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## Gay Rights and the Right to a Family: Conflicts Between Liberal and Illiberal Belief Systems

Rhoda E. Howard-Hassmann\*<sup>1</sup>

I find it deeply ironic that because gays and lesbians want to share our values, they have been accused of destroying our values.<sup>2</sup>

### I. THE RIGHT TO FORM A FAMILY

As the new century begins, it is useful to reflect on which social groups are still unprotected by the international human rights regime. An obvious candidate is gays and lesbians.<sup>3</sup> If “[e]veryone is entitled to all the rights and freedoms set forth in this [Universal] Declaration [of Human Rights], without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth *or other*

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1. This article is a very slightly revised reprint of a chapter of the same title, see Rhoda E. Howard, *Gay Rights and the Right to a Family: Conflicts Between Liberal and Illiberal Belief Systems*, in *INNOVATION AND INSPIRATION: FIFTY YEARS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS*, 111 (Peter Baehr, Cees Flinterman, & Mignon Senders eds., 1999). For their research assistance, I am deeply grateful to Rina Rodak and Jason Wakely, as I am grateful to Jack Donnelly, Annelies Henstra, Karen March, Charlene Miall, Douglas Sanders, and Cees Waaldijk for their comments on an earlier draft. I also thank the Social Sciences and Humanities Research Council of Canada for the funds necessary to conduct the research for this essay.
2. Legislative Assembly of Ontario, OFFICIAL REPORTS OF DEBATES, 6675 (6 June 1994) (statement of Ms. Dianne Poole, Liberal Member of the Provincial Parliament for Eglinton) (concerning a debate over Bill 167, *An Act To Amend Ontario Statutes To Provide for the Equal Treatment of Persons in Spousal Relationships*, which was defeated).
3. In using the terms gays/lesbians or homosexuals throughout, I recognize that there are other sexual minorities also seeking rights, namely bisexuals and transsexuals.

*status*,"<sup>4</sup> then it is incumbent upon activists and scholars interested in protecting the rights of gays and lesbians to show that they occupy a status analogous to that of other social groups who suffer discrimination. This is not an easy task.<sup>5</sup>

Gays and lesbians are a more difficult social group to protect than other weak social groups such as women or children, because they are perceived in many cultures as innately dishonorable. Women and children who fill their prescribed social roles and perform their prescribed duties can be honored and respected (although they may still be denied human rights, especially if they step out of their roles). Gays, by asserting a deviant identity that defies social norms and common morality, are undeserving of honor and respect.

The debate is not about sexual practices, however repugnant many opponents (and many supporters) of gay rights might find such practices. The debate is about morality, and especially about the role of that fundamental social institution, the family. The epigram above illustrates the ambiguity of the position of gays and lesbians with regard to this social institution. Their very desire to join society by forming their own recognized family units is seen as an attack on the family.

"The family," states the Universal Declaration of Human Rights (UDHR), "is the natural and fundamental group unit of society and is entitled to protection by society and the State."<sup>6</sup> The family is not specifically defined as a heterosexual relationship; rather, the UDHR states that "Men and women of full age . . . have the right to marry and found a family," without specifying that they must marry someone of the opposite sex.<sup>7</sup> But while this may be a useful legal point in arguing for the rights of gays and lesbians to marry, it is sociologically anachronistic to assume that the drafters and original signers of the UDHR did not have in mind a heterosexual family.<sup>8</sup>

Liberals in the West and elsewhere might be willing to acknowledge that gays, as a social group suffering discrimination, should be permitted—

4. Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess. (Resolutions, pt. 1), at 71, art. 2, U.N. Doc. A/810 (1948), *reprinted in* 43 AM. J. INT'L L. 127 (Supp. 1949)(emphasis added).

5. See Jack Donnelly, *Non-Discrimination and Sexual Orientation: Making a place for Sexual Minorities in the Global Human Rights Regime*, in INNOVATION AND INSPIRATION, *supra* note 1, at 93 (making a case for a logical analogy between homosexuals and other groups). However, such logic is not convincing, as I will argue below, to those who view gays and lesbians as a radically different—and deviant—type of social category, as compared to those social groups who presently enjoy explicit protections against discrimination.

6. Universal Declaration of Human Rights, *supra* note 4, at art. 16 (3).

7. *Id.* at art. 16 (1).

8. See also Johannes Morsink, *Women's Rights in the Universal Declaration*, 13 HUM. RTS. Q. 237, 239 (1991).

even encouraged—to form their own distinctive and respected family units. But nonliberals regard the gay demand to form family units protected by society and the state as a threat to society's most fundamental social institution.<sup>9</sup> The family that the UDHR protects is, in their eyes (and in the eyes of the drafters of the UDHR probably was), a heterosexual family.

This article analyzes the conflict between liberal and nonliberal normative systems that underpins debate about gay rights and the right of gays to form a family. In so doing it refers to the normative beliefs and practices of actual existent cultures. To understand such beliefs and practices is not necessarily to condone them, any more than one would condone the underlying cultural values that in many societies, including the liberal West until recently, have buttressed sexism, anti-Semitism, and slavery. But if sensitivity to other cultures is a requirement in the debate over the universality of human rights, then even the most liberal advocates of gay and lesbian rights need to understand the beliefs of those who oppose them.<sup>10</sup>

## II. THE DEBATE IN CANADA

This section uses evidence from Canada to show how citizens in a Western democracy “work through” the question of homosexual rights. The evidence upon which it relies consists of interviews the author personally conducted with civic leaders, a debate within one of Canada's major churches, and a debate over gay rights in the Ontario Legislature in 1994. The purpose of analyzing the Canadian debate is to show how some citizens, religious organizations, and members of the political elite have changed their views so as to accommodate gays' and lesbians' desire to be respected, honored members of society. This change in Western liberal culture is so recent and so dependent upon an overall liberal social ideology as to be very difficult to replicate in the illiberal world. The Western world's liberalism is not only a matter of politics, or even a matter of social liberalism, but it is also a sexual liberalism, a liberalism that argues that there is no legitimate social interest whatsoever in private physical acts.

From July 1996 to April 1997, the author interviewed seventy-three civic leaders in Hamilton, Ontario, about their views on a number of human rights questions, including gay rights. All seventy-three were presumed to be

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9. On public opinions about gay rights in the United States, see A. WOLFE, *ONE NATION, AFTER ALL* 72–81 (1998).

