown. We have to put religion in children. I’m Catholic and proud to be Catholic. Honesty and morals. I am worried about this country [especially] groups that are trying to break down our morality . . . [like] lesbianism and gayism. [The world is] going to hell.87

In accordance with these views, religion—and its support for absolute values—is a critical factor in a well-run society and is a source for individual determination to do the right thing. President George W. Bush turned to religion when he decided to stop drinking.88 The working class may not have access to the rehab centers of the upper-middle class, but they do have access to the type of prayer and Bible study groups President Bush found in Midland.89 Williams observes that the working class sees religion and the military as the key institutions for turning one’s life around. She concludes that “[f]or the hard living [working class folk], adherence to traditionalist religion, with its emphasis on absolute truths and a transcendent moral authority, sometimes offers a path back to settled life.”90 Those who are drawn to religion because they see it as a way to restore order in their lives seek

86. Id. at 42.
87. Id. at 38–39.
89. Id. at 69.
90. Williams, supra note 12, at 181.
out more traditionalist and fundamentalist versions of religion in order to do so.91

Williams’s account of working-class traditionalism appears to be at odds with political scientists’ suggestion that a preference for traditionalism over modernism may be genetic, or at least hard-wired in ways that it is difficult to change. Scientists have little insight into the mechanisms that transmit such traits, whether genetic or cultural.92 Williams emphasizes that some of the working-class preference for traditionalism reflects upbringing—working-class parents emphasize strict rules and do not encourage questioning authority or the determination of values as a matter of individual expression.93 “Right” and “wrong” are not relative or contextual terms.

Lesley Newson and Peter Richerson offer a way to reconcile the two notions (that is, the notion that a preference for traditionalist values may be inherited, or at least ingrained at an early age in ways that are hard to change, and the idea that it reflects class and upbringing). Newson and Richerson, who study cultural evolution, have done a cross-cultural study on the emergence of modernist versus traditionalist reproductive norms.94 They note that the “blue” family paradigm,95 associated with modernist approaches to family formation, involves a dramatic reduction in fertility at odds with presumed evolutionary tendencies favoring production of larger numbers of offspring. Newson’s and Richerson’s “kin influence hypothesis” posits that in pre-modern societies virtually all communities and social networks are kin-based, and that this has the effect of supporting norms and values that encourage investing resources in producing offspring rather than in other life goals.96 They argue that as social networks form among people who are genetically unrelated, people focus less on reproduction and more on other objectives, such as employment productivity or individual expression. Newson and Richerson attempt to show that a move from traditionalist to modernist norms correlates with urbaniza-

91. Id. at 180 (high school grads uphold more rigid moral values than college graduates); id. at 181 (moral absolutism is a bulwark against middle-class relativism).
93. Williams, supra note 12, at 167–68, 180–81, 196 (conformity, obedience, and intolerance for back talk are the norm).
94. Lesley Newson & Peter J. Richerson, Why Do People Become Modern? A Darwinian Explanation, 35 Popula
95. See generally CAHN & CARBONE, RED FAMILIES V. BLUE FAMILIES, supra note 1.
96. Newson & Richerson, supra note 94, at 118.
tion, migration, and other factors that transform kin-based societies to more diverse social networks. They conclude that a leading causal variable in the move toward modernism is a change in the ratio of relatives to non-relatives in a community.97

Williams explains working-class attitudes toward family in similar terms (though without reference to Darwin). She argues that “family comes first” is a truism of working-class life98 and that this is true, in part, because workers lack the large, geographically-diverse networks enjoyed by the elite.99 Williams relies on the work of sociologist Marjorie L. DeVault, who observes that “working-class families live relatively close to their relatives and spend a large part of their social time with kin. Husbands and wives often have separate social groups, and their friends tend to be local people they have known for many years.”100 Lamont agrees, noting that workers “are often immersed in tight networks of sociability, in part because their extended family often resides within a few miles (the children appear to spend considerable time visiting cousins).”101 Poor and working-class families are more likely to stay in the communities in which they were born, with nearby parents and siblings, who speak to each other on a daily basis and who raise children as part of a network of cousins who see each other on a regular basis.102

Class status,103 kinship patterns, religious observance, attitudes toward hierarchy, degree of openness toward change, and a preference for traditionalist versus modernist values may reinforce each other. Kin-based groups place greater importance on family and may be more threatened by changes in family structure that undermine shared understandings of morality. To the extent that kin-based groups are more likely to be traditionalists, they may also be suspicious of family change even if it does not alter their material well-being. Changes that also affect material well-being, such as divorce or single parenthood, may in turn increase the perceived importance of traditional values. Indeed, two recent studies provide empirical sup-

97. Id. at 119.
98. WILLIAMS, supra note 12, at 185.
99. Id. at 169.
101. LAMONT, supra note 85, at 11.
103. Williams identifies the white working class as those who are not poor, are not managers, and have not graduated from college. WILLIAMS, supra note 12, at 156.
port for the proposition that voters are more likely to insist on traditional verities as state policy if they feel threatened by other factors such as crime or economic downturn.\textsuperscript{104} Other studies show that as fewer people attend church, those who continue to do so tend to be those most drawn to traditionalist religions, thereby increasing the identification of religion with more fundamentalist tenets.\textsuperscript{105}

These changes in class, family, and religion may explain the appeal of fundamentalist approaches to family values. To understand the appeal of traditionalist policies, however, requires recognition of a political leadership that has contributed to a redefinition of American politics, using same-sex marriage as a vehicle along traditionalist/modernist lines.

\textbf{B. Traditionalism Versus Modernism, and Political Polarization}

Extensive literature addresses political polarization in the United States, the extent to which the parties are more ideologically identified, and the degree to which polarization better describes either a change in the attitudes of the rank and file or the attitudes of party activists.\textsuperscript{106} This literature, while often disagreeing about the nature of political polarization, comes close to consensus on two points: (1) the country has become increasingly divided on the issue of “moral values” over the last twenty years while changing less on economic issues;\textsuperscript{107} and (2) party activists are more divided over moral values than

\begin{footnotes}
\item[104.] See Brückner & Grüner, \textit{supra} note 57; McVeigh & Diaz, \textit{supra} note 57 (finding that counties voted more heavily for same-sex marriage bans if they were characterized by traditional gender roles and family structure and weak community cohesion, as indicated by residential instability, low rates of home ownership, and high crime rates).
\item[105.] Bishop, \textit{The Big Sort}, \textit{supra} note 11, at 109. Bishop observed further that after the sixties, mainline Protestant churches, which tended to be more moderate and inclusive, started to lose membership to evangelical and fundamentalist congregations. Id. at 167–68.
\item[107.] See, e.g., Stephen Ansolabehere, Jonathan Rodden & James M. Snyder, Jr., \textit{Purple America}, J. Econ. Perspectives, Spring 2006, at 97, 107, available at http://web.mit.edu/jrodden/www/materials/purplefinal.pdf (“Moral issues have become increasingly important over the past 30 years. Such issues have grown from insignificance to a clear second dimension in American elections.”).
\end{footnotes}
the rank and file.\textsuperscript{108} In the context of these divisions, abortion and same-sex marriage provide flashpoints, having been politically manipulated to increase the intensity of party identification, especially on the conservative side.

