

**Same-Sex Marriage Law and its Negative Impacts on Schooling:
Contemporary Liberalism and Religious Freedom**

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Abstract

A fashionable retort used by proponents for same-sex marriage (SSM) in debate has been that a change in the marriage law will only affect same-sex couples who want their relationship registered as a marriage. However, in jurisdictions where SSM law now applies that law now threatens the freedom of families, churches, businesses, workplace practices and school education in a way not seen before the imposition of these laws. This essay firstly will show that SSM legislation is one of the fruits of what can be called contemporary liberalism, and that that legislation in many cases leads to a diminution in civil freedom itself. Secondly, this essay will establish a basis for such civil freedom vis a vis SSM legislation showing that SSM legislation needs to provide for freedom of speech and freedom of religion. Thirdly, it will be shown that one particularly vulnerable area that should be taken into account is school education. Religious freedom clauses should be part of any SSM legislation which seeks to avoid disharmony within society as has been experienced in various countries in the western world. I will show how this affects Australian schools and social norms as an example of the kinds of outcomes that may be expected from legislating for SSM.

Introduction

One of the popular remarks in the same-sex marriage¹ (SSM) debate by its advocates has been that the introduction of SSM will only affect same-sex couples who want to register their relationship as a marriage. However in jurisdictions where SSM law now obtains, it has negatively affected families, churches, schools, businesses, and workplace practices to the point where certain minorities are threatened by its enactment (Hundreds of Christians prosecuted over same sex marriage law.²) Little doubt can be entertained that potent social forces lie behind this move to change the character of marriage in law with its powerful change to family, school education and teacher training and employment practices. These social forces can be unified under the heading of *contemporary liberalism* with a singular emphasis on identity equality. Liberalism of this sort is already having significant and graphic effects upon school education across the Western world as can be demonstrated in reports from the UK, the US, Canada and Australia. If the promise made by SSM proponents that the introduction of SSM legislation will only affect those that register their relationship under its terms then efforts should be made to ensure that occurs; for in no given nation-state to the present time has there not been a substantial impact on the lives and livelihoods of those unable for religious and philosophical reasons to accept the integrity and credibility of SSM. This essay will explore religious freedom

1 As has been pointed out by a close colleague, SSM is not the beginning of marriage breakdown but follows a century of breakdown in the institution by damage inflicted on it by the 1920s first 'youth culture' of the 'flapper' generation, by the youth rebellion of the 1960s, assisted by drugs, pre-marital sex, the contraception pill, and no-fault divorce laws.

2 Web log post July 3, 2012. <http://faithinourfamilies.com/2012/07/03/hundreds-of-christians-prosecuted-over-same-sex-marriage-law/>

legislation as used in American states as one way to ensure that pupils, parents, teachers, and schools are protected from subjection to legal action from state instrumentalities when SSM law is enacted.

1.0 SSM Legislation's Impacts on School Education Outside Australia

This section deals with the significant impacts of SSM legislation in various jurisdictions now in place. SSM discussion both before and then after SSM legislation enactment directly affects the sex-education curriculum but also can lead to subtle changes in the whole teaching curriculum as will be illustrated below. In particular this article will focus on the impact this legislation has had on pupils, teachers, parents, and school-wide policies.

Wardle³ (2011) in an academic legal study on the impacts of legalising same-sex marriages and unions concluded after a comprehensive survey that such legalisation does 'generate detrimental and troubling impacts upon education in nearly every state and nation where such unions have been legalized' (p. 598). He helpfully categorised these impacts into *four* main areas which are given shortened versions immediately and in longer cited versions under their respective headings: 'indoctrination' (p. 598), suppression of 'dissent' (p. 598), ignoring 'parental rights' (p. 612), and negative effects upon 'religions, religious schools, beliefs and believers' (p. 613).

3 Lynne D. Wardle is the Bruce C. Hafen Professor of Law and an expert in family law at Brigham Young University. He has been President (2011-14) of the International Academy for the Study of the Jurisprudence of the Family. Wardle served as President of the International Society for Family Law (ISFL) from 2000-2002 and currently serves on the ISFL Executive Council; he is a member of the American Law Institute.

