

# Civil Marriage: “The Voluntary Union for Life of One Man and One Woman, to the Exclusion of All Others”

By Mark W. Dost

*The nation and the law are now focused on Massachusetts, where on May 17, 2004, homosexual couples entered into civil marriage for the first time within the borders of the United States. True, a few officials in other states had ostensibly presided over same-sex “marriage” ceremonies a few months earlier, but those arrangements violated state statutes governing marriage. And because of the Baker<sup>1</sup> decision four years earlier, Vermont had created civil unions, equivalent to civil marriage except in name. But in Massachusetts, new ground was broken. Four of seven justices of the Massachusetts Supreme Judicial Court had ruled in the Goodridge<sup>2</sup> case and in the advisory Opinions of the Justices<sup>3</sup> that the Massachusetts constitution granted same-sex couples residing in that state<sup>4</sup> the right to enter into civil marriage and have it called “marriage.”*

*Not everyone greeted Goodridge with tears of joy. Cries of “judicial tyranny” abounded. Indeed, whether one agrees or disagrees with the decision, no one disputes that four justices removed from the legislature<sup>5</sup> and from the remaining citizens of Massachusetts the right to decide the issue short of constitutional amendment. Instead, in the face of three compelling dissents, the four justices asserted—astonishingly—that there was no rational basis for limiting marriage to opposite-sex couples.*

Against this background, I will argue that the law of Connecticut should continue to limit civil marriage to the union of a man and a woman; all changes in the institution should be made cautiously and soberly; and the culture, and not the courts, should have the final say in defining this institution.

## First, the Numbers

According to the 2000 census, same-sex couples occupied less than six-tenths of one percent of all Connecticut households.<sup>6</sup> According to the 2002 report of the Vermont Civil Union Review Commission,<sup>7</sup> only about 600 Vermont same-sex couples, less than one-third of same-sex households identified in the census, chose to enter into civil unions in the eighteen months after they became legal. If civil unions became legal in Connecticut, one would expect then that only about two-tenths of one percent of Connecticut households would be affected. The percentage of same-sex “marriages” might be greater; but even if 50 percent more married, that would still bring us to about three-tenths of one percent of all households.

Some would argue it is principle that matters, not numbers. But when it comes to changes in the law, numbers do matter. And they matter all the more when proponents and opponents agree that this change will revolutionize what we mean by marriage and family. Let us turn now to the matter of principle.

## The Nature of Marriage

Few propositions concerning the human condition command universal acceptance. Until this generation, three propositions about the nature of marriage fell into that class: marriage is the union of a man and a woman;<sup>8</sup> the institution is inextricably linked to the bearing and raising of children; and marriage and morality are inseparable. *Baker* challenged and *Goodridge*



rejected all three as a matter of state constitutional law.

*Marriage and Morality.* Let us first consider the issue of morality. In their opening paragraph, the *Baker* justices declared:

The issue before the Court, moreover, *does not turn on the religious or moral debate over intimate same-sex relationships*, but rather on the statutory and constitutional basis for the exclusion of same-sex couples from the secular benefits and protections offered married couples.<sup>9</sup>

The four *Goodridge* justices acknowledged the legislature’s “police power,” traditionally defined as the power to enact legislation “for the protection of the public health, morals, safety, and general welfare.”<sup>10</sup> Yet in defining “police power,” the justices chose a more comfortable formulation, substituting “morals” with “good order” and “comfort.”<sup>11</sup> The choice is interesting because, like *Baker*, the opinion at the outset dismissed the relevance of morality:

Many people hold deep-seated religious, moral, and ethical convictions that marriage should be limited to the union of one man and one woman, and that homosexual conduct is immoral. Many hold equally strong religious, moral, and ethical convictions that same-sex couples are entitled to be mar-

*(Please see page 26)*

tion of any State, shall be construed to require that marriage or the legal incidents thereof be conferred upon any union other than the union of a man and a woman.