Abortion provides a dramatic example. In the 1970s, the two major political parties differed only slightly on abortion, and in some polls Republicans were more pro-choice than Democrats.\textsuperscript{109} Polls show the two parties diverging sharply on the issue after 1990.\textsuperscript{110} The dramatic development over the last few years is the further decline in Republican support. An examination of politicians indicates that pro-life legislators hold more extreme views than their constituents, suggesting that party activists have led, rather than followed, public divisions on the issue.\textsuperscript{111} A different study adds that while in the 1990s, those holding pro-life religious views may have become Republicans because of their views on abortion, in recent years conservative Republicans may also have become more opposed to abortion because of their political identification—even if they do not necessarily belong to religions with staunch pro-life beliefs.\textsuperscript{112}

Drew Westen explains that the effectiveness of these appeals is partly due to more strident political rhetoric designed to correspond with traditionalist/modernist divisions.\textsuperscript{113} He observes that as a matter

\begin{thebibliography}{99}
\bibitem{110} Id.
\bibitem{113} Drew Westen, \textit{The Political Brain: The Role of Emotion in Deciding the Fate of the Nation} 178 (2007). See also Janet L. Dolgin, \textit{Embryonic Discourse: Abortion, Stem Cells, and Cloning}, 31 FLA. ST. U. L. REV. 101, 133 (2003) (“[P]ro-life adherents are more reluctant than ever to compromise their position with regard to fetal and embryonic status. Their rhetoric, their tactics, and their underlying agenda all have come to depend increas-
of political strategy, the Republicans have been “unequivocal” in conflating abortion and murder, setting out “an uncompromising stance as the only moral stance one could take, get[ting] the thirty percent of Americans with the least tolerance for ambiguity on moral questions to the polls,” and allowing the Democrats to splinter in their approach to the issue.114

These same factors contribute to the effectiveness of political mobilization on same-sex marriage. First, traditionalist versus modernist family structure corresponds closely with party differences in recent U.S. elections. In 2004, the correlation between the electoral vote in a given state and a composite factor measuring family issues such as teen births, non-marital cohabitation, fertility, abortion and age of marriage was .87 (.83 in 2008), one of the highest correlations of any factor used to measure the outcome.115

Second, fundamentalist versus modernist religious beliefs also map onto political geography. In a study designed to test the correlation between religious and political beliefs, the researchers divided people into three categories: (1) fundamentalists, who believe literally in the words of the Bible; (2) maximalists, who believe in the events in the Bible, but who do not believe literally in each word of it; and (3) biblical minimalists, who don’t believe that the Bible reflects the divine word at all.116 In those states voting Republican in 2004, almost half of the voters were biblical fundamentalists compared to 28% in states voting Democratic.117

Third, these divisions apply even more to political leaders than to the rank and file. Indeed, one of the critical differences between red

117. Id. at 11. These divisions exist within states as well. 72% of Biblical fundamentalists in red states and 65% of fundamentalists in blue states describe themselves as conservatives. Id. at 15. In contrast, 60% of Biblical minimalists in blue states and 59% in red states describe themselves as liberals. Id. at 15.
states and blue states is that in red states—which tend to be poorer—more affluent citizens are more likely to attend church than poorer voters. In the wealthier and more liberal blue states, on the other hand, wealthier and better-educated voters are less likely to attend church than those farther down the economic ladder. The net result is that the views of the better-educated leaders in the different states are farther apart than the views of the less educated, and this may be particularly true on social issues that involve religious teachings such as same-sex marriage and abortion.

Differences between the sharply polarized views of party leaders in different parts of the country and the more moderate differences among the rank and file complicate analysis of the role of class in any discussion of voting behavior. So, too, does the lack of precise definitions distinguishing the middle classes, working classes, and poor. The latest studies attempt to clarify matters by distinguishing between middle-income whites without college degrees—the group that has swung most decisively to the right over the last thirty years—versus college educated whites, on the one hand, and poorer Americans of all races, on the other. In What’s the Matter with Kansas?, Thomas Frank argued that “conservatives won the heart of America” by convincing Kansans and other people of modest means to vote against their own economic interests in a vain effort to defend traditional cultural values against the elites in coastal and urban areas far removed from the concerns of the heartland. Larry Bartels responded a year later with an analysis that suggested that, if anything, income has become a stronger explanation of voting patterns since 1976, with whites in the bottom third of the income distribution becoming more Democratic and whites in the top third less so. Joan Williams argues that class, and the identification of the white working class in particular, has become less about income and more about education and mindset. Bartels agrees, for example, that President Bush won the “white work-

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118. Gelman et al., Red State, Blue State, supra note 50, at 22.
119. Id.
121. See Thomas Frank, What’s the Matter with Kansas? How Conservatives Won the Heart of America 116, 129 (2004). The effort is vain, of course, because the changes in family values are a product of the changing economy. See June Carbone, From Partners to Parents: The Second Revolution in Family Law (2000).
123. See Williams, supra note 12, at 155.
ing class vote” by 23%, when class is defined in terms of whites without a college degree rather than in terms of income.124 Williams identifies this group of voters, who strongly support traditional values, with the “settled living” white working class who are struggling to hang onto decent incomes in the face of a sagging economy rather than the working poor closer to the edge economically.125

Finally, what Bill Bishop terms the “Big Sort” intensifies the geographic isolation of those who think in similar terms, and that movement may be greater among the better-educated, who tend to be more mobile. New Hampshire’s political future, for example, may depend less on how conservative its working-class voters are than on how many workers with graduate degrees relocate there because of the expansion of the high-tech Boston corridor.

Taken together, these factors set the stage for political and legal divisions that map traditionalist/modernist splits.

