



## The same-sex marriage debate in the US and representations of Scandinavia

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### Abstract

*Those opposed to same-sex marriage have traditionally drawn upon arguments rooted in the pathological character of homosexuality, natural law, sociobiology or the assertion that the legal recognition of same-sex relationships will promote homosexual activity. Stanley Kurtz's thesis – which argued that the introduction of registered partnerships for gay and lesbian couples in the Scandinavian countries had contributed to the decline of heterosexual marriage and the growth of illegitimacy – provided a different and, seemingly, less prejudicial rationale. During 2004, as the debate around the Federal Marriage Amendment intensified, Kurtz's findings were widely cited within the conservative movement, Congress and the White House. The paper considers the character of the Kurtz thesis and assesses the reasons why it had particular political resonance.*

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The prospect of extending legal recognition to gay and lesbian relationships has hung over American politics for almost three decades. However, the issue came to the fore following the Massachusetts Supreme Judicial Court's November 2003 ruling, which established that the provisions of the state constitution required the extension of marriage to gay and lesbian couples, and amidst fears that the 1996 Defense of Marriage Act (DOMA), which asserted the right of individual states to deny recognition to same-sex marriages that might be conducted in other states, could be struck down by the federal courts. Although there were tactical disagreements and differences of emphasis, those who opposed same-sex marriage quickly rallied behind proposals for a Federal Marriage Amendment (FMA). In its most widely canvassed form, the measure – which was also known as the Marriage Protection Amendment – would prohibit same-sex marriage and only permit civil unions – or domestic partnerships – between same-sex couples if these are established by a state legislature rather than through a court ruling.

Those campaigning for the FMA drew upon a broad range of arguments. Some had been used by the opponents of 'gay rights' for decades and were theological in character. Others rested upon notions of natural law and sociobiology. Furthermore, it was said, an acceptance of same-sex marriage would contribute to the promotion of homosexuality. It would also fuel demands for the inclusion of sexuality in state and federal antidiscriminatory policies thereby compelling private organizations to accept behaviour with which they fundamentally disagreed. <sup>1</sup>Alongside these, there was a stress on the character of the process by which same-sex marriage had been placed on the political agenda. Marriage had – from this perspective – been redefined in Massachusetts by 'judicial fiat' and there were, furthermore, fears that this would just be a beginning. Other court rulings, it was said, might cite the 'full faith and credit', 'equal protection' or the 'due process' clauses of the US Constitution so as to require same-sex marriage across the nation. Furthermore, as Senator Rick Santorum of Pennsylvania emphasized, the US Supreme Court had – in the 2003 *Lawrence* ruling – broadened the 'right to privacy' so that it could – logically and consequentially – be used to establish a constitutional right to engage in all forms of consenting adult relationships and seek legal recognition for them. From this perspective, the rationale that underlay same-sex marriage would also permit weddings between close family members and a multiplicity of spouses.

However, during the course of 2004, these polemics against same-sex marriage were strengthened and bolstered by a further line of argument. It rested upon particular representations of Denmark, Norway and Sweden and the work of Professor Stanley Kurtz. Kurtz – a research fellow at the Hoover Institution (Stanford University) – is a social anthropologist specializing in the study of family life and religion and an established contributor to conservative periodicals such as *The Weekly Standard*, *Policy Review*, *National Review* and *National Review Online*. He is also an adjunct fellow at the Hudson Institute, an influential conservative thinktank.

Kurtz argued in a series of studies and commentaries that the establishment of registered partnerships for same-sex couples in the Scandinavian countries had contributed to the overall decline of marriage as an institution in the Nordic region and – as a corollary – fuelled the rise in illegitimacy, the number of single-parent households, and the further growth of public sector provision. <sup>2</sup>

This paper considers the context within which Kurtz's claims were put forward, the character of his arguments, the counter-arguments that were put forward, and the impact of his critique on the same-sex marriage debate in the US.

## Background

From the end of the 1980s onwards, the calls for same-sex unions put forward by some gay and lesbian activists were strengthened by the 'conservative case' for gay marriage. Instead of making a generalised plea for tolerance and equality, Andrew Sullivan - who served as editor of *The New Republic* between 1991 and 1996 - and Jonathan Rauch, a journalist and columnist who has served as a research fellow at the American Enterprise Institute, built much of their case around the claim that same-sex marriage would curb and limit gay promiscuity. It would lay a basis for stable domestic relationships among gays and lesbians and serve as a mechanism through which the homosexual community would be accepted and incorporated within the dominant public culture.

For the most part, the 'conservative case' was answered by opponents of same-sex marriage in two ways. Some pointed to what they saw as gay promiscuity which, they argued, was endemic and could not be restrained by marriage. Instead, wedding vows would be mocked and devalued. Some campaigners cited a 1978 study suggesting that 43 per cent of white homosexual males had had sexual relations with 500 or more men and 28 per cent had a thousand or more partners.<sup>3</sup> Others responded to Sullivan's polemics by arguing that it was not marriage that 'tamed' men, but women. This was a proposition that had been popularised within sections of the conservative movement following the publication of George Gilder's 1986 book, *Men and Marriage*. From Gilder's perspective, the young man was, in essence, a hedonistic barbarian who will only respect others and conform to the law because it enables him to marry and gain sexual gratification.