For an analysis of the intended effect of the amendment on state and federal courts and legislatures, see [http://www.allianceformarriage.org/site/PageServer?pagename=mac\\_fma](http://www.allianceformarriage.org/site/PageServer?pagename=mac_fma) (last visited June 6, 2004).

31. The FMA could play a major role in the presidential race of 2004, particularly if the Bush administration sees it as a useful tool to draw social conservatives to the polls. *Marriage Amendment: Will It Help or Hurt Bush?*, CNN.COM, February 26, 2004, <http://www.cnn.com/2004/ALLPOLITICS/02/25/elec04.pr.ez.bush.marriage/> (last visited June 6, 2004).

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ried, and that homosexual persons should be treated no differently than their heterosexual neighbors. *Neither view answers the question before us.* Our concern is with the Massachusetts Constitution as a charter of governance for every person properly within its reach. "Our obligation is to define the liberty of all, not to mandate our own moral code."<sup>12</sup>

Note the sleight of hand: each court disposed of moral and ethical considerations by placing them in the company of religious considerations. Note also the *Goodridge* majority's grand disclaimer of its authority to impose its own moral code; yet the question presented was whether the legislature, representing the people of Massachusetts, could resolve the moral issue. All law reflects moral judgment. For that reason, each court's pronouncement against moral judgment, especially in the law of marriage, eludes understanding.

*Public Ideal vs. Private Choice.* Proponents of change ask rhetorically, "How is my same-sex marriage going to affect your heterosexual marriage?" as though the matter were only of private concern. Those who oppose legal recognition of same-sex unions focus properly on the big picture: How will changing the law of marriage affect the institution?

Marriages work when people understand what "marriage" means. As individuals and as a society, we have not yet lost that shared

meaning. When someone tells us, "I'm getting married for the first time," we respond with, "Congratulations." When we are told, "I'm getting married for the fifth time," we draw back. Our collective understanding informs and guides each one of us.

Marriage is about moral or ethical consensus, a shared public view of how things should be in the areas of sex, childbearing, and child rearing. This shared view makes marriage a public good, intended to advance the prosperity, security, and well-being of those engaged in the enterprise, their children, and their community. Maggie Gallagher has written:

Marriage is the fundamental, cross-cultural institution for bridging the male-female divide so that children have loving, committed mothers and fathers. Marriage is inherently normative: It is about holding out a certain kind of relationship as a social ideal, especially when there are children involved.

Marriage is not simply an artifact of law; neither is it a mere delivery mechanism for a set of legal benefits that might as well be shared more broadly. The laws of marriage do not create marriage, but in societies ruled by law they help trace the boundaries and sustain the public meanings of marriage.

In other words, while individuals freely choose to enter marriage, society upholds the marriage option, formalizes its definition, and surrounds it with norms and reinforcements, so we can raise boys and girls who aspire to become the kind of men and women who can make successful marriages. Without this shared, public aspect, perpetuated generation after generation, marriage becomes what its critics say it is: a mere contract, a vessel with no particular content, one of a menu of sexual lifestyles, of no fundamental importance to anyone outside a given relationship.

The marriage idea is that children need mothers and fathers, that societies need babies, and that adults have an obligation to shape their sexual behavior so as to give their children stable families in which to grow up.<sup>13</sup>

*Marriage and Children.* The *Goodridge* majority asserted that same-sex and opposite-sex unions were equivalent, except for

one "unbridgeable difference:" only the sexual union of a man and woman can produce a child. It then dismissed the distinction:

Our laws of civil marriage do not privilege procreative heterosexual intercourse between married people above every other form of adult intimacy and every other means of creating a family. General Laws c. 207 contains no requirement that the applicants for a marriage license attest to their ability or intention to conceive children by coitus. Fertility is not a condition of marriage, nor is it grounds for divorce. People who have never consummated their marriage, and never plan to, may be and stay married. People who cannot stir from their deathbed may marry. While it is certainly true that many, perhaps most, married couples have children together (assisted or unassisted), it is the exclusive and permanent commitment of the marriage partners to one another, not the begetting of children, that is the *sine qua non* of civil marriage.