10. To further clarify: I personally support the full, immediate, and universal implementation of all human rights for gays and lesbians. However, this article is a work of sociological analysis, and not one of legal advocacy.

heterosexual. This group of civic leaders was multiethnic, including thirty-six immigrants from various parts of the world. It was also a highly educated, older group of people actively involved in local affairs. Several of the recent immigrants from the non-Western world were obviously trying to adapt themselves to the dominant liberal ethos of Canadian society. Of the seventy-three people interviewed, the author categorized twenty-one as strongly in favor of gay rights, forty as moderately in favor, and twelve as opposed to gay rights. Those strongly in favor approved of gay marriages and adoptions of children on the same basis as heterosexual marriages and adoptions, those moderately in favor had reservations about gay marriages or adoptions, and those against gay rights generally were opposed to both gay marriages and gay adoptions.<sup>11</sup> Almost everyone, however, accepted that gays should be protected by antidiscrimination measures in such areas as employment, housing, and education, and many of those opposed to gay marriages were willing to accept a legal "domestic partnership" giving gay partners the same rights as heterosexual partners. The point at which many could go no further in accepting gay rights was when such rights were seen to violate the religious principle (in Hinduism, Sikhism, and Judaism, as well as Christianity) that marriage is a union between a man and a woman for the purpose of procreation.<sup>12</sup>

Canadians in the Hamilton study found it easy to accept gay rights because of a changing knowledge base, changing social norms, and a changing ideological perspective on sexual practices. Forty-four respondents volunteered during their interviews that they knew someone who was gay, and that this had influenced their attitudes to become more favorable to gay rights. It is easier to reject gay rights when gays are the mysterious "other," apart from the society that you live and work in, than when they are your own child, friend, or coworker. Psychological studies confirm that those who are exposed to gays and lesbians are more likely to favor gay rights (or less likely to be "homophobic") than those who are not so exposed.<sup>13</sup>

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11. Survey data in Canada show a rapid increase in the proportion of Canadians who are willing to accept gay marriages: in 1996, 49 percent of Canadians agreed with legal recognition of gay marriages, as opposed to 24 percent in 1992. See National Angus Reid/Southam News Poll, *Public Attitudes on Specific Gay Rights Issues*, 7 June 1996; L. Bozinoff & P. MacIntosh, *Majority Opposes Same Sex Marriages*, THE GALLUP REPORT, 21 May 1992.
  12. For detailed results of these interviews, see R.E. Howard-Hassmann, *The Gay Cousin: Learning To Accept Gay Rights*, J. HOMOSEXUALITY (forthcoming 2000/01) available online at University of Denver, *Human Rights Working Papers Series*, <<http://www.du.edu/humanrights/workingpapers/>>. The author also interviewed five individuals who identified themselves as gay or lesbian; their views are not included in this analysis.
  13. See, e.g., W. Schneider & I.A. Lewis, *The Straight Story on Homosexuality and Gay Rights*, 7 PUB. OPINION 17 (Feb./Mar. 1994); L.M. Lance, *The Effects of Interaction With Gay Persons on Attitudes Toward Homosexuality*, 40 HUM. RELATIONS 329 (1987).

Eighteen respondents in the Hamilton study mentioned that being gay is a genetic or biological condition. Reports of scientific studies suggesting that homosexuality is a biological condition are given prominent play in the Canadian press, even though these scientific results are very preliminary, and are certainly not conclusive.<sup>14</sup> These reports make it easier for Canadians who wish to be liberal and tolerant, but who have moral or religious scruples about homosexuality, to be more accepting of gays. If homosexuality is an insuperable biological condition, then Canadians are relieved of their obligation to make a moral judgment about gays.<sup>15</sup> Gays are no more responsible for their sexual preferences than women are responsible for their sex or blacks are for their race.

The changing social norms in Canada since about 1970, which have made it much easier than previously for gays and lesbians to "come out," have made it possible for heterosexual Canadians to discover that many of those who they love or respect are gay. The Canadians in the Hamilton study were influenced by the general emphasis in Canada since the late 1960s on sexual choice and privacy. Several referred to the famous statement by then Justice Minister Pierre Elliott Trudeau, who said in 1967, "The state has no place in the bedrooms of the nation."<sup>16</sup> Trudeau introduced a number of reforms into what until then had been a rather Puritanical sexual culture, liberalizing divorce, legalizing therapeutic abortion under certain specified circumstances, and decriminalizing private homosexual activities between consenting adults.<sup>17</sup> Affected like the rest of the Western world by the sexual revolution of the 1960s, the new political culture of a more modern, liberal Canada agreed that sexuality was a matter not only of political but also of social indifference. Society as a whole had no business judging the sexual activities of its individual members.

These strong pro-privacy views were buttressed by the strong pro-equality views that became part of the core ideological orientation of Canadians after the 1960s.<sup>18</sup> Just as women and members of racial

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14. On the status of this research, see Chandler Burr, *Homosexuality and Biology*, 271 *ATLANTIC MONTHLY* 47 (Mar. 1993); W. Byne, *Why We Cannot Conclude That Sexual Orientation Is Primarily a Biological Phenomenon*, 34 *J. HOMOSEXUALITY* 73 (1997); J.P. De Cecco & D.A. Parker, *The Biology of Homosexuality: Sexual Orientation or Sexual Preference?*, 28 *J. HOMOSEXUALITY* 1 (1995).
  15. See K.E. Ernulff et al., *Biological Explanation, Psychological Explanation, and Tolerance of Homosexuals: A Cross-National Analysis of Beliefs and Attitudes*, 65 *PSYCHOLOGICAL REPORTS* 1003 (1989) (also finding that people who think gays are "born that way," have more positive attitudes toward them than those who think they choose to be gay).
  16. G. RADWANSKI, *TRUDEAU* 96 (1978).
  17. See *id.* at 90–97.
  18. For a general discussion of the value of equality in Canadian society, see PAUL. M. SNIDERMAN ET AL., *THE CLASH OF RIGHTS: LIBERTY, EQUALITY AND LEGITIMACY IN PLURALIST DEMOCRACY* (1996).

minorities should not be disadvantaged in the public realm in areas such as employment, housing, or education, homosexuals too should not be so disadvantaged. The rights to privacy and equality demand that deviant sexual practices be entirely overlooked not only in public but also in private decision-making. The citizen who even in her private discussions takes homosexuality to be a deviant or despicable attribute is failing in her duty to respect and honor other citizens.

This social turn toward respect for sexual diversity and privacy both influenced, and was influenced by, changes in Canada's dominant Christian religions. In 1991, 83.3 percent of Canadians identified themselves as Christian.<sup>19</sup> By the 1990s, Canada's churches had undergone a considerable amount of soul-searching that resulted in new attitudes toward homosexuals. Even among the more conservative churches, "Hate the sin, not the sinner" was a common view, frequently reiterated by the respondents in the Hamilton study. Even the small, conservative Christian Reformed Church (brought to Canada by Dutch immigrants) was rethinking its attitudes toward homosexuals. One Christian Reformed committee concluded, "It is one of the great failings of the Church and Christians generally that they have been lacking in sympathy and concern for the plight of the homosexuals among them."<sup>20</sup>

One of Canada's dominant churches is the United Church (formed by the union of Presbyterians, Methodists, and Wesleyans in 1925), with about 3.1 million members in 1991.<sup>21</sup> This church not only accepts homosexuals as members of its congregation, but also accepts that practicing homosexuals may be ordained as ministers. The United Church justifies this practice by arguing that it is the actual expression of physical love that is important in a Christian relationship, not whether such expression is heterosexual or homosexual. "The closer we can get to a concept of sexuality, both in its physical and spiritual aspects, as a way in which we express our love of God, of one another and of ourselves, the better we will be able to evaluate the sexual activity of ourselves and others."<sup>22</sup> Noting the story of how the first Jewish Christians had come to accept Gentile Christians, the United Church argued that "the gospel was by nature inclusive rather than exclusive."<sup>23</sup> Thus, the many Biblical exhortations against homosexuals are

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19. See STATISTICS CANADA, *Census of Canada 1991, Religions in Canada*, Ottawa: Industry, Science and Technology Canada, 1993, tbl. 1, at 8–17.