In response to arguments such as these and bolster his representations of gay and lesbian unions, Sullivan drew upon the Scandinavian experience. He cited an unpublished study of Denmark which reported on the heterosexual marriage and divorce rate in the years following the establishment of registered partnerships in 1989:

'.. where de facto gay marriage has existed for some time, the rate of marriage among gays is far lower than among straights, but, perhaps as a result, the gay divorce rate is just over one-fifth that of heterosexuals. And, during the first six years in which gay marriage was legal, scholar Darren Spedale has found, the rate of straight marriages rose 10 percent, and the rate of straight divorces decreased by 12 percent. In the only country where we have real data on the impact of gay marriage, the net result has clearly been a conservative one.'<sup>4</sup>

## The Kurtz thesis<sup>5</sup>

Stanley Kurtz's analysis – which was in part a reply to Sullivan's descriptions of developments in Denmark and, at the same time, a contribution to the debate about same-sex marriage that followed in the wake of the *Goodridge* ruling in Massachusetts - began with an acknowledgment that the process of marital decline predated the establishment of registered partnerships in the Scandinavian countries by several decades. The 'sexual revolution' of the 1960s and 1970s, Kurtz records, had brought forth:

'.. contraception, abortion, and growing individualism. Sex was separated from procreation, reducing the need for "shotgun weddings." These changes, along with the movement of women into the workforce, enabled and encouraged people

to marry at later ages. With married couples putting off parenthood, early divorce had fewer consequences for children. That weakened the taboo against divorce. Since young couples were putting off children, the next step was to dispense with marriage and cohabit until children were desired.'<sup>6</sup>

These trends - and a rise in the out-of-wedlock birthrate - were, of course, evident across Europe and in the US. However, as Kurtz emphasises, the process of cultural liberalisation went further and at a faster pace in the Scandinavian countries. In Denmark, out-of-wedlock births rose - as a proportion of all births - from 11.1 per cent in 1970 to 46.4 per cent in 1990. During the same period, the proportion of Swedish and Norwegian births outside of marriage rose from 18.6 per cent to 47 per cent and 6.9 to 38.6 per cent respectively.<sup>7</sup> While Kurtz recognises that a significant proportion of these children were born to cohabiting couples rather than single mothers, he argues that cohabitation is - by definition - a fragile basis for a relationship and such couples were likely to part at a later stage.

Why, according to Kurtz, were Scandinavian out-of-wedlock birth rates so high and why had they increased at a faster rate than in other European nations? Although the process was slowed by the absence of an urban underclass and the continuing hold of moral traditionalism in some regions, illegitimacy rates grew rapidly, Kurtz asserts, because of high levels of female participation in the labour market, the welfare state - which was oriented towards the individual rather than the family unit and thereby provided a basis for personal independence - and the relatively weak hold of religious faith. He pointed, in particular, to the Swedish experience:

'No Western economy has a higher percentage of public employees, public expenditures--or higher tax rates--than Sweden. The massive Swedish welfare state has largely displaced the family as provider. By guaranteeing jobs and income to every citizen (even children), the welfare state renders each individual independent ... A related cultural-ideological agent of marital decline is secularism ... Scholars have long suggested that the relatively thin Christianization of the Nordic countries explains a lot about why the decline of marriage in Scandinavia is a decade ahead of the rest of the West.'<sup>8</sup>

What, however, is the relationship between these trends and the legal provision of registered partnerships for same-sex couples? Kurtz argues that the introduction of domestic partnerships in Denmark (1989), Norway (1993) Sweden (1994) and Iceland (1996) was not only a consequence of these long-term cultural shifts, the liberalisation of popular attitudes, and the redefinition of sexual morality, but had also added to and strengthened the symbolic separation of marriage and parenthood. From Kurtz's perspective, it fuelled the notion that marriage is simply an expression of love and affection between individuals rather than a bedrock for the raising of children. And - by weakening the link between marriage and parenthood - it contributed to the belief - which is now, Kurtz suggests, embedded in much of Nordic culture, that children do not require the long-term presence and commitment of their own mother and father.

'.. gay marriage is both an effect and a cause of the increasing separation between marriage and parenthood. As rising out-of-wedlock birthrates disassociate heterosexual marriage from parenting, gay marriage becomes conceivable. If marriage is only about a relationship between two people, and is not intrinsically connected to parenthood, why shouldn't same-sex couples be allowed to marry? It follows that once marriage is redefined to accommodate

same-sex couples, that change cannot help but lock in and reinforce the very cultural separation between marriage and parenthood that makes gay marriage conceivable to begin with.'<sup>9</sup>

Kurtz suggests that events in Norway have been particularly telling. Norway was, he asserts, 'relatively conservative' at the beginning of the 1990s. Marriage was stronger and the out-of-wedlock birthrate lower than in Sweden and Denmark when registered partnerships were first introduced. They were established on the basis of a court ruling and '.. imposed, against the public will, by the political elite'. Within this context, registered partnerships played a particularly potent role in undermining marriage as an institution. By signaling - within a relatively conservative culture - that marriage and procreation were unrelated and at the same time creating a split in the established Lutheran church, the introduction of the partnerships was 'a culture-shifting event' that led to a particularly dramatic rise in the proportion of out-of-wedlock births.

Kurtz builds upon his principal line of argument by making three further points. Firstly, he argues that the lessons that can be drawn from the Scandinavian experience have been confirmed by recent developments in the Netherlands. For many years, traditionalist attitudes towards marriage had a comparatively strong hold in Holland. While premarital cohabitation was commonplace, there were few out-of-wedlock births. However, the campaign to secure same-sex marriage – which was legalized in April 2001 – played a pivotal role in weakening the role of marriage in Dutch society. From the mid-1990s, the out-of-wedlock birth rate – which had been rising from the 1970s onwards – began to increase much more steeply reaching 31 per cent of births in 2003. From Kurtz's perspective, there is – as in the countries of Scandinavia – a direct causal relationship. Same-sex marriage had led to '.. the replacement of marriage by a flexible and morally neutral range of relationship options'<sup>10</sup>

Secondly, Kurtz is sometimes tempted to take the logic and dynamic of his argument a stage further. It is not, he argues, simply the establishment of same-sex partnerships that undermines the institution of marriage. The mere advocacy of gay and lesbian marriage - and the corresponding assertion that marriage and parenthood are separable - in itself weakens the institution of marriage. This places Andrew Sullivan's polemics in Kurtz's direct line of fire:

'Every time Andrew Sullivan makes his case that marriage and parenthood are not connected, he is harming marriage. I know this is far from Sullivan's intention ... But the harm to marriage is real nonetheless.'<sup>11</sup>

Lastly, the campaign for same-sex marriage is - from Kurtz's perspective - a Trojan horse. The Scandinavian experience, he records, suggests that few gays and lesbians intend to marry. The Danish statistics are representative. Only a handful of couples have entered into - and remained within - registered partnerships since they were brought into being.