Let us understand. The law of marriage does not require procreation. Therefore, marriage is not about procreation. The law does not require sex.<sup>14</sup> Therefore, marriage is not about sex. Let us apply the logic further. The law of marriage is not about permanent commitment; for the law permits one spouse to divorce without cause. Nor is it about any commitment; for the law permits antenuptial agreements. Nor is it about exclusivity; for the law does not require that partners pledge to be faithful. In short, marriage is about, well, nothing!

Yet the court did not go that far. Instead, it disposed of only the attributes of marriage that contradicted its theory and retained the two attributes that were left. "Marriage" deconstructed.

To make any sense of the *law* of marriage, one cannot divorce it from the *culture* of marriage. Although the law of marriage may not require that spouses engage in sex, sex is certainly fundamental to the institution as understood by the culture. The U. S. Supreme Court in *Loving v. Virginia* had no trouble making the connection when it declared, "Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival."<sup>15</sup> And while lifetime commitment has been a fundamental ideal of the institution, so also has the desire

of partners to conceive and bear their own children and raise them to adulthood in a stable, supportive, and nurturing environment. As a culture, we say, rightly, that a man and woman intending to have children together *should* marry. When we say that, we mean that they should be committed to one another for life, be sexually faithful to one another, and have love characterized by mutual support and self-sacrifice; these are the ethical foundations of marriage. We also mean that a child should be raised in a home where this commitment has been made, where the child will have the benefit of being raised by the child's mother and father, and where the parents will benefit from the companionship of the child and one another. The law supports these ideals of marriage and cannot be understood apart from them.

In passing no-fault divorce laws that granted a spouse the right, unilaterally, to divorce, legislatures divorced the law of marriage from one of its foundations and sent this message: divorce is a matter of moral indifference. This message took its toll upon countless women left to raise children, upon men deprived of their children's companionship, and upon children cheated of the full support and attention of both parents.<sup>16</sup> If the law, in elevating personal autonomy, now severs the normative link between marriage and childbearing and child rearing, it will send these messages: it is a matter of moral indifference whether men and women who intend to have children should marry; and, a father (or mother, for that matter) has no critical role to play in the raising of children.

The refusal of same-sex marriage proponents to moralize or to articulate ethical standards in the areas of sex and family life is troubling. Some proponents say, "We ourselves believe in lifetime and exclusive commitment;" but almost none will say that the standard should govern others' conduct. The principle of private choice, live-and-let-live, precludes the establishment of moral consensus needed to make marriage work as an institution offering permanence and stability to families. Further, many homosexuals who support same-sex marriage would never themselves marry; they see in same-sex marriage an affirmation of themselves, not a call to an ethical standard. They embrace the affirmation; they reject the institution.

## Same-sex Marriage and Civil Rights: A Case of Mistaken Identity

Is same-sex marriage a matter of civil rights? Proponents have tried to identify their cause with civil rights movements of the past 150 years. In doing so, they rest their case on the proposition that homosexual orientation is like skin color or sex. However, a number of factors distinguish the same-sex marriage movement from the civil rights movements opposing racial and sex discrimination.

*Causation.* Race and sex are fixed from birth. Homosexuality is not. In a recent report published in the *Journal of Personality and Social Psychology*, researchers J. Michael Bailey, *et al.*, contacted individuals listed in the Australian twin registry<sup>17</sup> and found that although instances of homosexuality were rare among the general population, in sets of male identical twins, at least one of whom was homosexual, the other was also homosexual only 11 percent of the time.<sup>18</sup> According to Bailey, his study "did not provide statistically significant support for the importance of genetic factors"<sup>19</sup> for homosexual orientation. Although biology may be one of a constellation of factors that influence whether individuals experience strong same-sex attraction, engage in homosexual conduct, or identify themselves as homosexual, environment plays a critical role.