C. The Politics of Same-Sex Marriage

Public opinion polls uniformly indicate that same-sex marriage rests on the divide that separates Democrats from Republicans, liberals from conservatives, and traditionalists from modernists. Consider the following table containing data from the Pew Forum126 showing views on same-sex marriage:

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125. Williams, supra note 12, at 164, 180–81. A more nuanced explanation would nonetheless map class onto geographic divisions and regional leadership. The white working class, after all, is not monolithic. It has shifted most dramatically from the Democratic to the Republican camp in the South, where the population generally is more likely to identify as conservative, the role of fundamentalist religions is particularly strong, and race continues to be more of a factor in white working class identity. In addition, the percentage of state voters who are part of the white working class varies from over 70% in West Virginia, Iowa and Wyoming to 15% in Hawaii. For a more in depth discussion of the regional role of working class politics, see Ruy Teixeira & Alan Abramowitz, The Decline of the White Working Class and the Rise of a Mass Upper Middle Class 16–17, 20 (April 2008) (Brookings Working Paper), available at http://www.brookings.edu/~/media/Files/rc/papers/2008/04_demographics_teixeira/04_demographics_teixeira.pdf.

Moreover, the Francia, Morris, Scavo, and Baumgardner study cited earlier, which compares biblical fundamentalists to biblical minimalists, similarly finds that just 14% of biblical fundamentalists in red states and 7% of those in blue states support same-sex marriage in contrast with 79% of the biblical minimalists in red states and 68% of those in blue states.\textsuperscript{129}

These findings are hardly surprising. Those who favor eternal, unchanging, transcendental values are unlikely to discard centuries-old teachings to permit same-sex couples to marry; modernists, who are often distrustful of externally imposed institutions such as marriage, tend to be more concerned about individual equality and fulfillment—and less likely to believe that same-sex relationships affect heterosexual marriage. These religious differences have been further exacerbated by use of same-sex marriage to solidify political loyalties.

The most dramatic example came in 2004. President George W. Bush, who was up for reelection that year, advocated a constitutional amendment banning gay marriage.\textsuperscript{130} Social conservative activists and state legislators placed anti-gay marriage propositions “on the ballot in several states—five of which were considered ‘battleground’ states

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|}
\hline
Group & Favor & Oppose & Don't Know \\
\hline
Conservative Republican & 14 & 81 & 5 \\
Independent & 44 & 47 & 9 \\
Liberal Democrat & 72 & 24 & 3 \\
White Mainline Protestant & 39 & 50 & 10 \\
White Evangelical & 17 & 77 & 6 \\
Black Evangelical\textsuperscript{127} & 15 & 49 & 6 \\
Unaffiliated & 60 & 34 & 6 \\
White Catholics & 45 & 42 & 13 \\
Hispanic Catholics\textsuperscript{128} & 32 & 52 & 16 \\
Total & 39 & 53 & 8 \\
\hline
\end{tabular}
\end{table}

\textsuperscript{127} The data on Black Evangelicals is from the Pew Research Center survey in 2007, which may overstate the opposition given that most of the change between 2007 and 2009 is in the direction of greater support. \textit{id.}

\textsuperscript{128} The data for Hispanic Catholics is from “Changing Faiths: Latinos and the Transformation of American Religion,” Pew Forum and Pew Hispanic Center, conducted in 2006 and published in 2007. Like the data for “Black Evangelicals,” it may overstate the opposition given the difference in time periods. \textit{id.}

\textsuperscript{129} Francia, Morris, Scavo & Baumgardner, \textit{supra} note 116, at 13.

early in the presidential campaign.” The measures constituted classic “wedge issues” in the sense that they united and mobilized the Republican base while dividing Democrats. Every measure passed, receiving 70% support on average.

Political scientists believe that the measures affected the election outcome in direct and indirect ways. First, since the Republican base strongly supported the measures while the Democratic base was divided on the issues, any increase in turnout because of the measures was likely to favor President Bush. Post-election surveys indicate that this effect was probably greatest in the crucial battleground state of Ohio, where turnout increased by 10% (the second highest increase in turnout in the country). The presence of these measures on the ballot encouraged churches and other conservative groups to mobilize their constituents, who may not necessarily have been motivated by more partisan get-out-the-vote campaigns.

Second, the ballot measures may have persuaded some voters to vote for President Bush on the basis of his position on same-sex marriage. In Ohio, for example, Bush increased the percentage of those voting for him most significantly among those most in favor of the ban: those with low education, the elderly, and non-whites—groups that tend to be traditionalists but do not necessarily vote Republican. A post-election analysis of these effects found, for example, that after controlling for voter views on other issues such as the war on terror,

a white non-Protestant, female independent with mean levels of education, age and income had a .50 probability of supporting

131. Id. at 5 n.3 (“Louisiana (78% yes) and Missouri (71% yes) placed their measures as referendums on late-season primary ballots. The other referendum states included Georgia (76% yes), Kentucky (75% yes), Mississippi (86% yes), Oklahoma (76% yes), and Utah (66%). Only one of these states (Oklahoma) has provisions for constitutional initiatives. Votes in the initiative states were: Arkansas (75% yes), Michigan (56% yes), Montana (67% yes), North Dakota (73% yes), Ohio (62% yes), and Oregon (57% yes.”).

132. Id. at 23, 25.

133. Id. at 21. The survey also found a more subtle effect: Those highly motivated to vote by the presence of the measures on the ballot were more likely to vote for Bush than those who favored the ballot measure but were not motivated to turnout by that issue alone. The authors state that the

probability of voting for Bush among supporters of the ban who reported low levels of turnout motivation by the ballot question was .46 in Arkansas, and .47 in Ohio (that is, a predicted vote for Kerry). In contrast, the probability of voting for Bush was .62 among those who supported the ban and reported being very motivated to turnout by the ballot question.

134. Id. at 12–13, 23–28.
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Bush if she believed that gay marriage was a very important issue in evaluating the candidates, but just a .38 probability if she did not believe that gay marriage was a very important issue.\footnote{Id. at 14.}

For some otherwise undecided voters, same-sex marriage itself may have been a decisive issue.

Third, the presence of same-sex marriage issues on the ballot may have had a “priming effect.” If a voter is primed to see same-sex marriage as an important issue, they are more likely to use it in evaluating a candidate; Bush staked out a clear position on the issue early in the election cycle, placing himself in a position to benefit from the effect.\footnote{Id. at 21, 23–24 (summarizing the effect).} Taking two voters with identical demographic profiles, for example, the voter living in a state with a same-sex marriage ban on the ballot was significantly more likely to view the issue as important, presumably due to the increased attention paid to the issue because of the ballot proposition.\footnote{Id. at 13. The authors give the following example: \footnote{[A] non-white, independent Protestant woman with low education, living in a state with a gay marriage ban is predicted to have a .61 probability of saying gay marriage was very important in her consideration of the presidential candidates. A woman with the same demographic profile from a non-ban state is predicted to have a .55 probability of saying this.} Id.}

Consideration of the issue may also have had the incidental effect of making John Kerry seem more liberal by reframing the election in terms of an issue to which a majority of Americans were opposed.\footnote{Id. at 23.}