20. R. Heynen et al. (Homosexuality Committee), *Homosexual Behavior and the Church: A Christian Reformed View, Looking at the Scriptures*, in *A CRISIS OF UNDERSTANDING: HOMOSEXUALITY AND THE CANADIAN CHURCH* 68 (D. O'Leary ed., 1988).

21. See STATISTICS CANADA, *supra* note 19, at 12.

22. UNITED CHURCH OF CANADA, *GIFT, DILEMMA AND PROMISE: A REPORT AND AFFIRMATIONS ON HUMAN SEXUALITY* 71 (1984) (on file with author).

23. *Id.* at 77.

disregarded, in an interpretation which emphasizes Christian love and acceptance over the many prohibitions and exclusions that characterized the Christianity of earlier times. What is important to the United Church is not the physical sexual activities of homosexuals, but their overall Christian commitment. "Some would say of them [homosexuals] . . . that they are unclean. . . . But what if such people . . . are God-fearing, devout and generous? Does God not speak to them?"<sup>24</sup> Christian respondents in the Hamilton study frequently expressed this view of their religion, noting Christ's love for and acceptance of all sinners over the more rigorous strictures against sin.

Although other Canadian churches have not gone as far as the United Church in accepting homosexuals (and indeed, there was considerable dissent within the United Church at the time its new policy was introduced), many accept that the sinner should be welcomed in their midst, even as the sin is deplored. This new religious attitude makes it easier for Canadians who want to accept gay rights to do so. The religious change reflects wider overall social changes, but it is important to many Canadians that the religious authority to which they turn confirms the evolution of secular trends of tolerance and acceptance.

The United Church exemplifies more recent trends not only to tolerate, but even to "celebrate" the presence in Canadian society of ever-increasing "diversity." The truly rights-protective society is one that is "inclusive." These three key words—celebration, diversity, and inclusivity—typify a very recent social attitude that mere tolerance is a type of racism or prejudice, reflecting an unwillingness of the dominant, "tolerant" group to acknowledge that the diverse Other is as morally respectable as the conforming Us. The rhetoric of diversity insists on more than tolerance. It insists on the moral acceptability of the diverse family. A homosexual family is as worthy of concern and respect as a heterosexual family. The demand for state, religious, and social acceptance of their families indicates homosexuals' desire to be included in society, not to be excluded from it. Homosexuals agree that the family is the fundamental unit of society; their families are equally fundamental. The homosexual family should be celebrated as a family.

The language of inclusivity and diversity was at the core of the debate over Bill 167, "An Act To Amend Ontario Statutes To Provide for the Equal Treatment of Persons in Spousal Relationships," in the Ontario Legislative

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24. *Id.* at 78. For an analysis of the evolution of Christian and Jewish thought regarding homosexuals in the United States that confirms the analysis in this paper, see R. Nugent & J. Gramick, *Homosexuality: Protestant, Catholic and Jewish Issues; a Fishbone Tale*, 18 J. HOMOSEXUALITY 7 (1989).



Assembly in 1994.<sup>25</sup> This bill, introduced by the ruling left-leaning New Democratic Party, was meant to ensure that all benefits and duties accruing to or incumbent upon heterosexual spouses should be available to homosexual spouses as well. The debate on the bill reflects the divisions still existing in Canadian society in 1994. While its sponsors used the language of inclusivity and diversity, its opponents evinced a discomfort with the idea of homosexual spouses, and a fear that the bill would undermine the Canadian family. In deference to its symbolic and religious meanings, the word “marriage” was carefully eschewed in the bill, which was nevertheless defeated.<sup>26</sup>

Defending Bill 167 in the Legislative Assembly of Ontario, then Premier Bob Rae used language familiar to proponents of inclusivity, diversity, and the right to determine one’s own private activities.

[P]eople . . . have a right to a private life. They have a right to be themselves. They have a right to be who they are, without shame, without fear, with acceptance. . . . [I]n a secular society such as ours and in a diverse society such as ours and in a society such as ours which reflects different values, different traditions, different people . . . it is only right and fair that the law should reflect them [homosexuals] as well. . . . [T]he first freedom, the first right that people have is the right to be themselves.<sup>27</sup>

Attorney-General, Marion Boyd, also phrased her introduction in terms familiar to sexual liberals of the 1990s: “Tolerance, diversity, fairness, and respect: These are the main themes of this legislation,” she said, later arguing “it is our duty as legislators . . . to bring our laws into accord with this fundamental articulation of the core Canadian values of diversity and tolerance.”<sup>28</sup> Also using language familiar to sexual liberals of the 1980s and 1990s, another Member of Parliament added: “We have an opportunity here to leave a legacy of positive self-esteem among all people, that we

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25. Bill 167, 3rd Session, 35th Legislature, Ontario, 43 Elizabeth II (1994).

26. On May 20, 1999, the Supreme Court of Canada ordered the Province of Ontario to amend its Family Law Act within six months to give gay couples the same rights to spousal support as heterosexual common-law couples, in the case of marriage breakdown. The Court also “hinted broadly that other provincial statutes that discriminate against gays ought to be changed at the same time.” Kirk Martin, *Gay Couples Win Rights*, *GLOBE & MAIL* (Toronto), 21 May 1999, at A1. On April 11, 2000, the Government of Canada passed Bill C-23, giving gay and lesbian couples the same rights and responsibilities as common law heterosexual couples, although still not giving them the right to marry. See House of Commons Canada, Bill C-23, *The Modernizing Benefits and Obligations Act*, 2nd Sess., 36th Parliament, 48–49 Elizabeth II, 1999–2000.

27. Legislative Assembly of Ontario, OFFICIAL REPORT OF DEBATES, 6796–97 (9 June 1994) (statement of Premier Bob Rae).

28. Legislative Assembly of Ontario, OFFICIAL REPORT OF DEBATES, 6454 (19 May 1994) (statement of Hon. Marion Boyd, Attorney General); *Id.* at 6573 (1 June 1994).

have a society that accepts people no matter who they are. . . . To be an inclusive society, that includes gays and lesbians."<sup>29</sup>

Coming from a more conservative, rural tradition than the urban Premier and Attorney-General, another of the government's Ministers added his view of the religious import of giving spousal rights to gays and lesbians:

[W]hen I grew up as a child and attended church and Sunday school on a regular basis, I believed we had a loving God, who loved all people, and wanted us to treat everyone equally. . . . [T]hose people who want to talk about or hide behind this as a religious issue should . . . think about their God, their Supreme Being, as a loving person who would like us to treat everyone equally and not continue discrimination.<sup>30</sup>

The Minister's modern, inclusive interpretation of Christianity was upsetting for many members of the Provincial Parliament, within his own party as well as within the Opposition parties. Opponents of Bill 167 were very concerned that the traditional family would be undermined by it.