*Moral Choice.* Although a person cannot choose his or her skin color or sex, he or she can choose whether to engage in sexual activity. Some would argue that our biological constitution compels us toward sex and that moral choice, therefore, is merely an illusion. Were that true, however, our culture would long ago have abandoned its many norms and laws governing sexual activity. The presence of moral choice—whether one engages in sex—distinguishes the same-sex marriage movement from civil rights movements demanding equality on the basis of physical conditions that implicate no moral choice.

*Defining "Homosexuality."* Many assume that homosexuality is a fixed and identifiable condition, like skin color or sex. They are mistaken. In the largest and most comprehensive survey on sexual behavior in America,<sup>20</sup> participants answered questions about sexual orientation on the basis of three

"markers" of orientation: *behavior*, *self-identity*, and *desire*. According to the survey, 2 percent of men identified themselves as exclusively homosexual (identity), 2 percent reported having had sex with only male partners in the past year and also in the past five years (behavior),<sup>21</sup> and 2.4 percent stated that they were sexually attracted only to men (desire). Strikingly, of the group of men who identified at least one of the three markers, only 24 percent of that group identified all three; for women, the figure was 15 percent. The report states that this analysis

...raises quite provocative questions about the definition of *homosexuality*. While there is a core group (about 2.4% of the total men and about 1.3% of the total women) in our survey who define themselves as homosexual or bisexual, have same-gender partners, and express homosexual desires, there are also sizable groups who do not consider themselves to be either homosexual or bisexual but have had adult homosexual experiences or express some degree of desire. . . . *In sum, homosexuality is fundamentally a multidimensional phenomenon that has manifold meanings and interpretations, depending on context and purpose.*<sup>22</sup>

Can the same be said about skin color or sex?

*Change.* One never hears of a white man, faculties intact, waking up one morning and discovering that he is black or female. Unlike race or sex, which is immutable, the three markers of sexual orientation can change in some persons over time.

We know that behavior and self-identification can move in the direction of homosexuality. In 682, or 40 percent, of the 1,707 Vermont civil unions recorded in 2002, at least one partner had been married before; in 148, both had been married before.<sup>23</sup> Can the markers also move in the direction of heterosexuality? According to the Laumann survey,<sup>24</sup> approximately 9 percent of all men since puberty have engaged at least once in sexual activity with another male, yet 42 percent of that group has had no activity with another male beyond age 18; and only 2 to 2.4 percent of all men have engaged in recent sexual activity with men.<sup>25</sup> Further, a recent study conducted by Robert L. Spitzer of Columbia University, a

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principal force behind the removal of homosexuality as a disorder from the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* in 1974 and no enemy of homosexual rights, sought to determine whether credible evidence existed in favor of "reparative therapy," a form of therapy intended to change a person's sexual orientation. Challenging an unscientific orthodoxy that has emerged among mental health professionals in the last ten years, Spitzer found credible evidence that reparative therapy can be conducted successfully for some highly motivated individuals, with no evidence of harm and with considerable benefits to the individuals—benefits that went "beyond changing sexual orientation itself."<sup>26</sup>

*Health Factors.* The *Goodridge* majority neglected to acknowledge one unbridgeable difference between opposite-sex and same-sex unions. Simply put, when men and women confine lifetime sexual activity within marriage, sex is safe. Sex is not safe for homosexual men and marriage will not make it so. When married couples talk of "safe sex," they speak of contraception. When homosexual men talk of "safe sex," they speak not at all of contraception, but reduced risk of disease and infection.<sup>27</sup> As a culture, we need to consider whether our law should declare as normative sexual conduct that is not inherently safe.