1.1 Ideological indoctrination

'ideological indoctrination of pupils and students through whole school program into a viewpoint that favours homosexual relations' (Wardle's emphasis, 2011, p. 598);

Wardle presented specific examples in each of the four areas above which often led to court proceedings. For instance, in an 'elementary' school in Lexington, Massachusetts –a state which had legislated for SSM at the time-- kindergarten and grade 1 pupils were read stories designed to lead them to accept homosexual couples and their families as normal. What was disturbing was that no permission was sought from parents. When the school was approached it acted as if it had the authority to introduce such things to children without seeking parental permission *even though Massachusetts education law required the school to seek permission*. 'The school district was unapologetic and uncompromising in their stand that the school had the right to expose children to such ideas and indoctrination without concern for and regardless of family values or parental objection' (Wardle, 2011, p. 599). Although the plaintiffs sued under the provisions of both state and federal law, they were unsuccessful and their loss demonstrated the power that the school education system now wielded in this area of sex-education because of the enactment of SSM law.

Another case in New Jersey in 2010 involved a teacher asking girls and boys to dress as women for a fashion show. Although, the 'Maple Shade Township School superintendent said it was a misunderstanding and cancelled the event after parents complained' (Wardle, 2011, p. 600) such events have taken place across the nation. In Iowa, at least 80 pupils from East High School were moved from the school onto home-schooling plans because

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of a similar 'gender-bender' event.

One principal in South Carolina at Irmo High School resigned in 2008 after being directed to recognise a gay club for his high school pupils. His retort was that such a club asked the school to acknowledge a particular type of sexual behaviour and he didn't believe the school should be the place where that behaviour was being condoned and he was being required to do this without discussion.

In Scotland, which has 366 Catholic schools, these schools were told in early 2014 that sex education was now to be done by government-financed organisations outside the schools (Mills, 2014). Needless to say, the Catholic spokesman on the matter was furious given that the church had been given assurances, grudging though they were, that the schools would be able to control the way the government's material was taught to its pupils. By the end of 2014 it seemed that the government had started to listen to Catholics and now accepted that 'Catholic schools teach tolerance and inclusiveness but are expected to make clear the distinction between civil unions and a Catholic understanding of marriage' (Lamb, 2014).

In Canada, although from 1999 all the financial benefits of marriage had been transferred to SS (same-sex) couples by law, SSM was legalised in 2005 by order of the Canadian Supreme Court (Wardle, 2011). In British Columbia in 2006, school boards agreed 'in litigation' to 'adopt and enforce a policy barring parents from opting their children out of discussion of GLBT(Gay, Lesbian, Bisexual, and Transgender) issues in the schools'

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(Wardle, 2011, p. 603). School Boards in various provinces such Ontario, Quebec, and British Columbia are required to have homosexual education in the schools and to provide "resources to adopt a broader, educative approach to deal with . . . issues of . . . homophobia" (Wardle, 2011, p. 603f) which is comprehensively sinister in its compass. And those teachers fully supportive of the government's approach have become skilled in breaking down the prejudices of children to homosexuality and same-sex marriage by using curriculum areas not associated with 'sex education' (Baklinski, 2015). Baklinski reported that such pro-homosexual and SSM teacher/advocates have boasted about their abilities to influence the pupils under their care (2015).

Miller (2012) reported on the impact of SSM associated legislation in Canada after 10 years and the news was not good for teacher freedom of speech and for parental rights in the sphere of education. It should be remembered that SSM legislation is implicitly dictating that SS relationships have now been declared by governmental edict to be equal to normative, conjugal one man/one woman marriage. In Canada's case, equating the two has had vast and even dreadful consequences for those venturing to challenge the contemporary government in the area of schooling. Parental rights have also suffered under the new regime. The state now deems itself to be in charge of children's minds and hearts when they are at school.

SSM advocates have denied any desire to use government schools (and others) to indoctrinate children into homosexual ways. Yet, Daniel Villarreal, a gay writer, certainly

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does not disagree with this stated, naive position. He said the 'queer'⁴ community liked to say: 'We're not gonna make kids learn about homosexuality, we swear! It's not like we're trying to recruit your children or anything.'

But to that falsehood he admitted: '*But let's face it that's a lie. We want educators to teach future generations of children to accept queer sexuality. In fact, our very future depends on it*' (Villarreal, 2011, italics mine).