Most of the discussion of these effects focuses on the question of whether the same-sex marriage issue helped President Bush win the 2004 election; political scientists conclude the answer may be “yes.”\footnote{Id. at 24–25, 27.}

The analysis further suggests, however, that the use of these wedge issues may have longer-lasting effects. One of the most significant effects of the ballot measures was to increase the perception that same-sex marriage was an important issue, particularly among voters already anxious about family matters.\footnote{Id. at 2, 13.} The perceived crisis that these measures addressed—the possibility that a state court might compel recognition of a same-sex couple—was manufactured in terms likely to inflame voters primed to view further family change as a threat. Moreover, much of the mobilization and get-out-the-vote campaigning took place through a combination of party and church

\begin{thebibliography}{99}
\item[136.] Id. at 14.
\item[137.] Id. at 21, 23–24 (summarizing the effect).
\item[138.] Id. at 13. The authors give the following example: \\
[A] non-white, independent Protestant woman with low education, living in a state with a gay marriage ban is predicted to have a .61 probability of saying gay marriage was very important in her consideration of the presidential candidates. A woman with the same demographic profile from a non-ban state is predicted to have a .55 probability of saying this.
\item[139.] Id. at 23.
\item[140.] Id. at 24–25, 27.
\item[141.] Id. at 2, 13.
\end{thebibliography}
organizations that coordinated their activities. This had the effect of creating alliances that may not have previously existed (Catholic parishes, for example, might attempt to mobilize parishioners to vote on same-sex marriage even if they would not be willing to take a stand on Bush versus Kerry for President) and may have served to cement conservatives’ and traditionalists’ identification with Republican party politics.

III. Cultural Cognition Revisited

The fight for same-sex marriage has not remained static. Indeed, the most recent polls indicate that while the factors described above have increased opposition to abortion, support for same-sex marriage—and a variety of other rights for gays and lesbians—has steadily increased. The public, however, remains deeply divided on the issue, and the divisions continue to follow party, age, religion, and traditionalist-versus-modernist values orientation. These divisions also raise questions about how the issue is to be framed in the future.

A. Same-Sex Parenting and Cultural Attitudes

In an effort to provide a more in-depth examination of attitudes toward same-sex relationships, the Cultural Cognition Project has been examining the subject of same-sex parenting. The Project chose same-sex parenting, rather than same-sex marriage, in part because attitudes toward parenting involve testable factual beliefs about the well-being of children. Cultural cognition is defined as “[t]he psychological disposition of persons to conform their factual beliefs about the instrumental efficacy (or perversity) of law to their cultural evaluations of the activities subject to regulation” (i.e., to view factual assertions about the effect of law though preconceived views about the subject at hand).
are characterized by dissensus. Moreover, it is not a statistically normal form of dissensus in which most people grouped at the center with fewer people at the extremes; rather, the modal response is at the extreme on either side. In fact, for all gay- and lesbian-related issue-items in our study, a majority of people indicated that they either strongly support or strongly oppose the policies. The modal responses on both sides of this issue are at the extremes—Americans feel strongly about these issues.  

For example, on the basic question of whether gays and lesbians should be allowed to legally adopt children, 31% strongly agreed and 25% strongly disagreed compared with the much smaller percentages who agreed (11%), slightly agreed (16%), disagreed (8%), or slightly disagreed (9%). Similarly, on the question of gay marriage, the extremes dominated even more, with 43% strongly opposed and 26% strongly in favor; on civil unions, 36% were strongly in favor, compared to 25% who were strongly opposed.

The survey also indicated deep divisions on the role of equal rights. When asked whether “it is important that same-sex couples have the same rights as heterosexual couples,” for example, 32% strongly agreed, while 24% strongly disagreed, again with weaker endorsements of the milder statements. On the decline of the family, however, there was more agreement with 42% strongly agreeing with the statement “I worry about the decline of the traditional family,” and another 26% agreeing or mildly agreeing.

Demographic analysis of the cultural cognition findings indicated that opposition to same-sex relationships was heavily concentrated among Republicans, conservatives, and those who attended church more than once a week. On the issue of whether gays and lesbians should be allowed to legally adopt children, only 35% of Republicans agreed compared to 72% of Democrats and 62% of Independents; 32% of those who attended church once a week or more agreed compared to 70% of those who never attended; 33% of conservatives agreed compared to 69% of moderates and 81% of liberals. The study shed light on the relationships between these variables. For example, the relationship between church attendance and attitudes toward gay and lesbian adoptions were very strong. Ninety percent of

146. Id.
147. Id. at 8.
148. Id. at 5.
149. Id.
150. Id. at 10.
151. Id.
those who were the most opposed to gay and lesbian adoption attended church once a week or more; of those who were most supportive, 90% never attended church. 152

One of the study's most striking findings was the extent of the division between hierarchs and egalitarians. 153 On the question of whether seeing two men married by a judge in a public park made the subject feel bad, 57% of hierarchs said yes, compared to 27% of egalitarians. Nonetheless, the differences between conservatives and liberals were even greater, with 76% of conservatives feeling bad compared to 23% of liberals. 154

The first stage of the study concluded that the more extreme people are in their positions on gay and lesbian issues, the less likely they are to say they will change their position on adoption in light of empirical demonstrations that the factual basis for their beliefs are wrong. This was particularly true for the opponents of gay and lesbian adoption. 155

The results are not surprising. To the extent that opposition to same-sex parenting is rooted in concern about the decline of the traditional family, of violations of a “natural hierarchy,” or of discordance with a religiously mandated order, empirical data—even if accurately interpreted—is unlikely to affect views. Indeed, polls documenting the attitudes underlying the nascent “tea party movement” provide further evidence of the role of hierarchical viewpoints in shaping attitudes toward government policies. A University of Washington poll indicated that among Tea Party supporters, 74% agreed that “[w]hile equal opportunity for blacks and minorities to succeed is important, it’s not really the government’s job to guarantee it.” 156 Another 52% said that “compared to the size of their group, lesbians and gays have too much political power.” 157 Unsurprisingly, only 18% of those in the Tea Party survey thought that gay and lesbian couples should have the legal right to marry. 158

152. See Cultural Cognition Project, supra note 64.
153. Id. at 10–11.
154. Id. at 11.
155. Id. at 16.
157. Id.
158. Id.
B. Cultural Expression and Same-Sex Marriage

Same-sex marriage is part of a larger cultural and political fight. In a different era, the courts might have cautiously guided cultural change; the long fight to dismantle state prohibitions on interracial marriage provides an example. On the one hand, the Supreme Court’s decision in *Loving v. Virginia*\(^{159}\) came near the end of a long civil rights campaign, with recognition that the issue of marriage generated greater cultural tension and less immediate impact than issues such as civil rights in schools or employment.\(^{160}\) On the other hand, once the courts resolved the issue, there was relatively little resistance in comparison with the school desegregation fights. Same-sex marriage, however, has had a different trajectory. While the early decisions in Vermont requiring the state to establish civil unions\(^{161}\) and Massachusetts mandating same-sex marriage\(^{162}\) have contributed to a transformation of attitudes in those states,\(^{163}\) similar decisions in other

\(^{159}\) 388 U.S. 1 (1967).