Because of my upbringing and my religious beliefs, I believe firmly in the concept of the traditional family and I think of family as the traditional mother, father and children. . . . In society today, every major problem we face . . . can all be traced to the breakdown of the traditional family unit.<sup>31</sup>

This quotation illustrates the depth of religious and moral commitment of opponents of Ontario's Bill 167. Many defenders of gay and lesbian rights easily dismiss opposition as symptomatic of "homophobia," thus converting a moral position into a psychiatric illness. Aware of this tendency, another opposition member complained that his religious views of traditional morality were denigrated, and that all religiously based defenses of the family were derided:

We do not support changing the definition of "marital status." The role of the family is an important and fundamental building block in our society. . . . Some of us derive these views from deeply held religious convictions and we would be untrue to our faiths . . . to deny this. . . . In some quarters it is not popular . . . to draw . . . on religious convictions . . . to make the case against changing the definition of marriage. . . . People who refer to their religious convictions . . . are ridiculed as extremists or fundamentalists or red necks or zealots.<sup>32</sup>

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29. Legislative Assembly of Ontario, OFFICIAL REPORT OF DEBATES, 6641 (2 June 1994) (statement of Gary Malkowski, New Democratic Member of the Provincial Parliament for York East).

30. Legislative Assembly of Ontario, OFFICIAL REPORT OF DEBATES, 6671 (6 June 1994) (statement of Hon. Elmer Buchanan, Minister of Agriculture, Food and Rural Affairs).

31. Legislative Assembly of Ontario, OFFICIAL REPORT OF DEBATES, 6626 (2 June 1994) (statement of Mrs. Joan M. Fawcett, Liberal Member of the Provincial Parliament for Northumberland).

32. Legislative Assembly of Ontario, OFFICIAL REPORT OF DEBATES, 6582 (1 June 1994) (statement of Mr. Charles Harnick, Progressive Conservative Member of the Provincial Parliament for Willowdale).

The concerns expressed by these opponents of Bill 167 in Ontario are similar to the concerns reflected by those who oppose the recent liberalization of some Christian churches' attitudes toward homosexuals. According to one critic, the United Church, by accepting homosexuals, has desanctified both the Word of God and the holiness of matrimony. Moreover, it has relativized God's Truth, and has ended the obligation of obedience to God's will. Religious Truth is now corrupted by a willingness to change church teachings in accordance with social values that might well contradict the Word of God.<sup>33</sup>

Indeed, this is what the example of the United Church shows. Religion is not merely a matter of following the revealed Truth, in whatever holy book it might be found. Religious "truths" frequently change as the larger world changes, and as religious organizations adapt their teachings so as not to be out of step with the times. From a sociological point of view, religions are man-made institutions, however much those who partake in debates about religion and human rights might claim that they are relying on the teachings of their various gods. As man made God in his own image, so society makes God's rules in the image of its own.

Religion is not static; it reflects society and is part of social change. What people now "find" in the scriptures depends on what they are looking for. Just as Christians no longer endorse slavery or the unthinking obedience of a woman to her husband, so many Christians no longer endorse an image of the homosexual as sinful. But while many Christians consider this change a mark of progress toward greater diversity and inclusivity, many others—and many others of different religions in both the Western and the non-Western world—consider this diversity to be a moral outrage, an offense against the sanctity of marriage and the family. In this view, pro-gay rights liberals have so influenced public debate that there is no room for religiously based opinions. It is precisely such irreligious liberalism that causes such concern and such opposition to Western cultural imperialism in the non-Western world.

Thus, by studying the Canadian debate we can understand the moral issues that preoccupy supporters and opponents of that most quintessential of gay rights—because it is most "inclusive" of gays in the community—the right to marry and form a family on the same basis as heterosexuals. To grant gays and lesbians the right to marry is to agree that their sexual orientation is worthy of respect, that there is no moral obligation in either social or religious terms to condemn their sexual activities. Rather, their sexual activities are as socially and personally appropriate as those of heterosexu-

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33. See V. Shepherd, *The United Church and Ordination of Active Homosexuals: A Critique*, in *A CRISIS OF UNDERSTANDING*, *supra* note 20, at 35.

als. Canadian society, along with several other Western societies such as the Netherlands, now seems to be en route to endorsing this point of view. However, this is the case because of a host of underlying liberal values which are still contested by conservatives in Canada, and which also strike many outside of the developed, liberal Western world as deeply offensive.

### III. HOMOSEXUAL RIGHTS AND THE NEED FOR A LIBERAL CULTURE

The discussion above of the debate in Canada reveals the social conditions necessary for endorsement of a nondiscriminatory, indeed supportive, attitude toward gays and lesbians. In many societies, homosexuals are viewed as immoral social deviants; this was the case in Western Christian society until very recently. Only the development of a liberal society increasingly tolerant of personal privacy, including sexual privacy, permits homosexuals to assert claims to social respect. Such liberalism also coincides with small-s secularism: not necessarily the renunciation of religious views, but a reconsideration of religious views in accordance with prevailing secular social norms, as evinced above in the discussion of Canada's United Church.<sup>34</sup>

With modernization and secularization come "removal of sexuality from the realm of taboo and a new respect for the private sphere."<sup>35</sup> That citizens have a right to privacy is taken for granted in liberal democracies. As one Canadian judge stated in 1977: "It is a fundamental principle of our society that every member must respect the dignity, privacy and person of the other."<sup>36</sup> It is no accident that the second case concerning homosexual rights upon which the United Nations Human Rights Committee ruled revolved around the right to personal privacy.<sup>37</sup>

The extension of social acceptance of privacy so far as to include tolerance of what were previously thought of as sexual improprieties and sexual deviance arrived only very recently in North America, with the

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34. For a fuller discussion of the values of secularism and personal privacy in liberal society, see Rhoda E. Howard, *HUMAN RIGHTS AND THE SEARCH FOR COMMUNITY* 23 (1995).

35. W. Lienemann, *Churches and Homosexuality: An Overview of Recent Official Church Statements on Sexual Orientation*, 50 *ECUMENICAL REV.* 8 (1998).