**Table 1: Denmark – cumulative total of registered partnerships, 1989 - 2004**

Year	Registered partnerships – cumulative total
1989	0
1990	296
1991	663
1992	851

1993	986
1994	1078
1995	1191
1996	1308
1997	1433
1998	1531
1999	1679
2000	1829
2001	1992
2002	2166
2003	2315
2004	2468

Source: adapted from Danmarks Statistik (2005), *Families by region, type of family, size and number of children*, [www.statbank.dk](http://www.statbank.dk).

As well as citing these statistics, Kurtz also draws upon the work of Copenhagen University researcher, Henning Bech. In a survey of the Danish gay and lesbian experience, Bech had suggested that the calls for registered partnerships in Denmark, and the debate that preceded their creation, were not fuelled by the feeling that homosexuals should and would commit themselves to 'steady, monogamous relationships' but were instead directed towards the winning of 'social acceptance' <sup>12</sup> Calls for same-sex marriage in the US, Kurtz suggests, have a similar character. They are simply seeking to secure the social legitimization of homosexuality.

### Consequences

The progressive devaluation of marriage is, Kurtz argues, becoming a defining feature of most European societies. The process that began in the Scandinavian countries has spread to the Netherlands and now threatens countries such as Belgium, Germany, and Britain. These are among those that Kurtz regards as belonging to the 'middle group' of countries. The dissolution of marriage is not yet at the Scandinavian level but it is above that in southern European countries such as Spain, Italy, Portugal and Greece. The effects of recognising same-sex partnerships in the 'middle group' will, Kurtz argues, be to accelerate the growth in out-of-wedlock birth rates still further across the continent.

'Yet every Western country is susceptible to the pull of the Nordic model. Nor does Catholicism guarantee immunity. Ireland, perhaps because of its geographic, linguistic, and cultural proximity to England, is now suffering from out-of-wedlock birthrates far in excess of the rest of Catholic Europe.' <sup>13</sup>

Why, however, does the decline of marriage matter? From the perspective of Kurtz, other cultural conservatives and - as the 1990s progressed an increasingly broad consensus of opinion within the US - the absence of a stable, long-term family structure, which only marriage can provide, threatens the overall social fabric. Even controlling for other variables, children from single parent or fragile families are much more likely to lead dysfunctional lives. There will be increased criminality and the education system will be placed under greater strain. At the same time, the increasing fragility of family life has also - and will further - increase pressures for growth of collective provision funded by taxation:

'The Scandinavian family has collapsed - and has been replaced by a massive, centralized welfare state. If the American family is dissolved by social redefinition of marriage ... we shall be subject to the "soft despotism" of a centralized bureaucracy. In Scandinavia, this has already happened' <sup>14</sup>

Marital decline will, Kurtz argues, have a particular impact in Britain - which is introducing civil partnerships during the course of 2005 - and the US, should it fail to curb the shift towards the legitimization of homosexual relationships through civil unions and same-sex marriage. This is because there is - in contrast with Scandinavia - an entrenched urban underclass in both the UK and the US. Although the figures have fallen in the US, they remain the highest in the advanced world and Britain has the highest teenage pregnancy rate in western Europe. The further disintegration of family structures would place a further burden on their ability of those in the underclass to escape the cycle of poverty.

Furthermore, by fuelling the decline of marriage, registered partnerships add to the 'birth dearth'. As Senator Sam Brownback of Kansas stresses, there has not only been a rise in the out-of-wedlock birth rate but there is also a correlation between decline of marriage and the fall in overall fertility levels in Europe. This, he argued, would lead to a disproportionately aged population, adding to pressures for increased social-welfare provision and immigration. <sup>15</sup>

## Counter-arguments

Table 2: Percentage of births outside of marriage in selected countries, 1960 - 2002

	1960	1965	1970	1975	1980	1985	1990	1995	2000	2002
<b>Denmark</b>	7,8	9,5	11	21,7	33,2	43	46,4	46,5	44,6	44,6
<b>Netherlands</b>	1,4	1,8	2,1	2,1	4,1	8,3	11,4	15,5	24,9	29,1
<b>Norway</b>	3,7	4,6	6,9	10,3	14,5	38,6	38,6	47,6	49,6	50,3
<b>Sweden</b>	11,3	13,8	18,6	32,8	39,7	46,4	47	53	55,3	56
<b>United Kingdom</b>		-	8	9	11,5	18,9	27,9	33,6	39,5	40,6
<b>United States</b>		-	-	-	18,4	22	28	32,2	33,2	34

Source: adapted from Childstats.gov (2005), *International Comparisons - Population and Family Characteristics Data*, [www.childstats.gov/intnl/pdf/pop4a.pdf](http://www.childstats.gov/intnl/pdf/pop4a.pdf). and JA Martin, BE Hamilton, PD Sutton, SJ Ventura, F Menacker, ML Munson (2003), 'Births: Final data for 2002', *National Vital Statistics Reports*; 52:10. Hyattsville, Maryland: National Center for Health Statistics, Table 17, [www.cdc.gov/nchs/data/nvsr/nvsr52/nvsr52\\_10.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr52/nvsr52_10.pdf)

Kurtz's arguments were the subject of extended discussion during much of 2004. Dissenting views were published on [Slate.com](http://Slate.com), in academic journals such as *Issues in legal Scholarship*, and appeared in a range of blogs in both the US and Scandinavia. For his part, Andrew Sullivan challenged Kurtz's findings on both his website ([www.andrewsullivan.com](http://www.andrewsullivan.com)) and in published commentaries. Barney Frank, a long-serving and openly gay Democratic Congressman, (Massachusetts, 4<sup>th</sup> district), addressed them in the House of Representatives. Kurtz's critics emphasized five points.