*Health Care Decisions, Inheritance, Support Rights, Health Insurance.* Proponents of same-sex marriage, deliberately or unwittingly, have made false or exaggerated claims of legal problems faced by unmarried couples and have overlooked solutions. Lawyers routinely prepare durable powers of attorney for health care, designations of conservator, living wills, designations of health-care agents, and other simple legal tools for clients, *married and unmarried*, so that loved ones may care for them in the event of incapacity.<sup>28</sup> Inheritance laws match people's expectations so imperfectly that individuals, *married and unmarried*, routinely execute wills and take other steps to ensure that the right people receive their wealth on death.<sup>29</sup> Unmarried couples may enter into legally enforceable agreements to support one another.<sup>30</sup> And what of health insurance? To come to the conclusion that we should change marriage laws to afford health insurance to partners of same-sex employees, we

would have to accept some or all of these propositions: (1) the problem of insurance coverage cannot be solved another way; (2) homosexual partners are more deserving of coverage than other dependent groups (e.g., siblings); and (3) it is proper for the government to impose the cost of insuring homosexual partners on an employer who, as a matter of conscience, reason, or both, does not wish to affirm homosexual relationships. Expanding health insurance coverage is no reason for changing the law of marriage.

*Adoption.* There is no fundamental right to adopt. Adoption law in this country has focused on the needs and best interests of children, not on the needs of prospective parents.<sup>31</sup> For that reason, a recent decision from the Eleventh Circuit rejected an argument that Florida's ban on adoptions by homosexuals unconstitutionally impaired the free exercise of their "right" to engage in private sexual intimacy.<sup>32</sup> Connecticut law does not prohibit homosexuals from adopting as single parents or as partners of a single parent, but does permit sexual orientation to be considered in determining

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whether the best interests of a child are being met;<sup>33</sup> and properly so, because the child would be denied permanently a father or a mother. Interestingly, the first country to legislate same-sex marriage, the Netherlands in 2001, prohibited international adoptions by same-sex couples, and the second, Belgium in 2003, prohibited adoptions by same-sex couples altogether.<sup>34</sup>

Of course, homosexuals can be good parents. But organizations like the American Academy of Pediatrics go too far when they conclude that children raised by homosexuals fare as well as children "whose parents are heterosexual." "[The studies on which they rely] usually compare same-sex homes to *single-parent*, heterosexual homes,"<sup>35</sup> which are anything but comparable to intact homes. Further, studies asserting "no difference" have been criticized on the grounds "that the sampling populations

are not representative, that the observation periods are too limited in time, that the empirical data are unreliable, and that the hypotheses are too infused with political or agenda driven bias."<sup>36</sup>

## Judicial Review and Judicial Restraint

Finally, we citizens could abandon democratic principles, leave to judges the issue of whether and how to change the institution of marriage, and then follow Massachusetts Justice Greaney's call to capitulate to their decision.<sup>37</sup> But courts are the wrong forum for effecting change. Consider the stakes. There is no public institution more important than marriage. Should the public be excluded from deciding whether and how it will be changed? Courts are highly restrictive forums, dealing in cases that limit access to a few witnesses and a few lawyers. In a legislature, each citizen can be heard. Further, courts consider limited points of view. In *Baker* and *Goodridge*, the views of religious organizations and people of faith on matters of ethics were given no weight, even though the ethical foundations of the law of marriage are appropriated from religion<sup>38</sup> and supported by religion, and even though proponents of same-sex marriage offer no substitute system. Also, compared to legislative bodies, courts are not well equipped to investigate complex facts and are at the mercy of the knowledge and integrity of the few witnesses who appear before them and the skill of the lawyers who prepare and question the witnesses and brief the law.

Courts, unlike legislatures, must deliberate under a fixed schedule. Oral argument before the justices in *Goodridge* lasted only thirty-seven minutes! Although judges issue written decisions, their deliberations are in secret. Judges have trouble drawing lines; they are poorly equipped to fashion remedies limited in scope. They are not free from bias. On public policy issues, they are sometimes wrong and sometimes very wrong. They are unaccountable to voters. And in creating constitutional law, they severely limit or foreclose altogether the ability of legislatures or the people to correct their errors. For these and other reasons, lawyers and judges alike should study the reasoning of the three dissenting judges

in *Goodridge* and leave the issue of same-sex marriage, and the thorny issues that will inevitably follow, to the people.