36. D.G. CASSWELL, *LESBIANS, GAY MEN, AND CANADIAN LAW* 638 (1996).

37. See *Nicholas Toonen v. Australia* views adopted on 31 March 1994, U.N. Human Rights Committee, 50th Sess., Comm. No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994), reprinted in U.N. GAOR, 49th Sess., Supp. No. 40, at 226-37, U.N. Doc. A/49/40 (vol. II) (1994). For discussion of this case, see L.R. Helfer & A.M. Miller, *Sexual Orientation and Human Rights: Toward a United States and Transnational Jurisprudence*, 9 *HARVARD HUM. RTS. J.* 61 (1996).

sexual revolution of the 1960s. The 1969 Stonewall riot in New York City, in which homosexuals defended themselves against a police raid on a gay bar, was a logical outcome of the previous stress on freedom of sexuality found in the student and women's liberation movements. But tolerance of sexual improprieties and deviance was also a consequence of the erosion of traditional sex roles and an acceptance of a high degree of androgyny. Homophobia is linked to traditional sex roles, as well as to other factors such as conservative religious beliefs and lack of contact with gays.<sup>38</sup> Societies in which privacy is a social value and in which deviance from social norms such as prescribed sex roles is tolerated tend to be urban and cosmopolitan. Gays are symbolic of urban society and indeed do tend to congregate in urban areas.<sup>39</sup>

Androgyny and cosmopolitanism are both aspects of diversity. Diversity since the 1980s includes not only matters of language, religion, ethnicity, or other such characteristics, but also matters of intimate sexual choice. The Western liberalism that is fully accepting of homosexual rights is a sexual liberalism. Sexual liberalism permits sexual diversity. Sexual diversity is a matter of privacy, individualism, and choice, all three values that permeate liberal society. But this very diversity upsets traditional morality, whether in the Western world or elsewhere. Even in the West there are many who would prefer a more public sense of heterosexual duty to family and community, even when that duty is imposed by society rather than freely chosen by the individual. The new tolerance, the new "anything goes" approach to sexuality, upsets many individuals' deepest perceptions of what is honorable and shameful.

Opposed to the dominant liberal ethos in Canadian society are those who are strongly disturbed by homosexuals and homosexual behavior. That such a sector of the population still exists is evident, for example, in the amount of gay bashing (verbal and physical attacks on gays) that still occurs; indeed, that may have increased as a result of the new openness of gays. In a street survey of 368 individuals attending Toronto's Gay and Lesbian Pride Day celebrations in 1995, 78 percent of respondents reported having experienced, during their lifetime, verbal assaults; 38 percent reported having been chased or followed; and 21 percent reported having been physically assaulted, all because they were assumed to be lesbian or gay.<sup>40</sup>

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38. See G.M. Herek, *Heterosexuals' Attitudes Toward Lesbians and Gay Men: Correlates and Gender Differences*, 25 J. SEX RES. 451 (1988).

39. On gays and urbanism, see GILBERT HERDT, *SAME SEX, DIFFERENT CULTURES: EXPLORING GAY AND LESBIAN LIVES* 171-73 (1995).

40. See E. Faulkner, *Anti-Gay/Lesbian Violence in Toronto: The Impact on Individuals and Communities*, Ottawa, Canada: Dept. of Justice, 1997 (TR1997-5e), at xi.

The views of individuals who strongly oppose homosexual rights are exemplified by a website entry by a well-known Canadian, anti-gay propagandist, Jeff Vos.<sup>41</sup> Vos confounds gays with Jews, asserting that gay culture is supported by Jews and that gays are protected by human rights commissions known to be financed by the Jewish community.<sup>42</sup> He also confounds gays and blacks, asserting that the reason that gays and black Africans are both populations known to be susceptible to AIDS is that both are known to be highly promiscuous.<sup>43</sup> Gays are also effeminate, according to Vos; they violate approved sex roles.<sup>44</sup> They corrupt innocent children, who have no sexual tendencies at all until they are seduced by homosexuals.<sup>45</sup>

The set of stereotypes Vos uses reflects wider stereotypes found in many societies about the nature of various "deviant" social groups. Society, says Mary Douglas, divides people into pure and impure categories.<sup>46</sup> This is a deeply ingrained tendency, an effort to make sense of the disorder of the world around us, to set boundaries and reduce the likelihood of social confusion.<sup>47</sup> Purity is connected with cleanliness and orderliness. In turn, cleanliness is connected to sexual restraint, and orderliness to appropriate sex role behavior. Gays, in this account, exemplify impurity and disorder. Their sexual practices are dirty and deviant, and they are hyper-sexual, obsessed by sex. They are disorderly because—so the stereotype goes—they violate approved and natural sex roles; at the same time as they are hyper-sexual, they are effeminate and passive. Unlike women, who can conform to social norms and rules, and who can be considered pure if they conform to sexual restrictions and taboos regarding their bodily functions, gays are innately disorderly and dirty. They thus upset the social order in fundamental ways; they violate the most intimate, deeply-ingrained rules of social behavior.

To the social conservative, then, gays are a form of social dirt whose role is to confirm the rightness of everyone else's sexual restraint. "The creation of a specialized, despised, and punished role of homosexual keeps the bulk of society pure."<sup>48</sup> For such conservatives, the liberal rhetoric regarding gay rights exemplified in Canadian debates shames the society

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41. See Jeff Vos, *Suppressed Facts III: The Homosexual Threat* (visited 12 Dec. 1997) <<http://www.crusader.net/texts/cng/indhomo.htm>>.

42. See *id.*

43. See *id.*

44. See *id.*

45. See *id.*

46. See generally, MARY DOUGLAS, *PURITY AND DANGER: AN ANALYSIS OF CONCEPTS OF POLLUTION AND TABOO* (1966).

47. See *id.*

48. M. McIntosh, *The Homosexual Role*, in *QUEER THEORY/SOCIOLOGY* 35 (S. Seidman ed., 1996).

that employs it, reversing as it does the natural order of social morality. Liberals tolerate, indeed celebrate, the intolerable. Liberals ask for gays to be honored and respected: the more common traditional or conservative social order expects gays to be dishonored and denigrated. Liberals want to include gays as part of the community, while traditionalists expect that gays should be excluded and shunned, if not indeed imprisoned or exiled. Liberals go so far as to announce that gays should have just as much self-esteem as heterosexuals; traditionalists reply that gays should be ashamed of their behavior and their very identity.

Underlying these oppositions of liberal and traditional attitudes toward gays are deeper attitudes about proper comportment in society as a whole. Liberal attitudes toward gays reflect liberals' deeper underlying principle that individualism should be permitted, and that individual desires should take precedence over the collective will. The right to privacy is more valued by liberals than is a public morality; diversity, no matter how repugnant are nonconforming acts or identities, is more valued by liberals than conformity to public morals. Traditionalists expect that all individuals should exhibit restraint in their activities; liberals encourage instead self-fulfillment and indeed, public exhibitionism, as in the "flaunting" of their sexuality by gays that so many conforming heterosexual individuals (including twenty-seven in the Hamilton study) deplore.<sup>49</sup> Traditionalists expect everyone to abide by social rules; liberals encourage choice, indeed even choice in sex role behavior, encouraging men to adopt feminine attributes and roles and women to adopt masculine. The international movement for gay rights, then, is a movement that attacks traditional social morality in a more fundamental way than any other movement to protect human rights. Even more than the struggle for women's rights, it defies the orderly opposition of male and female so central to all cultures.

#### IV. GAYS, LESBIANS, AND THE THREAT TO THE FAMILY

Beyond all the stereotyped social oppositions discussed above, there is still that which is most problematic about homosexuals: the refusal to marry someone of the opposite sex, and the refusal to procreate with someone of the opposite sex within marriage. Gays and lesbians are a threat to the family. This is what makes the "out" gay or lesbian, insistent on his or her identity as such, so much more problematic than the individual who merely engages in same-sex activity.