Firstly, there were questions about Kurtz's methodology. Frank emphasized that Kurtz's essays did not include coverage of marital decline in other European countries – apart from those in Scandinavia - that had not recognized same-sex relationships so that comparisons could be drawn. Nor, Frank argued, had Kurtz considered the experience of civil unions in Vermont. These had been established in 2000. However,

there was no evidence, he asserted, that heterosexual marriage has been undermined in the Green Mountain State.<sup>16</sup>

Secondly, although Kurtz recognized that other variables – apart from same-sex unions – had contributed to the decline of marriage, his critics suggested that he underestimated the relative importance of these. William Eskridge, Darren Spedale and Hans Ytterberg argued that marriage had been undermined over a long period by legal reforms that had permitted sexual relations outside of marriage, allowed parental rights to those who are unmarried, and made it easier to leave a marriage. The long-term trend was, they argue, unaffected by the legal recognition of same-sex relationships.<sup>17</sup> For his part, Barney Frank argued that Kurtz not only underestimated the significance of the other factors – such as contraception, female participation in the labour force, secularism, and welfare provision – that played a role in separating marriage from procreation and thereby contributed to marital decline but failed to address the political implications that flowed from a recognition of these. Frank put this in graphic terms:

‘.. even if we abolish same-sex relationship recognition, we would have to ban or severely restrict contraception, abortion, women in the workforce, cultural individualism, secularism and the welfare state if we were to save marriage’<sup>18</sup>

Thirdly, while there seemed to be a correlation between the introduction of registered partnerships in some of the countries that extended legal recognition to same-sex couples and a continuing rise in the out-of-wedlock birthrate (although there was a leveling off in Denmark during the 1990s), this did not signify causation. M.V. Lee Badgett, an associate professor at the University of Massachusetts, is among those who have stressed that the process of marital decline preceded the legal recognition of same-sex relationships. In other words, cohabitation came first.<sup>19</sup> For his part, Andrew Sullivan has also questioned what he regards as Kurtz’s failure to distinguish between correlation and causation although he posed this in more provocative terms. In his daily blog, he cites a contributor to *Reason*, an online libertarian journal:

‘The rate of interracial marriage in the United States has boomed during the last thirty years. Over the same time period, rates of divorce and premarital sex have climbed, and marriage rates have dropped, abortion has surged, and the number of children born per couple has declined. Ergo interracial marriage is to blame for divorce, promiscuity, abortion, low rates of childbirth and the decline of marriage.’

<sup>20</sup>

Fourthly, although Kurtz countered the point by arguing that the numbers were too small to allow conventional conclusions to be drawn from the statistics, his critics stressed that some of the other indices of marital decline - apart from the out-of-wedlock birth rate - appear to have shifted in a way that refutes his critique.

‘Not only do the registered partnership laws in Denmark and Sweden not correlate to super-normal plunges in marriage rates and super-elevated divorce rates, but some of the trends move in the other direction. The 1990s see no stake through the heart of marriage – indeed, the institution shows renewed signs of life in the new millennium ... We are tempted to think that registered partnerships drove the higher marriage and lower divorce rates and, in effect, staved off the “end of marriage”. But we resist this temptation. We do not think the “end of

marriage” is imminent, but neither do we think that registered partnerships saved the institution.’<sup>21</sup>

Instead, Eskridge, Spedale, and Ytterberg suggest that the rise in the Danish marriage rate was due to the increased number of young people who were reaching their twenties and thirties.

Lastly, Kurtz’s representations of relationships and the family in Scandinavia have come under fire. Badgett stresses that parenthood within marriage is still the norm in the Nordic countries. An overwhelming majority of couples with children in Denmark and Norway, she noted, are married. For their part, Eskridge, Spedale and Ytterberg also emphasise quality of life factors and the differences between the US and Sweden. Child mortality rates are significantly lower in Sweden and Swedish teenagers are much less likely to become pregnant, acquire STDs, or have an abortion.<sup>22</sup>

Kurtz has addressed some of these charges by reasserting that he does not regard same-sex unions as the sole cause of marital decline but at the same time stressing that gay and lesbian marriage ‘.. reinforces and intensifies parental cohabitation’.<sup>23</sup> He also challenges the veracity of the statistics cited by Badgett. The claim that the overwhelming majority of couples with children in Denmark and Norway are married is, he asserts, ‘.. incomplete and deeply misleading’. This is because the figure only includes couples who are living together and thereby omits children who live with single parents and step-parents. From Kurtz’s perspective, Badgett’s account fails to acknowledge the scale and degree of the rise in the number of cohabitating parents who constitute - by definition - fragile families. Although many couples were marrying after the birth of their first child, significant numbers have now abandoned marriage altogether.<sup>24</sup>

For the most part, researchers in Denmark, Norway and Sweden have not responded directly to the portrayals of marriage and the Scandinavian family around which the Kurtz thesis is structured.<sup>25</sup> The conclusions that they have drawn from the data are, however, much more cautious and nuanced than those reached in the US. In a 2002 study of the family in Denmark cited by Kurtz, Cecilie Wehner, Mia Kambskard and Peter Abrahamson do indeed recognise that ‘.. what defines and makes the foundation of the Danish family can be said to have moved from marriage to parenthood.’<sup>26</sup> They also emphasise the degree to which cohabitation has become institutionalised among those in their twenties and the extent to which there has been an increase in the average age of marriage, (which by 2000 had risen to 32.9 for men and 30.1 for women). Nonetheless, they also make points that Kurtz seemingly fails to acknowledge. They stress that cohabitation is – in Denmark - commonly a ‘trial period’ that precedes marriage. Many young people live together and have their first child before exchanging vows. Although cohabiting couples are more likely to dissolve their relationship than those who marry, (perhaps because it is a more ‘pure’ relationship in which neither partner is financially dependent upon the other and there are no legal obstacles to separation), Wehner, Kambsgard and Abrahamson’s data (2001) suggests that about three quarters of Danish children live with their biological mother and father.<sup>27</sup> The picture is more or less the same in both Sweden and Norway. In 1999, 75 per cent of Swedish children aged 17 or under lived with their parents.<sup>28</sup> In January 2002, 60 per cent of Norwegian children lived together with married parents and a further 15 per cent had cohabiting parents.<sup>29</sup> In the US, the comparable figure was 71 per cent (1996).<sup>30</sup>