## Conclusion

A revolution is upon us, and with it, a counter-revolution. On the one hand, strong forces in our culture seek to change the law of marriage, moving beyond tolerance of homosexuality to its affirmation. On the other hand are the forces of preservation and restoration, with whom I am allied. We see in the proposed re-definition of marriage a fundamental departure from widely shared ideas and ideals that inform and govern our culture's understanding of our identity as men and women, husbands and wives, and parents, and that inform and govern our responsibility in the areas of sex, child rearing, and family. We understand that the ideals that have become incorporated into our culture's definition of marriage—lifetime commitment, sexual exclusivity, sacrificial love—have become part of its foundation. We understand that what the law says about marriage matters and that the law's removal of its most lasting foundation puts the entire institution at risk.

The tendency of our culture has been to substitute generosity of spirit for intolerance of those once ostracized. For that, we can commend ourselves, so long as our generosity of spirit toward the group once ostracized is not matched by intolerance for those who disagree with us. But generosity of spirit should never cause us to weaken or abandon our principles. Nor should it cause us to weaken or abandon the institution that has so well served generations that preceded us and that remains the best hope for the happiness, security, and well-being of our generation and of generations to follow.

The institution of marriage will not stay static. It will change as our culture changes. But the direction of that change should come from the people, not by a few, and only after much deliberation. **CL**