\(^{163}\) See CAHN & CARBONE, *RED FAMILIES V. BLUE FAMILIES*, supra note 1, at 134 fig.8.2 (indicating that the public increasingly supports same-sex marriage and does so most dramatically in those states that now have same-sex marriage or civil unions. In Massachusetts and Vermont, for example, over 70% of people under thirty years old favor same sex marriage, as do a majority of the two states’ entire population, with the exception of those people over the age of sixty-five. An effort to repeal same-sex marriage in such states today might offend a much larger segment of the population than would a similar effort before the state supreme court cases that initially changed the law.).
states produced reversals at the polls.\textsuperscript{164} Moreover, this early litigation gave rise to a series of legislative and ballot measures affirming opposition even when same-sex marriage would not otherwise have been an issue in those states.\textsuperscript{165} The effect is similar to what might have happened if, after the California Supreme Court struck down laws prohibiting interracial marriage in 1948, the effort to preserve racial purity had been raised throughout the South through high profile initiatives following the \textit{Perez} decision.\textsuperscript{166} The rise of a more aggressive and ideological right, which seeks to impose its own political agenda, means that the issue of same-sex marriage will ultimately be determined in the public arena. The inevitable fight will need to acknowledge, rather than ignore, the cultural tensions that underlie it.

The environment in which these battles will be fought, however, is changing. Early anti-same-sex marriage propositions often raised a symbolic issue—affirmation of traditional marriage—that sounded the alarm for those threatened by cultural change but did not appear to affect anyone directly.\textsuperscript{167} By contrast, California’s Proposition 8, which passed by a much narrower margin than the 2004 anti-same-sex marriage initiatives, repealed civil rights guaranteed by the California

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\textsuperscript{164} For an account of the campaign to overturn same-sex marriage in California, see \textit{Perry v. Schwarzenegger}, 702 F. Supp. 2d 1132 (N.D. Cal. 2010), which found, \textit{inter alia}, that the efforts to do so violated the U.S. Constitution.

\textsuperscript{165} These ballot measures have a number of different effects. For some portions of the population, the ballot measures had the effect of increasing the perception of the issue’s importance. In California, the state supreme court, in \textit{In re Marriage Cases}, 183 P.3d 384, 411–12 (Cal. 2008), concluded that the state legislature could not override the proposition, stating that “it would be unreasonable to conclude that the measure [Proposition 22] was intended (and should be interpreted) to leave the Legislature free to revise California law to authorize the marriage of same-sex couples.” \textit{Id.} While it is impossible to know what would have happened in the absence of Proposition 22, it is conceivable that the public might have responded differently to legislation passed by a Democratic legislature if signed into law by a Republican governor than it responded to a judicial decision mandating same-sex marriage. See, \textit{e.g.}, Melissa Murray, \textit{Marriage Rights and Parental Rights: Parents, the State, and Proposition 8}, 5 STAN. J. C.R. & C.L. 357, 365 (2009) (observing that Proposition 8 “was explicitly intended as a bulwark against an overreaching judiciary and other state actors who would thwart the will of the voters.”).


\textsuperscript{167} I say did not “appear” to affect anyone directly because the states that passed the measures in 2004 had not been proposing to adopt same-sex marriage. Some of the propositions affected other laws, in some cases inadvertently. See, \textit{e.g.}, C. Susie Lorden, \textit{The Law of Unintended Consequences: The Far-Reaching Effects of Same-Sex Marriage Ban Amendments}, 25 QUINNIPIAC L. REV. 211 (2006) (examining the effect of same-sex marriage prohibition on victims of domestic violence); Marc Spindelman, State v. Carswell: \textit{The Whipsaws of Backlash}, 24 WASH. U. J.L. & POL’Y 165 (2007) (discussing the application of Ohio’s same-sex marriage ban to domestic violence laws.).
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Constitution and prevented recognition of a right enacted twice by the legislature, supported by the Governor, and affirmed by the state supreme court.168

In 2008, Arkansas voted on a proposition that prohibited adoption or foster parenting by "unmarried individuals in cohabiting relationships."169 It did so despite the fact that there were three times the number of children needing foster care placement than there were homes available.170 Ongoing litigation has challenged the constitutionality of the result.171

These actions/propositions are not just symbolic, nor are they just about different forms of cultural expression. The 2004 ballot measures involved the cynical use of the initiative process to affect the presidential election. The California initiative used direct democracy to block possible action by the legislature or the courts.172 The Arkansas vote, which also occurred during a presidential election year, sought to overturn interpretations of state law that affected the most vulnerable children.173 These results circumvent the established legal and political leadership that might seek to defuse rather than inflame cultural differences. It is time to consider the implications of these developments more broadly.

I would like to suggest a few modest considerations to change the tenor of the debate and to critique the transformative possibilities underlying Perry v. Schwarzenegger.174 The Perry litigation challenges the constitutionality of Proposition 8 under the Federal Constitution.175 The plaintiffs attempted to do so by treating the issue as one that depended on factual findings about the impact of the proposition on

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168. Proposition 8, Cal Const, Art. I § 7.5, passed with 52.47% of the vote. See Murray, supra note 165, at 358 n.1. In contrast, Proposition 22, Cal. Fam. Code § 308.5, the California initiative passed in 2000, which also defined marriage as a relationship between a man and a woman, passed with 61.4% of the vote. State Ballot Measures in 2000, Cal. Sec'y State, http://primary2000.sos.ca.gov/returns/prop/00.htm (last visited October 16, 2010). See also In re Marriage Cases, 183 P.3d 384 (Cal. 2008) (finding California’s failure to provide for same-sex marriage to be a violation of the state constitution); Strauss v. Horton, 207 P.3d 48 (Cal. 2009) (upholding constitutionality of Proposition 8).


170. Id.


172. See In re Marriage Cases, 183 P.3d at 411–12.


175. Id. at 928.
same-sex couples, the motives of Proposition 8 advocates, and the strength of the state interest in defining marriage as a relationship between a man and a woman. The trial court ruled in their favor, and the appeal to the Ninth Circuit is pending.