Furthermore, although the number of couples re-marrying offers a partial explanation, there was a limited but significant increase in the marriage rate during the 1990s. At the same time, there is also evidence suggesting that young people in Denmark value marriage as an institution to a greater extent than the younger age cohorts in the 1960s and 1970s when there was more of an emphasis upon cultural individualism.

## Impact

Such criticisms did little to prevent the Kurtz thesis from coming to play a pivotal role in bolstering the campaign to secure the FMA. Kurtz's representations of the Scandinavian experience were published in *The Weekly Standard* and posted on [National Review Online](#). They were then cited by Christian right organisations such as Focus on the Family, the Family Research Council and Concerned Women for America, and across the conservative movement more broadly.<sup>31</sup> Kurtz's work also encouraged laid the basis for further studies of same-sex unions and their impact in the Nordic countries. In May 2004, the Institute for Marriage and Public Policy – a conservative thinktank and advocacy organization headed by Maggie Gallagher, author of *The Case for Marriage* - published a report on divorce trends among same-sex couples in Sweden. It concluded that it was much more probable that such couples would separate than heterosexual couples. Lesbian couples, it was noted, were 2.67 times more likely to part when compared with heterosexuals.<sup>32</sup> In Louisiana, which overwhelmingly passed an amendment to its state constitution prohibiting same –sex marriage in September 2004, copies of Kurtz's original article in *The Weekly Standard* were distributed to members of state Senate Judiciary Committee A and the House Committee on Civil Law and Procedure.<sup>33</sup>

In March 2004, at a meeting with representatives from the Apostolic Congress – which is affiliated with the United Pentecostal Church - Tim Goeglein, Special Assistant to the President and Deputy Director of Public Affairs, cited Kurtz and drew directly upon his critique as a basis for opposition to same-sex marriage.<sup>34</sup>

Kurtz himself appeared before the Constitution subcommittee of the House Judiciary Committee in April 2004 and his work was drawn upon in Congressional debates on the FMA. In July 2004, Kurtz's principal essay on the Scandinavian experience was read – at the request of Colorado Senator Wayne Allard - into the Congressional Record. Alongside Allard, John Cornyn (Texas) and Jim Inhofe (Oklahoma) also cited Kurtz's studies. For his part, Senator Rick Santorum of Pennsylvania not only drew upon Kurtz but spoke in the least restrained terms about the devaluation of marriage that would necessarily ensue if same-sex unions were permitted:

'.. the countries of Denmark , Sweden, and Norway have either marriage or civil unions for same-sex couples. Sixty percent of first-born children in those countries are now born out of wedlock .... Why? Because marriage is not important. It has no meaning. So people simply do not get married.'<sup>35</sup>

Two months later, in the House of Representatives debate on the Amendment, Marilyn Musgrave, the Colorado Republican who had originally sponsored the FMA added Kurtz's article on developments in the Netherlands into the Record. Mike Pence of Indiana's 6<sup>th</sup> district drew upon Kurtz's work in explicit terms:

'Marriage in Scandinavia and in Holland is dying since the advent of same-sex marriage over the last decade in those countries. As a result, a majority of children in Sweden and Norway are now born out of wedlock. In some parts of Norway, as many as 80 percent of first-born children and two-thirds of subsequent children are now born out of wedlock.'<sup>36</sup>

Why did Kurtz's arguments have such a political resonance? In part, it was because it offered a direct answer to the 'conservative case' for same-sex marriage. However, there were also other reasons. Firstly, the Kurtz critique had a particular significance within the conservative movement. There have long been tensions between those who define conservatism in terms of moral traditionalism and 'economic conservatives' who stress the principles associated with minimal government, low tax rates, and economic deregulation. Although rooted in cultural conservatism, Kurtz's claim that same-sex unions contributed to the decline of heterosexual marriage and rising illegitimacy took a form that would strike a chord with those who emphasised the primacy of economic considerations. His arguments were taken up in the Senate by Jim Inhofe of Oklahoma and Jeff Sessions of Alabama who both warned in the debate on the Federal Marriage Amendment that if children were not raised in families – because of increased marital breakdown - they would become the responsibility of the government and the American taxpayer.<sup>37</sup>

The Kurtz critique also addressed the concerns of those within the conservative movement who emphasised the traditional prerogatives of the states and libertarians who asserted that same-sex marriage was a private matter and of little concern to others. The belief was expressed in its least restrained form by figures such as David Boaz, executive vice-president of the Cato Institute who called for the privatization of marriage but others – such as former Georgia Congressman, Bob Barr – also spoke of 'states' rights' and the dangers posed by the over-centralization of power.<sup>38</sup>

However, the Kurtz critique also had a resonance that went beyond the confines of the conservative movement. Firstly, in contrast with the other arguments against same-sex marriage, many of which depended upon speculative chains of reasoning or particular religious premises, Kurtz's claims drew upon empirical data and the methodologies associated with the social sciences. This imbued them with a legitimacy that the other arguments lacked. Within this context, Denmark, Norway and Sweden appeared to represent a cultural laboratory that could be used to test competing claims. Same-sex relationships had been granted legal recognition in Scandinavia ahead of other countries and it therefore seemed that credible conclusions could be drawn by researchers about the consequences of this. For his part, Kurtz had no doubt about the character of those conclusions:

'Marriage is slowly dying in Scandinavia ... Not coincidentally, these countries have had something close to full marriage (for gays and lesbians – EA) for a decade or more ... Will same-sex marriage undermine the institution of marriage? It already has.'<sup>39</sup>

Secondly, through its emphasis upon the role of taxation and scale of the public sector as well as same-sex marriage in contributing to marital decline - the Kurtz critique built upon established American perceptions of the Scandinavian nations which had long been represented through images of libertine morality and secularism, and in terms of dependency upon collective provision and 'big government'. In the late 1950s, reports in *Time* magazine pointed to the moral dangers that they associated with Sweden's 'middle way'. In July 1960, President Dwight Eisenhower condemned the social problems that he associated with paternalistic government in 'a fairly friendly country' that was readily identified as Sweden.<sup>40</sup> In the 1960s, the Scandinavian model was cited as a warning by opponents of Lyndon Johnson's 'Great Society' programmes.<sup>41</sup> The 1970 Presidential Commission on Obscenity drew heavily on the Danish experience in legalizing pornography. The Economic Freedom Network's annual survey of 'economic freedom' in different countries, which is structured around 38 variables such as the degree of business regulation and respect for property rights, reflects perceptions of the Nordic economies. In its 2002 survey, the Network ranked

Denmark, Sweden and Norway as 14<sup>th</sup>, 22<sup>nd</sup> and 36<sup>th</sup> respectively. In contrast, the US secured a ranking of joint third, just below Hong Kong and Singapore. <sup>42</sup> Rick Santorum caught the mood when he referred – in his contribution to the Senate debate on the FMA – to ‘ .. socialistic, equality-driven Scandinavia’. <sup>43</sup>

Thirdly, the Kurtz critique addressed and sought to accommodate popular notions of tolerance and cultural relativism. Larry Flynt, the celebrated publisher of *Hustler*, put these sentiments in their most polemical form:

‘Way too many American voters get hoodwinked into voting on the basis of symbolic issues. You may not like the idea of gay marriage, for instance. But unless you’re gay, it isn’t going to make a damn bit of difference in your day-to-day life’ <sup>44</sup>

At the same time, Kurtz offered a line of argument that did not depend upon moral objections to – or distaste for – homosexuality. It had a particular relevance and salience at a time when there had been a significant shift in the character of popular opinion. Although there was a faltering in 2003-03 amidst the political fallout from the *Lawrence* and *Goodridge* rulings – attitudes towards homosexuality became markedly more tolerant during the 1990s. While a majority continued to regard homosexuality as ‘always wrong’, the electoral environment in the metropolitan northeast and on the west coast offered significantly less backing for the proactive use of the law to curb gay and lesbian relationships.

**Table 3: US attitudes towards sexual relations between two adults of the same sex (%)**

	1990	1994	1996	1998	2000	2002
Always wrong	76.3	66.5	60.4	58.0	58.8	55.0
Almost always wrong	4.8	4.0	5.2	5.7	4.5	4.9
Sometimes wrong	6.1	6.2	6.2	6.9	8.0	7.1
Not wrong at all	12.8	23.3	28.2	29.4	28.8	33.0
N	872	1,884	1,784	1,753	1,697	884

Source: adapted from The National Opinion Research Center (2005), *General Social Survey Codebook – Cumulative Datafile*, HOMOSEX, <http://webapp.icpsr.umich.edu/GSS/>

Above all else, the Kurtz critique not only detached opposition to same-sex marriage from hostility to homosexuality but framed it in terms of children’s interests. Heterosexual marriage required bolstering and other lifestyle forms – including those who live singly, with multiple partners, or with same-sex partners - should be ‘discriminated’ against because the nuclear family – structured around a father and mother - offers the most appropriate and functional framework for the raising of children.

‘Because marriage is deeply implicated in the interests of children, it is a matter of public concern. Children are helpless ... Yet children are society. They are us, and they are our future. That is why society has the right to give special support and encouragement to an institution that is necessary to the well being of children – even if that means special benefits for some, and not for others. The dependence intrinsic to human childhood is why unadulterated libertarianism can never work’ <sup>45</sup>

By being framed in this way, the Kurtz critique corresponded closely with the political approach pursued by the Bush White House. Although in backing the FMA, the president embraced the concept of civil unions, (which some observed were not dissimilar to the registered partnerships offered in Scandinavia), the Kurtz critique broadly 'fitted' the Bush administration's approach. While the President endorsed the Federal Marriage Amendment and set its face against the prospect of same-sex marriage at the end of February 2004, the administration had – before then – sought a partial accommodation with gay and lesbian activists. Its 'inclusiveness' was hailed by the Log Cabin Republicans, the principal gay organization within the party. As vice-presidential nominee, Dick Cheney asserted that the legal recognition of same-sex relationships was a matter for the states alone. A number of openly gay individuals were appointed to positions in the administration. The president also signed legislation that extended some rights to same-sex partners including those of police officers and firefighters killed in the World Trade Center. Some groupings associated with the Christian right – such as Concerned Women for America - expressed concern about White House policy.

## Prospects

Kurtz's arguments gave the case against same-sex marriage a strength of purpose and a degree of credence that would have otherwise been absent. This could prove pivotal. Although the Bush administration has not committed the political capital to the issue that cultural conservatives would wish to see, and the FMA failed to attract the requisite number of votes in Congress during the course of 2004, there will be further political opportunities. The Amendment's prospects hang in the balance. Despite the obstacles that the FMA faces, the anti-majoritarian character of the amendment process - and the relative advantage that this extends to the less populous and more traditionalist states if a proposed amendment can win Congressional backing - may eventually allow those campaigning for the Amendment to secure victory. Such a development would give the concept of 'culture war' - a phrase which is often employed rather recklessly - a meaning and substance that it has hitherto lacked.