According to some queer theorists, the identity of "homosexual" is a

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49. See also WILLIAM N. ESKRIDGE, JR., *THE CASE FOR SAME-SEX MARRIAGE* 183–91 (1996).

very recent social creation, specific until very recently to Western society.<sup>50</sup> Until the late nineteenth century, even in the West, there were individuals who engaged in same-sex activities, but not “homosexuals” as such. Thus in Britain, it was not homosexuality that was proscribed by law, but the act of buggery (sodomy or anal sex), whether performed between men or by a woman and a man. Buggery was unnatural because it could not result in procreation.<sup>51</sup> Even Oscar Wilde was put on trial not because he was identified as a homosexual, but because he was accused of sodomy.<sup>52</sup>

Males began to identify themselves as homosexuals when certain social changes made that possible. Among these were industrialization and urbanization, which permitted homosexuals to congregate in cities and remove themselves from the constraints of family and village life. This in turn permitted the formation of a social network and community of homosexuals, within which it was easier for an individual to reinterpret his identity.<sup>53</sup> It was also easier for a male homosexual identity to emerge when machines and a more complex division of labor took over women’s work such as cleaning and cooking, so that men—whether heterosexual or homosexual—no longer needed to live with women to have their daily needs taken care of.<sup>54</sup>

If the identity of homosexual is barely 100 years old in the West, it is easier to appreciate why such an identity might be considered outrageous in the non-Western world. In many parts of the non-Western world, procreation is still an imperative of social life. Despite the economic and ecological changes that make advisable a reduction in fertility rates, all adults bear a social responsibility to marry and have children. In Africa, for example, same-sex activity is common in many cultures. In some, it is considered mere adolescent play; in others, the imperatives of male migration (for example, to the mines of South Africa) result in homosexual activity in the absence of women. But the individuals who engage in such activities do not consider themselves homosexuals. They do marry, and they do procreate. They do not deny or refuse the heterosexual married roles that

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50. See J. Weeks, *The Construction of Homosexuality*, in *QUEER THEORY/SOCIOLOGY*, *supra* note 48, at 41. Weeks is what is known as a “constructivist” among queer theorists, as opposed to “essentialists,” who argue for an essential homosexual identity rooted, presumably, in some aspect of genetics, biology, or psychology. The author’s own analysis, as should be clear from this paper, tends toward the constructivist position.

51. See *id.* at 45.

52. See *Oscar Wilde, 1854–1900, Author* (visited 26 Oct. 2000) <[http://www.irlandseye.com/aarticles/history/people/whoswho/o\\_wilde.shtml](http://www.irlandseye.com/aarticles/history/people/whoswho/o_wilde.shtml)>.

53. See B.D. Adam, *Structural Foundations of the Gay World*, in *QUEER THEORY/SOCIOLOGY*, *supra* note 48, at 111.

54. See BARBARA EHRENREICH, *THE HEARTS OF MEN: AMERICAN DREAMS AND THE FLIGHT FROM COMMITMENT* 9–10 (1983).



they are expected to adopt as adults.<sup>55</sup> Thus the Bishop of Sudan, who at the international conference of Anglican bishops in 1998 declared, “In the Sudan we know nothing of what you call homosexuality, we only know the gospel,” might well have been telling the truth, according to his lights.<sup>56</sup> While homosexual acts might be common, the homosexual identity might still be so uncommon in Sudan as to be deemed impossible.

Even in societies with ritualized homosexual activities, the family unit is still preserved. The adult male is expected to marry and procreate, even if his emotional ties are still to men. In ancient Greece, where homosexual relations between older men and adolescent boys (Platonic or otherwise) were idealized, the adult male married.<sup>57</sup> The famed berdache of North American Indian culture adopted a female role and “married” as a female, thus confirming the society’s overall commitment to marriage.<sup>58</sup> Among the cultures that practice ritualized homosexuality in Papua New Guinea, this is also the case, as Gilbert Herdt’s study of the Sambia people shows.<sup>59</sup> The Sambia were quite shocked when Herdt explained to them that as an American homosexual, he had never married.<sup>60</sup> They urged him to find a wife, as he was well beyond the age at which males in their culture practiced same-sex activities.<sup>61</sup>

The gay and lesbian liberation movement rejects the traditional male-female unit that is central to most of the world’s views of the meaning of family. In rejecting the union of male and female, it also seems to be rejecting the procreative function of the family. Thus, the most fundamental purpose of social life is denied: to form and protect families, and to make sure that as many children as possible are born. That lesbians and gays might like to have children—and indeed, in developed Western countries can find ways to have children without heterosexual physical relations—is beyond the comprehension of many technologically less developed societies; or, the alternative means of procreation are viewed as so unnatural as to be repugnant.

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55. See Chris Dunton & Mai Palmberg, *Human Rights and Homosexuality in Southern Africa*, 19 CURRENT AFR. ISSUES 21 (1996). See also D.P. Amory, “Homosexuality” in *Africa: Issues and Debates*, 25 ISSUE: A JOURNAL OF OPINION 5 (1997).

56. Canadian Broadcasting Company, *The World at Six* (radio), 5 Aug. 1998.

57. See HERDT, *supra* note 39.

58. See *id.*

59. See *id.*

60. See *id.*

61. See *id.* The case of the Sambia raises an interesting question for human rights universalists. The Sambia believe that young males have no semen in their bodies, and can only acquire semen through performing fellatio on older males. Thus boys in the seven- to ten-year-old age group perform fellatio on older boys. Eventually, the younger boys become the recipients of oral sex, “donating” semen rather than receiving it; later still, they marry and give up such activities. *Id.* at 114–15. Does this “boy insemination” violate children’s rights and if so, what, if anything, should be done about it?

That procreation is so fundamental to most societies also might explain why lesbianism often is seen as a lesser threat to society than male homosexuality. The lesbian can be forced to procreate: her father can compel her to marry, and her husband can rape her, whereas male homosexuals cannot be forced to procreate. However, in contemporary Western liberal societies, fathers may no longer invite putative husbands to rape their reluctant daughters, nor is marital rape tolerated any longer. Thus, the lesbian identity and role is possible, and with it a challenge to the fundamental heterosexual family.

The lesbian or gay identity is possible in the West because the purpose of marriage has changed. No longer is marriage viewed as primarily for the purpose of reproduction. Small families of one or two children are the norm, infertile women are not shunned, and even voluntary childlessness is reasonably accepted, although still drawing some social stigma. Instead, marriage is viewed as a social institution with the purpose to bring together partners for love, sexual fulfillment, and companionship. If the companionate marriage is the norm and procreation is not a necessary aspect of it, then there is no particular reason why the two married companions need to be of opposite sexes. Any two individuals can form a social unit for purposes of companionship and sexual fulfillment.

This new, Western ideal of the family permeates discussions of gay rights. Non-Westerners are asked to reshape one of their most sacred social institutions to accommodate what in many traditionalists' eyes are the shameful sexual desires of perverted individuals. As such, the demand for gay and lesbian rights is the latest in a series of what might be called cultural assaults against the non-Western world. Such an assault is highly objectionable to many outside the West, whether homosexuality is an "innate" characteristic or whether it is a social construction.