The greatest difficulty the litigation faces is the fact that the suit is brought under the Federal Constitution and, thus, it could ultimately be decided by the U.S. Supreme Court in ways that affect the country as a whole. Nonetheless, principles of judicial statesmanship offer the courts ways to defuse the issue. The Ninth Circuit’s inquiry into the standing of the Proposition 8 advocates offers one such avenue. Nonetheless, the case also involves a framing of the Proposition 8 campaign in a way that differs significantly from the portrayal in thirty-second television ads. This reframing of the issues may contribute to the long term understanding of the same-sex marriage in cultural terms, subtly if not directly. It is likely to do so to the extent that it refines the messages on each side and contributes to a determination of legitimate and illegitimate public discourse or what Professor Gedicks refers to as “public reason.”

Perry v. Schwarzenegger’s success, politically and culturally, if not legally, may depend on the following issues underlying cultural cognition. These issues require framing the issue in a way that rallies the base, redefines the issue to appeal to those on the fence, and discredits the opposition.

1. Clarity of the Message

First, a litigation strategy offers a way to overcome the cacophonous voices in the public arena. Modern political parties have become caricatures of the traits in the cultural cognition indices. The issue for
Republicans is the role of the tea party, with its hierarchical views.\footnote{179} For Democrats, given the left’s “suspicion of hierarchy, certainty, and strong leadership,”\footnote{180} it may be Will Rogers’s joke, “I belong to no organized political party. I’m a Democrat.”\footnote{181} Dissecting what went wrong in the adoption vote in Arkansas, progressives concluded that their “campaign was hindered from the start by differing philosophies as to what their messaging and communications strategies should be, conflicting advice from campaign experts, and lack of outreach into the state as a whole.”\footnote{182}

This issue may be particularly difficult in the context of same-sex marriage. The argument for same-sex marriage is a modernist one. Its supporters comprise a broad spectrum ranging from deeply religious moderates, who revere marriage as a spiritual institution, to those who would prefer to dismantle marriage altogether.\footnote{183} Therefore, the challenge includes the question of organization: Is there a central message that makes sense and are there groups that can orchestrate its presentation?\footnote{184} The Perry litigation offers the opportunity to reconsider the lesson of the Proposition 8 campaign. The litigation has made the issue of fairness to LGBT\footnote{185} people the primary issue,\footnote{186} while marginalizing the traditionalist arguments in opposition and highlighting the least attractive and most intolerant aspects of the campaign for Proposition 8.\footnote{187}

\footnote{179. See discussion supra notes 167–168 and accompanying text.}
\footnote{180. See supra note 73.}
\footnote{181. Jonathan Chait, “I belong to no organized political party. I’m a Democrat”, A Blue View (March 5, 2010), http://www.ablueview.com/2010/03/i-belong-to-no-organized-political-party-im-a-democrat.html.}
\footnote{182. See Steenland, Futrell & Cook, supra note 169, at 2.}
\footnote{183. See, e.g., Julie Shapiro, Reflections on Complicity, 8 N.Y. City L. Rev. 657, 657–58, 665 (2005) (observing that “feminist anti-assimilationists” were torn once marriage became “the primary battleground between pro-lesbian and gay and anti-lesbian and gay forces” because “to align oneself with the vitriolic forces of anti-lesbian fundamentalism is unthinkable.”).}
\footnote{184. Murray, supra note 165, at 391–93. Murray emphasizes that at a tactical level a political campaign may involve not just a calculated message but one that can shift quickly if necessary to respond to the tactics of opponents.}
\footnote{185. I use the term “LGBT people” here to refer to lesbians, gay men, bisexuals and transgendered people. The issue of fairness applies to each of these groups and to their ability to marry a partner of their choice.}
\footnote{186. See Section 2, infra.}
\footnote{187. See Section 3, infra.}
2. The Importance of Fairness to LGBT: People As Individuals

Second, an important criticism of the Proposition 8 campaign is that it did not directly feature gay and lesbian couples or show the way that they are affected by denial of the opportunity to marry.\textsuperscript{188} The litigation offers an opportunity to do so.

Attitudes toward same-sex couples have changed over time due to recognition that respect and membership in the community are basic human rights, which has compelled broad acceptance within communities of faith as well as secular communities.\textsuperscript{189} The argument for same-sex marriage is at its core one for equality. In cultural terms equality has multiple meanings that range from dismantling the established family order to compassion for families struggling for recognition.\textsuperscript{190} The plaintiffs in \textit{Perry v. Schwarzenegger}, rather than just presenting an abstract defense of the right to marry, attempted to show the impact of the proposition on the specific plaintiffs in the case and their children. The court summarized the testimony as follows:

Katami and Stier testified about the effect Proposition 8 campaign advertisements had on their well-being. Katami explained that he was angry and upset at the idea that children needed to be protected from him. After watching a Proposition 8 campaign message, . . . Katami stated that “it just demeans you. It just makes you feel like people are putting efforts into discriminating against you.” Stier, as the mother of four children, was especially disturbed at the message that Proposition 8 had something to do with protecting children. She felt the campaign messages were “used to sort of try to educate people or convince people that there was a great evil to be feared and that evil must be stopped and that evil is us, I guess. . . . And the very notion that I could be part of what others

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\textsuperscript{188} See, e.g., Murray, supra note 165, at 391–95 (describing the infrequent depiction of gay and lesbian couples in advertisements); Steenland, Futrell & Cook, supra note 182, at 8.
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\textsuperscript{189} See, e.g., Lax & Phillips, supra note 34, at 383 (documenting the broad support for anti-discrimination laws and civil rights protections). Indeed, even the Mormon Church, which led the fight for Proposition 8, has felt compelled to discuss with its members the “extraordinary pain” associated with the campaign); Holly Welker, The LDS Elder Martin Jensen’s Prop 8 ‘Apology’: We Need Clarification, HUFFINGTON POST (Sept. 27, 2010, 12:14 PM), http://www.huffingtonpost.com/holly-welker/elder-jensen-prop-8-apology_b_739609.html.
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\textsuperscript{190} For a particularly good examination of the family images underlying Proposition 8, see Murray, supra note 165, at 367 (emphasizing that the campaign for Proposition 8 used the idea of rights to present families opposed to same-sex marriage as the victims of the extension of civil rights to gays and lesbians).
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need to protect their children from was just—it was more than upsetting. It was sickening, truly. I felt sickened by that campaign.191

This analysis constructs the campaign for the proposition as a personal attack on the plaintiffs, one that denies their status as full members of the community.192

The Perry effort to capture the impact of Proposition 8 on identifiable and sympathetic families had the potential to influence public as well as judicial opinion. In the effort to influence the public, the most significant decision may well be the one the Supreme Court has already issued, a 5-4 decision to prohibit televising the proceedings.193

3. Discredit the Opposition

Third, opposition to same-sex marriage has been part of a broader conservative coalition that has energized religious participation in politics and strengthened support for conservative candidates. To prevail on same-sex marriage may ultimately require rethinking coalition politics, and that may be easier to do by focusing on opposition to the tactics underlying the campaign for Proposition 8 than by concentrating attention solely on the same-sex marriage issue itself. The Perry litigation has had some success in making the homophobia underlying the campaign visible and discrediting the proffered secular justifications for opposing same-sex marriage.