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<sup>1</sup> William N. Eskridge Jr (2000), 'No promo homo: the sedimentation of antigay discourse and the channeling effect of judicial review', *New York University Law Review*, 75:5, November, 1330.

<sup>2</sup> From October 1989 onwards, the Danish registered partnership law provided that whenever – in Danish law – there were references to 'marriage' or 'spouse', the same responsibilities and rights would be extended to same-sex in a registered partnership. There were, however, exceptions. Registered partners could not adopt, have joint custody of children, or be married in the established churches. In 1999, the restrictions on adoption and custody were withdrawn, except that registered partners cannot adopt children outside of Denmark. The partnership laws in the other Nordic countries are broadly similar although the Swedish law – which was enacted in 1994 – imposed rather more restrictions on couples although many of these were lifted by further legislation passed in 2003. Partnerships from one of the countries are recognised in the other countries as well.

**Legal recognition of same-sex partnerships in Scandinavia**

	Year enacted	Parliamentary vote
<b>Denmark</b>	1989	71-47
<b>Norway</b>	1993	58-40 and 18-16 *
<b>Sweden</b>	1994	171-141

**Note:** Although the Norwegian parliament is unicameral, it divides itself – in some circumstances - into two chambers and elects a quarter of its membership to an upper chamber (*Lagting*).

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- <sup>3</sup> Peter Sprigg, *Outrage: How Gay Activists and Liberal Judges are Trashing Democracy to Redefine Marriage*, Washington DC, Regnery Publishing, 2004, p.46.
- <sup>4</sup> Andrew Sullivan, 'Unveiled: The case against same-sex marriage crumbles', *The New Republic*, August 13<sup>th</sup>, (2001), [www.andrewsullivan.com](http://www.andrewsullivan.com)
- <sup>5</sup> Kurtz and some other observers – including Andrew Sullivan – use the phrase 'gay marriage' to describe the registered partnerships offered in Scandinavia. For both, it is important to represent the partnerships as 'marriage' – and argue that they are seen as a form of marriage – insofar as they have drawn an association between introduction of partnerships and their impact on heterosexual marriage.
- <sup>6</sup> Stanley Kurtz, 'The end of marriage in Scandinavia: the "conservative case" for same-sex marriage collapses', *The Weekly Standard*, 9:20, February 2<sup>nd</sup>, (2004), [www.weeklystandard.com](http://www.weeklystandard.com)
- <sup>7</sup> Childstats.gov, *International Comparisons - Population and Family Characteristics Data*, (2005), [www.childstats.gov/intnl/pdf/pop4a.pdf](http://www.childstats.gov/intnl/pdf/pop4a.pdf).
- <sup>8</sup> Stanley Kurtz, 'The end of marriage in Scandinavia: the "conservative case" for same-sex marriage collapses', *The Weekly Standard*, 9:20, February 2<sup>nd</sup>, (2004), [www.weeklystandard.com](http://www.weeklystandard.com). See also National Coalition for the Protection of Children and Families (2004), *Testimony before the House Judiciary Committee by Dr Stanley Kurtz, 4-22-04*, [www.nationalcoalition.org](http://www.nationalcoalition.org)
- <sup>9</sup> Stanley Kurtz, 'The end of marriage in Scandinavia: the "conservative case" for same-sex marriage collapses', *The Weekly Standard*, 9:20, February 2<sup>nd</sup>, (2004), [www.weeklystandard.com](http://www.weeklystandard.com).
- <sup>10</sup> Stanley Kurtz, 'Going Dutch?: Lessons of the same-sex marriage debate in the Netherlands', *The Weekly Standard*, 9:36, May 31<sup>st</sup>, (2004), [www.weeklystandard.com](http://www.weeklystandard.com)
- <sup>11</sup> Stanley Kurtz, 'Deathblow to marriage', *National Review Online*, February 5<sup>th</sup>, (2004), [www.nationalreview.com](http://www.nationalreview.com).
- <sup>12</sup> Henning Bech, 'Report from a rotten state: "marriage" and "homosexuality" in "Denmark"', in Ken Plummer, *Modern Homosexualities: Fragments of Lesbian and Gay Experience*, London, Routledge, 1992, p.144.
- <sup>13</sup> Stanley Kurtz, 'The end of marriage in Scandinavia: the "conservative case" for same-sex marriage collapses', *The Weekly Standard*, 9:20, February 2<sup>nd</sup>, (2004), [www.weeklystandard.com](http://www.weeklystandard.com).
- <sup>14</sup> Stanley Kurtz, 'The end of marriage in Scandinavia: the "conservative case" for same-sex marriage collapses', *The Weekly Standard*, 9:20, February 2<sup>nd</sup>, (2004), [www.weeklystandard.com](http://www.weeklystandard.com)
- <sup>15</sup> Sam Brownback, 'Defining marriage down', *National Review Online*, July 9<sup>th</sup>, (2004), [www.nationalreview.com](http://www.nationalreview.com)
- <sup>16</sup> Congressional Record, *Marriage Protection Amendment – House of Representatives*, September 30<sup>th</sup>, H7913, (2004), [thomas.loc.gov](http://thomas.loc.gov)).
- <sup>17</sup> William N. Eskridge, Darren R. Spedale, and Hans Ytterberg, 'Nordic Bliss? Scandinavian Registered Partnerships and the Same-Sex Marriage Debate', *Issues in Legal Scholarship*, (2004), pp.27-8, [www.bepress.com](http://www.bepress.com).
- <sup>18</sup> Congressional Record, *Marriage Protection Amendment – House of Representatives*, September 30<sup>th</sup>, H7913, (2004), [thomas.loc.gov](http://thomas.loc.gov).
- <sup>19</sup> M.V. Lee Badgett, *Will Providing marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage? Evidence from Scandinavia and the Netherlands*, Council on Contemporary Families and the Institute for Gay and Lesbian Strategic Studies, (2004), p.5.
- <sup>20</sup> Andrew Sullivan, 'A Kurtz parallel', *The Daily Dish*, January 30, (2004), [www.andrewsullivan.com](http://www.andrewsullivan.com)
- <sup>21</sup> William N. Eskridge, Darren R. Spedale, and Hans Ytterberg, 'Nordic Bliss? Scandinavian Registered Partnerships and the Same-Sex Marriage Debate', *Issues in Legal Scholarship*, (2004), pp.26-8, [www.bepress.com](http://www.bepress.com).
- <sup>22</sup> William N. Eskridge, Darren R. Spedale, and Hans Ytterberg, 'Nordic Bliss? Scandinavian Registered Partnerships and the Same-Sex Marriage Debate', *Issues in Legal Scholarship*, (2004), pp.36-7, [www.bepress.com](http://www.bepress.com).
- <sup>23</sup> Stanley Kurtz, 'Unhealthy half truths: Scandinavian marriage is dying', *National Review Online*, May 25<sup>th</sup>, (2004), [www.nationalreview.com](http://www.nationalreview.com).
- <sup>24</sup> Stanley Kurtz, 'Unhealthy half truths: Scandinavian marriage is dying', *National Review Online*, May 25<sup>th</sup>, (2004), [www.nationalreview.com](http://www.nationalreview.com)
- <sup>25</sup> On the day of the 2004 presidential election, *Urban*, a Danish daily newspaper that is distributed freely, reported on Kurtz's arguments and responses to them in Denmark. See Vibe Halbirk (2004), 'Dansk forskning optræder som et skræmmebillede', *Urban*, 2. november, [www.urbanavis.dk](http://www.urbanavis.dk)
- <sup>26</sup> Cecilie Wehner, Mia Kambskard and Peter Abrahamson, *Demography of the Family – The Case of Denmark*, University of York, (2002), 1, [www.york.ac.uk/inst/spru/research/nordic/denmdemo.pdf](http://www.york.ac.uk/inst/spru/research/nordic/denmdemo.pdf).
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- <sup>28</sup> Ulla Bjornberg and Lillemor Dahlgren, *Demography of Family*, (2002), p.36, [www.york.ac.uk/inst/spru/research/nordic/swedendemo.pdf](http://www.york.ac.uk/inst/spru/research/nordic/swedendemo.pdf).