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## Notes

1. *Baker v. State*, 170 Vt. 194 (1999).
2. 440 Mass. 309 (2003).
3. 440 Mass. 1201 (2004).
4. *See* M.G.L. c. 207, § 11.
5. Legislative hearings on the issue were held only weeks before the decision.
6. Table PCT14. Same-sex partners occupy only 7,386 of 1,301,670 households in Connecticut.
7. Available at <http://www.leg.state.vt.us/baker/F02>.
8. Polygamous cultures are no exception; each marriage is between a man and a woman.
9. Emphasis supplied.
10. *CHR General Inc. v. City of Newton*, 387 Mass. 351, 355 (1982); *Klein v. Catalano*, 386 Mass. 701, 707 (1982).
11. 440 Mass. 309, 322. The traditional formulation may be found in a less conspicuous part of the opinion (at 330).
12. 440 Mass. 309, 312. Emphasis supplied. The quotation is from *Lawrence v. Texas*, 123 S. Ct. 2472, 2480 (2003); the majority opinion quoted from the plurality opinion in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 850 (1992).
13. Maggie Gallagher, "What Marriage is For," *The Weekly Standard*, Vol. 8, Issue 45 (8/4/2003), available at [www.weeklystandard.com/Content/Public/Articles/000/000/002/939pxiqa.asp](http://www.weeklystandard.com/Content/Public/Articles/000/000/002/939pxiqa.asp). *See also* M. Gallagher, "What is Marriage For? The Public Purposes of Marriage Law," *Louisiana Law Review* (Spring 2002).
14. The *Goodridge* majority ignored *Anders v. Anders*, 224 Mass. 438 (1916), in which the court held that a partner's undisclosed intention not to have sex went to the essence of the marital contract.
15. 388 U.S. 1, 12 (1967).
16. For a readable survey on the impact of divorce on men, women, and children, *see* Linda J. Waite and Maggie Gallagher, *The Case for Marriage: Why Married People Are Happier, Healthier, and Better Off Financially* (2000: Doubleday).
17. J. Michael Bailey, Michael P. Dunne, and Nicholas P. Martin, "Genetic and Environmental Influences on Sexual Orientation and Its Correlates in an Australian Twin Sample," *Journal of Personality and Social Psychology* 78 (March 2000), 524-536. An earlier twin study by Bailey and Pillard, which showed a higher concordance rate, had been heavily criticized on grounds of sample bias.
18. An extended and readable review of the Bailey study can be found in Stanton Jones and Mark Yarhouse, *Homosexuality: The Use of Scientific Research in the Church's Moral Debate* (2000: Intervarsity Press), pp. 72-79.
19. Bailey, p. 534.
20. Edward O. Laumann, John H. Gagnon, Robert T. Michael, and Stuart Michaels, *The Social Organization of Sexuality: Sexual Practices in the United States* (1994: The University of Chicago Press).
21. A small additional number engaged in sex with both men and women.
22. Laumann, pp. 300-301. Emphasis supplied.
23. Vermont Dept. of Health, 118th Report Relating to the Registry & Return of Births, Deaths, Marriages, Divorces, Civil Unions & Dissolutions, Table I-6.
24. *See* note 20.
25. Laumann, p. 312. The survey did not ask participants to identify the reason for the experience.
26. Robert L. Spitzer, "Can Some Gay Men and Lesbians Change Their Sexual Orientation? 200 Participants Reporting a Change from Homosexual to Heterosexual Orientation?" *Archives of Sexual Behavior*, Vol. 32, No. 5 (October 2003), pp. 403-417.
27. *See* Donald DeMarco, "What Science Tells Us About Same-Sex Unions," *The Interim* (April 2004), available at [www.catholiceducation.org/articles/homosexuality/ho0080.html](http://www.catholiceducation.org/articles/homosexuality/ho0080.html). For further study, *see* Thomas E. Schmidt, *Straight & Narrow: Compassion and Clarity in the Homosexuality Debate* (1995: Intervarsity Press), pp. 100-130, dealing, *inter alia*, with common sexual practices and the health risks they pose.
28. On the matter of health care and Medicaid, *see* Mark W. Dost, "Elder Law Considerations in Planning for Married and Unmarried Couples," *Recognizing Same-sex Couples: Should Connecticut Change the Law?* (2004: Conn. Bar Ass'n).
29. On the matter of estate planning (and nearly everything else in the law), *see* Frank S. Berall, "Recent Developments in Statutes and Cases Affecting the Non-traditional Family and Current Estate Planning for It," also in *Recognizing Same-sex Couples*, n. 28.
30. *Boland v. Catalano*, 202 Conn. 333 (1987).
31. Lynn Marie Kohm, "Moral Realism and the Adoption of Children by Homosexuals," *New England Law Review*, Vol. 38, No. 3 (2004), pp. 643 to 665.
32. *Lofton v. Secretary, Dept. of Children and Youth Services*, No. 01-16723 (11th Cir. January 2004). The Florida statute prohibited those who engage in homosexual conduct from adopting.
33. CONN. GEN. STAT. § 45a-726a.
34. Kees Waaldijk, "Others May Follow: The Introduction of Marriage, Quasi-Marriage, and Semi-Marriage for Same-Sex Couples in European Countries," *New England Law Review*, Vol. 38, No. 3 (2004), pp. 574 and 582. In his essay, Waaldijk predicts that these prohibitions will be repealed. *See also* Stanley Kurtz, "The End of Marriage in Scandinavia," criticizing the Nordic and European movement from marriage to cohabitation, available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/003/660zypwj.asp?pg=1>.
35. Testimony of Thomas Finn, Ph.D., an expert who appeared in Dec. 2002 hearings before the Conn. General Assembly's Judiciary Committee, available at [http://www.cga.state.ct.us/jud/SameSexMarriage/Finn\\_testimony.pdf](http://www.cga.state.ct.us/jud/SameSexMarriage/Finn_testimony.pdf). As noted in Gallagher and Waite, there is a mountain of evidence that children raised in an intact home by their biological mother and father generally do better on every scale than children raised in single-parent homes.
36. *Goodridge*, Cordy, J. (dissenting), at 387-388, and citations therein. *See also* affidavit of sociologist Stephen Nock, available at [http://marriagewatch.org/cases/Canada/ontario/halpern/af\\_f\\_nock.pdf](http://marriagewatch.org/cases/Canada/ontario/halpern/af_f_nock.pdf).
37. *Goodridge*, Greaney, J. (concurring), at 349-350.
38. Charles J. Reid, Jr., "The Unavoidable Influence of Religion Upon the Law of Marriage," *Recognizing Same-sex Couples*, n. 28.