Central to the success of conservative politics has been the efforts to frame progressive politicians and policies in terms that marginalize them.194 During the Proposition 8 campaign, the proponents succeeded in linking same-sex marriage to fears about the potential state efforts to dismantle traditional notions of marriage.195 Melissa Murray observes that the Yes on 8 campaign “joined the anxiety over state

192. Id. at 196–98, 1002–03. The decision in In re Marriage Cases had also found the denial of same-sex marriage to be a mark of second-class citizenship. See In re Marriage Cases, 183 P.3d 384, 443–44 (Cal. 2008).
195. Frank Schubert & Jeff Flint, Passing Prop 8, CAMPAIGNS & ELECTIONS, http://www.politicsmagazine.com/magazine-issues/february-2009/passing-prop-8 (last visited Jan. 14, 2011) (“One of the most important aspects of our behind-the-scenes work during this critical early period was to develop messages that would result in voters casting a Yes vote for traditional marriage. To do so, we had to have messages that appealed to a much broader audience than the forty percent or so of voters who made up our base. The dynamics of the Proposition 8 campaign were unique. We were asking voters for a Yes vote to ban same-sex
interference with individual and parental rights with the anxiety over ‘genderless’ marriage, suggesting the importance of the family—and particularly, the traditional marital family—as a site for imparting gender norms and values.” These efforts exacerbate the fears of traditionalists by linking same-sex marriage to positions at the opposite end of the cultural spectrum.

Proponents of same-sex marriage, in contrast, have been less successful in linking their opponents to homophobia and, perhaps, as critically, to a broader strain of intolerant, authoritarian views. Yet, even those ambivalent about same-sex marriage may find, as Julie Shapiro has written, that “[t]o align oneself with the vitriolic forces of anti-lesbian fundamentalism is unthinkable.” While supporters of Proposition 8 tried to distance themselves from overt homophobia, the Perry plaintiffs sought to make the extreme elements in the campaign more visible. The trial court, for example, reported that:

Proponent Hak-Shing William Tam testified about his role in the Proposition 8 campaign. . . . Tam testified that he is the secretary of the America Return to God Prayer Movement, which operates the website “1man1woman.net.” Tr 1916:3–24. 1man1woman.net encouraged voters to support Proposition 8 on grounds that homosexuals are twelve times more likely to molest children, Tr 1919:3–1922:21, and because Proposition 8 will cause states one-by-one to fall into Satan’s hands, Tr 1928:6–13. Tam identified NARTH (the National Association for Research and Therapy of Homosexuality) as the source of information about homosexuality, because he “believe[s] in what they say.” Tr 1939:1–9. Tam identified “the internet” as the source of information connecting same-sex marriage to polygamy and incest. Tr 1957:2–12. Protect Marriage relied on Tam and, through Tam, used the website 1man1woman.net as part of the Protect Marriage Asian/Pacific Islander outreach. Tr 1976:10–15; PX2599.

marriage and restore traditional marriage. We strongly believed that a campaign in favor of traditional marriage would not be enough to prevail.”).

196. Murray, supra note 165, at 367.

197. Indeed, the lesbian community itself has been split about same-sex marriage partly because of the perception that marriage is intertwined with traditional gender roles. See Paula L. Ettelbrick, Since When is Marriage a Path to Liberation?, in The Production of Reality: Essays and Readings in Social Psychology 45 (1994); Shapiro, supra note 183, at 657–58, 665.

198. For an example of an argument linking different forms of outgroup bias to personality differences, see Clark Freshman, Whatever Happened To Anti-Semitism? How Social Science Theories Identify Discrimination And Promote Coalitions Between “Different” Minorities, 85 Cornell L. Rev. 313, 359–409 (2000).

199. Shapiro, supra note 183, at 665.


The political success of the anti-same-sex marriages campaigns has depended on the ability to mobilize churches and to send culturally coded messages to different groups. Making those messages visible and discrediting the misinformation they spread is critical to countering the effect.

The larger issue may be the ability of fundamentalist and evangelical church groups to mobilize opposition to same-sex rights precisely because they attract like-minded followers. In the Arkansas adoption campaign, for example, one observer explained that:

There is a different mindset in evangelical churches; people are more of like mind. In mainstream churches, people cross political views . . . [and you’re] not as likely to see ballot petitions . . . or announcements from the pulpit. It’s not part of the culture. There are people of all stripes theologically and politically in mainstream churches, and there’s concern about how [political advocacy] will be perceived. In an evangelical church, people are happy to discuss [politics]. A pastor will say, “You will sign [this petition].”

Fundamentalist churches tend to attract like-minded people, which make their congregations easier to organize. Mainstream church members are more diverse and more opposed to the church playing a political role. The political science literature indicates that when a

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202. See Donovan, Tolbert, Smith & Parry, supra note 131, at 5–8. For a discussion of the role of the Mormon Church, for example, in financing the campaign, see for example Hendrik Hertzberg, Eight is Enough, THE NEW YORKER, Dec. 1, 2008, at 27 (“Of the forty million dollars spent on behalf of Prop. 8, some twenty million came from members or organs of the Church of Jesus Christ of Latter-day Saints.”); Jesse McKinley & Kirk Johnson, Mormons Tipped Scale in Ban on Gay Marriage, N.Y. TIMES, Nov. 15, 2008, at A1 (documenting Mormon efforts on behalf of Proposition 8); Dan Savage, Anti-Family, Anti-Gay, N.Y. TIMES, Nov. 12, 2008, at A31 (“The Mormon Church largely bankrolled Proposition 8.”). Frederick Mark Gedicks observes further that:

Although the pro-8 coalition with which the church and its members were allied employed consequentialist arguments against same-sex marriage, the church itself relied heavily on sectarian arguments drawn from LDS theology in support of the Proposition. The church set up its own website in support of Proposition 8, entitled, “Preserving the Divine Institution of Marriage.” The church’s most detailed written argument in support of Proposition 8 began with the flat theological claim that “[m]arriage is sacred, ordained of God,” and was immediately followed by a condemnation of same-sex marriage based on a detailed demonstration of its inconsistency with core elements of LDS theology.