## V. A NEW LAYER OF CULTURAL IMPERIALISM

From the point of view of non-liberals, either in the West or in the non-Western world, if homosexual identity is a social creation, then it is a choice. As a choice, rather than an innate condition, it is immoral, according to non-liberals. Homosexuality is a choice that should be condemned, not protected.

That the homosexual identity may well be a social construction, specific to time and place, makes it very difficult to argue to the international community that homosexuals are worthy of human rights protection because they can be found, in large numbers, in all societies. The number frequently cited by gay and lesbian activists, that 10 percent of the world's population is homosexual, is a myth. This number derives from the classic

study of male sexuality in the United States by Alfred Kinsey and his colleagues in the 1940s.<sup>62</sup> Kinsey reported that 10 percent of his white male sample had been more or less exclusively homosexual for at least three years between the ages of sixteen and fifty-five.<sup>63</sup> But Kinsey concluded that only about 4 percent of his white male sample had been exclusively homosexual throughout their entire lives.<sup>64</sup> Moreover, Kinsey's sample was not statistically representative; he relied on volunteers as well as on certain populations, such as prisoners.<sup>65</sup>

More recent data are much more reliable. A University of Chicago study conducted in the early 1990s found that about 2.8 percent of the male population of the United States and 1.4 percent of the female population "reported some level of homosexual (or bisexual) identity."<sup>66</sup> These figures were derived from a random sample survey of the U.S. population. Other studies conducted in the United States, as well as studies conducted in Britain and Europe, confirm that this is the more accurate number.<sup>67</sup>

Even these much smaller figures cannot be generalized to the entire world. If the identity "homosexual" is a social construction confined to developed Western society, then it probably does not exist in the same numbers in less developed, non-Western societies. Indeed, same-sex activity may merely be part of a range of sexual behaviors tolerated—even if officially denied—in certain cultures, as long as they are engaged in discretely and do not interfere with traditional sex roles and the imperative to form a family.

Nor is the evidence yet compelling that homosexuality is a biologically induced condition. Even if this evidence were compelling, non-Western states could argue that it is a genetic condition peculiar to Westerners. Genetic and other biological conditions are not randomly distributed throughout the world's population. Even if the biological condition of homosexuality were randomly distributed across all the world's populations, it still could be considered a shameful condition and one which should be hidden. The appropriate attitude of the individual unfortunate enough to be biologically homosexual would be to try to overcome this tendency, to hide it, not to flaunt it, and certainly not to use it as a reason to claim "special" human rights. Socially deviant individuals usually are shunned or punished, not rewarded with respect and concern for their rights.

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62. See A.C. KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN MALE* (1948).

63. See *id.*

64. See *id.* at 651.

65. See EDWARD O. LAUMANN ET AL., *THE SOCIAL ORGANIZATION OF SEXUALITY: SEXUAL PRACTICES IN THE UNITED STATES* 289 (1994).

66. *Id.* at 293. Note that the relevant criterion here was identity, not activity.

67. See S. LEVAY, *QUEER SCIENCE: THE USE AND ABUSE OF RESEARCH INTO HOMOSEXUALITY* 61–62 (1996).

Given the reluctance of Western sexual liberals to accept that in many other parts of the world homosexuality is a deviant, if not criminal, identity or activity, it is not surprising that some non-Western leaders have reacted to the incipient campaign for international gay rights with outright hostility.<sup>68</sup> It is important in the debate with non-Western world leaders not to dismiss them as possessing homophobic tendencies; that is, as suffering from a psychological condition. The debate needs to be conducted on the level of social morality. A dismissive attitude toward non-Westerners who condemn homosexuals suggests that liberal Westerners merely consider them barbaric, too primitive to have reached the refined level of sexual privacy and choice now common, if not universally accepted, in the West. It is, moreover, extremely offensive to many who are uneasy with gay rights to suggest that this is because of their personal fear of their own possible homosexual or bisexual tendencies. The moral issues are clear: religion, family, and the social obligation to have children. To push these issues aside by referring to psychological theories of homophobia is to denigrate the moral systems of non-Western societies uneasy with, or even absolutely hostile to, gay rights.

In the eyes of many non-Westerners, the international movement for gay rights is a new layer of cultural imperialism, a new secular imperialism, as it were. In many societies, as in sub-Saharan Africa, in Muslim cultures, in Papua New Guinea, or in China and Japan, ritualized, controlled homosexual activities were permitted—or were tolerated—before the onset of the Western, Christianizing period.<sup>69</sup> Westerners urged indigenous populations under their control or influence to curtail and be ashamed of these activities. Political imperialism and Christian morality resulted in state legal regulation, so that even now, many formerly colonized countries retain their colonizers' ancient laws regarding homosexual activities, as is common among former British colonies which outlaw gross indecency or buggery.<sup>70</sup>

In this context, gay liberation is but the latest wave of Western imperialism. The very same people who once, without regard to local cultures, ordered the non-Western world to outlaw homosexuality, now again, without regard to local cultures, urge the non-Western world to accept—even to respect and honor—homosexuality. As Bishop Henry

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68. For a detailed discussion of the state of the international campaign for gay and lesbian rights, see Douglas Sanders, *Getting Lesbian and Gay Issues on the International Human Rights Agenda*, 18 HUM. RTS. Q. 67 (1996).

69. See, e.g., S.O. Murray, *The Will Not To Know: Islamic Accommodations of Male Homosexuality*, in ISLAMIC HOMOSEXUALITIES: CULTURE, HISTORY, AND LITERATURE 14 (S.O. Murray & W. Roscoe eds., 1997); S. A. Wawrytko, *Homosexuality and Chinese and Japanese Religions*, in HOMOSEXUALITY AND WORLD RELIGIONS 199 (A. Swidler ed., 1993); HERDT, *supra* note 39.

70. For a list of these countries as of the mid-1990s, see Laura Bruni, *Index Amorum Prohibitorum*, 24 INDEX ON CENSORSHIP 195 (1995).

Orombi of Uganda said during the debate at the 1998 World Anglican Conference over the church's position regarding homosexuality, "We are quoting what is in the Scriptures. Don't you forget that the church in America and the church in England took us the Scriptures, and we are not reading anything different."<sup>71</sup> Yet at this conference, Western bishops tried to persuade bishops from the non-Western world to reverse the Christian attitude toward homosexuality that missionaries had taught them.