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- <sup>29</sup> Statistics Norway, *Children Statistics - Three of four children live with both parents*, (2004), [www.ssb.no/english/subjects/02/01/20/barn\\_en/](http://www.ssb.no/english/subjects/02/01/20/barn_en/).
- <sup>30</sup> Jason Fields, *Living Arrangements of Children*, Current Population Reports, Washington DC, US Census Bureau, 2001, p.3.
- <sup>31</sup> Nathaniel Frank, 'Perverted: quack gay marriage science', *The New Republic*, May 3, (2004), p.20.
- <sup>32</sup> Maggie Gallagher and Joshua K. Baker, 'Same Sex Unions and Divorce Risk; Data from Sweden' *iMAPP Policy Brief*, May 3<sup>rd</sup>, (2004), [www.marriedebate.com/pdf/SSdivorcerisk.pdf](http://www.marriedebate.com/pdf/SSdivorcerisk.pdf)
- <sup>33</sup> Supreme Court of Louisiana, Docket number: 2004-C- Forum for Equality PAC et. Al. vs. Honorable Fox McKeithen et al – Motion for Leave to File Amici Curia Brief on Behalf of Katherine Shaw Spaht, J Randall Trahan and Richard D Moreno, 2004, p.13, [marriagelaw.cua.edu/SpahtAMiciOneortwoissues.pdf](http://marriagelaw.cua.edu/SpahtAMiciOneortwoissues.pdf).
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- <sup>35</sup> Congressional Record, *Federal Marriage Amendment – Motion to Proceed*, 108<sup>th</sup> Congress, Senate, July 12, (2004), S7908, [thomas.loc.gov/](http://thomas.loc.gov/)
- <sup>36</sup> Congressional Record, *Marriage Protection Amendment - House of Representatives*, September 30, 108<sup>th</sup> Congress, H7912, (2004), [thomas.loc.gov](http://thomas.loc.gov).
- <sup>37</sup> Congressional Record, *Federal Marriage Amendment – Motion to Proceed, - Resumed*, Senate - July 13, 108<sup>th</sup> Congress, S7966, (2004), [thomas.loc.gov/](http://thomas.loc.gov/)
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- <sup>39</sup> Stanley Kurtz, 'The end of marriage in Scandinavia: the "conservative case" for same-sex marriage collapses', *The Weekly Standard*, 9:20, February 2<sup>nd</sup>, (2004), [www.weeklystandard.com](http://www.weeklystandard.com)
- <sup>40</sup> Jussi M Hanhimaki, *Scandinavia and the United States: An Insecure Friendship*, New York, Twayne Publishers, 1997, pp.87-8.
- <sup>41</sup> Jussi M Hanhimaki, *Scandinavia and the United States*, p.123.
- <sup>42</sup> The Fraser Institute, *Free the World.com*, (2005), [www.freetheworld.com/index.html](http://www.freetheworld.com/index.html).
- <sup>43</sup> Congressional Record, *Federal Marriage Amendment – Motion to Proceed*, 108<sup>th</sup> Congress, Senate, July 12, (2004), S7908)
- <sup>44</sup> Larry Flynt, *Sex, Lies and Politics*, London, Aurum, 2004, p.234.
- <sup>45</sup> Stanley Kurtz, 'Deathblow to marriage: gay marriage has real implications', *National Review Online*, February 5<sup>th</sup>, (2004), [www.nationalreview.com](http://www.nationalreview.com)