Gedicks, supra note 178, at 367 (footnote omitted).

203. See Steenland, Futrell & Cook, supra note 169, at 12 (footnote omitted). For a similar analysis of the role of the Mormon Church in the Proposition 8 campaign, see Fred Karger, 8: The Mormon Proposition Will Knock Your Socks Off, HUFFINGTON POST (October 20, 2009, 6:16 AM), http://www.huffingtonpost.com/fred-karger/8-the-mormon-proposition_b_326832.html, (reviewing a movie about the Mormon role in organizing the opposition to Proposition 8).

204. For an explanation of the greater cohesiveness of the Mormon Church, see Gedicks supra note 178, at 364–68.
like-minded group interacts only with similarly like-minded groups, the more extreme the views tend to become.\textsuperscript{205} As the Tan testimony indicates, it is not difficult to find homophobic statements from those associated with politically active fundamentalist churches or political groups.\textsuperscript{206}

The \textit{Perry} litigation attempts to make the overt homophobia by some of those involved in the campaign for Proposition 8 more apparent and to link it to the impact on gay and lesbian families. The district court findings further discredit the consequentialist arguments that the opponents of same-sex marriage attempted to advance.\textsuperscript{207} Indeed, the district court found that “the state advances nothing when it adheres to the tradition of excluding same-sex couples from marriage.”\textsuperscript{208} On appeal, therefore, the proponents of Proposition 8 have reframed the case in terms of an appeal to authority and tradition—the cornerstone of traditionalist cultural claims—but without the connection to traditional family defense implicit in the Proposition 8 campaign itself.\textsuperscript{209}

Litigation offers a way to alter the definition of what it is at stake in same-sex marriage litigation. In part, this is because of its limitations on the type of arguments that can be raised and the nature of the evidence that can be introduced.\textsuperscript{210} The opponents have accordingly attempted to characterize judicial decisions as ones “thwarting

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\textsuperscript{206} See also Richard Piatt & Becky Bruce, \textit{Some Say Buttars has Gone Too Far with Anti-gay Statements}, KLS (Salt Lake City, Utah) (Feb. 18, 2009, 6:02 PM), http://www.ksl.com/?nid=148&sid=5628917. Utah State Senator D. Chris Buttars, who compared gay people to radical Muslims and said gays represent the “greatest threat to America going down I know of today.” \textit{Id}. Buttars also characterized gays as engaged in “pig sex,” which triggered a human rights complaint and his eventual ouster from his position as chair of Utah’s Senate Judiciary Committee. \textit{Id}.

\textsuperscript{207} The trial court found, with respect to the principal expert witness for the defense, that: “Blankenhorn’s opinions are not supported by reliable evidence or methodology and Blankenhorn failed to consider evidence contrary to his view in presenting his testimony. The court therefore finds the opinions of Blankenhorn to be unreliable and entitled to essentially no weight.” Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 950 (N.D. Cal. 2010).

\textsuperscript{208} In its conclusions of law, the trial court held that: “The evidence shows that the state advances nothing when it adheres to the tradition of excluding same-sex couples from marriage. Proponents’ asserted state interests in tradition are nothing more than tautologies and do not amount to rational bases for Proposition 8.” \textit{Id}. at 998.

\textsuperscript{209} See Murray, supra note 165, at 359 (on the effort to “valorize” traditional marriage).

\textsuperscript{210} Gedicks, \textit{supra} note 178, at 367–68. Gedicks’s articulation of the basis for “public reason” offers a similar analysis outside the judicial context, distinguishing secular reason from appeals to religious theology, for example.
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Ultimately, the broader campaign must be linked to making homophobia unacceptable and to viewing marriage in terms of the policies that actually affect young couples like Bristol Palin and Levi Johnston.

**Conclusion: Bristol Palin is Important for Reasons That Have Nothing to do with Same-Sex Marriage**

The family crisis is tied to a changing economy; yet that economy is largely invisible in the moral-values debate. When Bristol Palin announced her recent reengagement to Levi Johnston and then almost as quickly broke up again, one of the topics that arose was the fact that Bristol’s accomplishments since the pregnancy have outpaced Levi’s. She has graduated from high school while he has not, and she has complained about his failure to secure a steady job to support their son. The fact that a young man no longer offers a young woman a financial foundation she cannot obtain on her own has far more to do with the health of the traditional family than same-sex marriage; yet, it somehow receives much less attention. With the Great Recession, the country finally noticed that marriage ceremonies fell to a 100-year low and the economy had something to do with it.

In 2004, same-sex marriage served as a distraction—from the Iraq war, the economy, and the ineptitude of the administration—and it worked brilliantly. The entire moral-values agenda—with bans on same-sex marriage, abstinence education, the repeal of abortion

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211 Murray, supra note 165, at 365.
214 Gould and Paserman, for example, observe that:
   . . . marriage rates decline with higher education, higher wages for women, and demand shifts in favor of women; marriage rates increase with age, higher wages for men and a higher ratio of men to women. Overall, the results show that women get married less when their labor market prospects improve (relative to men), and they get married more when marriage market conditions improve and when labor market prospects for men are relatively better.
rights, and restrictions on divorce—is unlikely to bring back the “traditional family” even if a majority of Americans actually wanted it. Instead, these issues simply serve to keep anxiety about the American family alive without doing anything to address the country’s real needs.

A genuine family agenda would take the initiative in addressing the country’s changing economic circumstances, starting with employment. A changing economy has dramatically increased the premium for higher education, yet jobs have become harder to get; college has become harder to pay for; and support for struggling families is waning, not increasing. As Paul Amato’s work underscores, the mismatch between traditional gender roles and an economy that provides greater opportunities for young women than young men fuels marital unhappiness and divorce.\textsuperscript{216} The ability to marry and stay married is thus increasingly a marker of class and education, and one that has a significant impact on the next generation.\textsuperscript{217} The reaffirmation of traditional attitudes toward marriage, to the extent that it encourages early childbearing that derails education or women to expect that their husbands will be able to support the family while their attentions can be directly primarily toward childrearing, is a prescription for frustration.\textsuperscript{218} Increasing family stability for the country as a whole accordingly requires rethinking the relationship between work and family and the meaning of gender within a changing economy. In this context, the Dobson claim that “the legalization of homosexual marriage will quickly destroy the traditional family”\textsuperscript{219} simply serves to mask the forces that in fact undermine young couples like Bristol and Levi.

\textsuperscript{216} See supra sources cited in note 57, and accompanying text.
\textsuperscript{217} See McLanahan, supra note 27, at 612–13 (summarizing divergence by education).
\textsuperscript{218} See supra notes 52–53, and accompanying text.
\textsuperscript{219} See supra note 4.