Having been persuaded by Christian colonizers to punish homosexual behavior, representatives of non-Western states now find themselves called upon to tolerate the very behavior they were once told was reprehensible. So homosexuality is now a symbol in many countries of the "decadent West," and a means by which political leaders can rally populist anger against foreigners. Thus Secretary for Information and Publicity in Namibia, Alpheus Naruseb, in 1997 lashed out at Europeans who, in his view, were undermining Namibian culture by imposing "gayism."<sup>72</sup> Said Naruseb:

It should be noted that most of the ardent supporters of this [sic] perverts are Europeans who imagine themselves to be the bulwark of civilisation and enlightenment. They are not only appropriating foreign ideas in our society but also destroying the local culture by hiding behind the facade of the very democracy and human rights we have created. . . . The moral values of our nation . . . incorporate the fundamental principles of nature and should not be equated to the vile practices of homosexuals which has a backlash effect on our society.<sup>73</sup>

This quotation, including the themes of foreignness, local culture, and local morality, exemplifies the resentment many in the non-Western world feel against the latest display of human rights cultural imperialism. To be told that they are morally inferior because they do not tolerate what seems to them a patently immoral practice strikes many non-Westerners as further evidence of Western insensibility to local cultures. In this respect, the anger shown by President Robert Mugabe of Zimbabwe in 1995, when the Gays and Lesbians of Zimbabwe attempted to set up a display at an African book fair, perhaps needs a more understanding reaction from Western sexual liberals. Mugabe, a product of Roman Catholic missionary education in a colonized Rhodesia, is now being told by young Western upstarts that the moral system which he accepted when taught it by their own elders is

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71. G. Niebuhr, *Anglican Conference Takes Tough Line on Homosexuals*, N.Y. TIMES (Int'l Ed.), 6 Aug. 1998, at A1, A8.

72. See *Swapo Slams Gays: Swapo Vows To "Uproot" Homosexuality in Namibia*, Electronic Mail and Guardian (South Africa), 5 Feb. 1997, available on <<http://www.mg.co.za/mg/news/97jan2/5feb-swapogay.html>>.

73. *Id.*

wrong.<sup>74</sup> Moreover, his own African upbringing no doubt taught him that the natural course was for men and women to marry and reproduce, and that that which is against nature is against the social order, and is therefore immoral.<sup>75</sup>

Nor is the type of reaction exhibited by Naruseb and Mugabe unique to sub-Saharan Africa. As Duran notes regarding Islamic societies in general, "a dispassionate discussion of the human rights of homosexuals is particularly hard to initiate in Muslim societies confronted with a kind of western homosexual aggression."<sup>76</sup> In the Muslim world, according to Duran, the active role in male same-sex activity is not dishonorable, while the passive role is deeply shameful. Thus, some Moroccan men who engage in paid sexual activities with male Westerners consider that in taking the active role in anal sex, they are symbolically degrading their former Western conquerors. "To sodomize a Westerner provides a kind of psychological relief for some people from among the former 'subject races' . . . ."<sup>77</sup> So at the same time as political leaders deny that homosexuality exists in their societies, homosexual activities themselves embody the relations between the West and the Rest. That homosexual activities can be used to express hostility to Westerners is not a paradox; by subjecting the Westerner to the humiliation of passive anal sex, the Muslim man signals his masculinity, his independence, and his rejection of subjugation. He can do this while simultaneously (and truthfully) arguing that gay rights are not part of his culture, and that the West has no business trying to impose them.

## VI. STYLE VERSUS SUBSTANCE: THE HOMOSEXUAL FAMILY AS A THREAT TO THE RIGHT TO A FAMILY

Jack Donnelly argues:

Perverts, degenerates, and deviants have the same human rights as the morally pure, and should have those rights guaranteed by law. . . . Human rights . . . are not lost simply because of one's beliefs or lifestyle. . . . How one chooses to lead one's life, subject only to minimum requirements of law and public order, is a private matter, no matter how publicly one leads that life.<sup>78</sup>

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74. For information on Mugabe's education, see N.C. BORCKMAN, *AN AFRICAN BIOGRAPHICAL DICTIONARY* (1994).

75. For a discussion of the Zimbabwe Book Fair incident, see Dunton & Palmberg, *supra* note 55, at 8.

76. Khalid Duran, *Homosexuality and Islam*, in *HOMOSEXUALITY AND WORLD RELIGIONS*, *supra* note 69, at 181, 186.

77. *Id.* at 189.

78. Jack Donnelly, *Unfinished Business*, 31 *POL. SCI.* 533 (1998).

This quintessentially liberal position—that one’s private life is a matter of public indifference even if conducted in public—is one that not only many non-Western traditionalists, but also many Western conservatives, would have difficulty accepting. The public conduct of private sexual activities was offensive to many in the Hamilton study the author conducted, and is even more offensive—a sign of Western decadence—among other populations. Donnelly’s implicit assumption that sexual activities are merely a matter of life “style” also is offensive to many traditionalists. In most societies, how a person conducts his or her life is not a matter of style. It is a matter of substance, and the substance—marriage, family, and procreation—is dictated by strongly ingrained social norms. Only in the wealthiest, most modern, most urbanized societies can individual lifestyle preference supersede these normative constraints on how one behaves.

The assertion of gay rights is very different from the acceptance of ritualized and constrained roles for gays in some indigenous, non-Western societies. The assertion of rights is a public demand for respect for homosexuals, and thus a public rejection of sex roles, the heterosexual family, and the normative underpinnings of the whole society. It is also a public rejection of many fundamental religious beliefs.

Donnelly’s suggestion that even morally reprehensible people are entitled to rights will not sit well with those many political leaders, and those many societies, who regard homosexuality as a attack on their entire cultural system. Rather, such a suggestion undermines fundamental aspects of local morality. International consensus on rights for ethnic, religious, and racial minorities is relatively easy to obtain in principle, because it is not inherently shameful (in the contemporary world) to be a member of any particular race, ethnicity, or religion. A weak consensus on rights for women has been obtained because women can be honored as long as they control the shameful aspects of their biological and sexual identities.<sup>79</sup> Consensus on the rights of children can be found because children are future adults; they are no more innately shameful than their elders of the same sex, religion, or race.

Racial, religious, and ethnic minorities form traditional families. Women and children are part of families. Rights for these groups do not undermine family relations or the social imperative to procreate. Rights for homosexuals, in the eyes of those who oppose gay rights, do just that. Those states that accept the UDHR do so in part because they agree that the family is “the natural and fundamental group unit of society.”<sup>80</sup> They make no mistake in assuming that the drafters of the Declaration, fifty-three years ago, had in

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79. For a discussion of women as inherently shameful, see Howard, *supra* note 34, at 135.

80. Universal Declaration of Human Rights, *supra* note 4, at art. 16(3).

mind a heterosexual family. Many cannot agree that those homosexuals who want the right to marry and adopt children want to share the values of the larger society, as the epigram that opens this chapter suggests. Rather, they accuse homosexuals of trying to destroy their values. If the United Nations accepts the human rights of homosexuals, then, in the eyes of those who oppose gay rights, it fails in the obligation it accepted in 1948, and that it enjoins upon society and the state in general, namely, to protect the family.

Thus, the difficulty for those, including this author, who support the inclusion of gay and lesbian rights in international law is to convince those who oppose gay and lesbian rights to change their views. This requires convincing them of the inherent respectability of those whom they consider to be—in Donnelly's words—"perverts, degenerates, and deviants."<sup>81</sup> Sexual liberalism, a very recent phenomenon even in otherwise liberal Western societies, requires a changed world view. To convince opponents of gay and lesbian rights to change their world view without seeming to be cultural imperialists is a major challenge for advocates of such rights. Yet it is a challenge that must be met if gays and lesbians are ever to enjoy the same wide protections of international law, including the right to the family, as are available to every other category of people who suffer discrimination.

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81. Donnelly, *supra* note 78, at 533.