1.2 Suppressing dissenting viewpoints

'suppressing dissenting viewpoints, both within school and with respect to those interacting with school; the presence of 'discrimination in employment of teachers and expression by students, teachers, guest lecturers, school administrators, and educational organizations, including employment discrimination in hiring, disciplining, firing, grading personnel and students including bullying, retaliation, discrimination and intimidation' (emphasis Wardle's, 2011, p. 598-599);

The UK⁵ has dealt harshly with schools who don't follow what the government wants in education. It simply threatens them with withdrawal of their funds. This attitude has promoted conflict among schools, parents and government organisations. The government body charged with inspecting all schools, the *Office for Standards in Education, Children's Services, and Skills* (Ofsted), regulates the variety of schools using a list of 'British Values' (Gosden, 2015).

Ofsted has shown its inability to deal with religious diversity by reckoning Grindon Hall

4 The name for those who argue pro-marriage and other normalisations for homosexuality is "homonormativity" which it is claimed seeks to suppress "queer" views as likely to distract from the goal of achieving acceptability by society.

5 Excluding Northern Ireland which has rejected SSM legislation on at least four occasions.

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Christian School (a non-government school) which had the best grades in the Sunderland area on the GCSE results, as 'inadequate'. Ofsted inspectors at this school reportedly questioned a 10-year old female pupil about what lesbians do. Although this school was threatened with withdrawal of funding because of its apparent failure to adequately teach 'British Values' ("Parents in fight to save 'inadequate' Grindon Hall Christian Free School - BBC News," 2015) it has survived. However, Durham Free School, another Christian school was not so fortunate and has now been closed down due to a 'terrible miscarriage of justice', according to the Chair of Governors (The Durham Free School, 2015).

After SSM became law (2004) in Massachusetts, the superintendent of the Boston Public Schools made 'the chilling declaration that speech that results in bias against gays and lesbians or discrimination (presumably by anyone) will not be tolerated' (Wardle, 2011, p. 607). Such statements and attitudes lead to consequential effects as in the case of Julea Ward who was dismissed from the graduate counselling program of Eastern Michigan University in 2010. She believed herself unable to counsel homosexual clients because of her religious beliefs. Happily this case was finally settled in the student's favour in 2012 after the University was sued.

Similarly a Masters student in Georgia, Jennifer Keeton, in the Counselor Education program of Augusta State University was ordered to do a remediation workshop when relevant members of faculty found out about her Christian beliefs and her views regarding SS relations. She appealed against the district court's decision which found against her actions. Now she has lost that appeal too. Her case showed the strength of the state in enforcing its morals upon its citizens to the point where even students' university education and future employment may

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be derailed (Jaschik, 2012).

Astonishingly, New York City opened a public high school, Harvey Milk, for 100 LGBT students alone in 2004 at a cost of \$US3.2 million. This raised questions about favouring students attracted to students of the same sex (i. e. questions of equality!) and issues of segregation. In any case, the experiment didn't work and because of falling enrolments it is now (in 2015) open to all students regardless of sexual orientation or religion. In contrast, the UK seems determined to try this experiment again with a Manchester school where a set quota of 40 LGBTI pupils will form part of the pupil group (Zaimov, 2015).

Teachers have been fired for merely reporting literature results that are not easily reconcilable with the current homosexualist orthodoxy in schools. In California, a Professor June Sheldon lost her position at San Jose City College for noting that in rat experiments a correlation had been found between maternal stress in 'pregnancy and later homosexual behavior in males' (Wardle, 2011, p. 609).

Dr Chris Kempling, District of Columbia, suffered lengthy harassment by the British Columbia College of Teachers (BCCT), the accrediting body of teachers, because of his continuing activism concerning the dangers of homosexual behaviour (White, 2008).

Kempling was a high school teacher and counsellor in the Quesnel School District. White (2008) commented:

In January this year, the BCCT laid 12 charges against Kempling, citing him for his letters to editors; for quoting biblical passages about homosexual behaviour in an interview with CBC Radio; and for having published an article, re-published by the Calgary Herald in December 2003, outlining differences

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between social liberals and social conservatives.

Canada must head the list of countries in which criticism of homosexuality and SSM is severely punished (along with other 'hate' crimes), with up to 5 years imprisonment (Wardle, 2011, p. 607). In fact, in a footnote, Wardle provided a brief overview of Canadian law in this matter which can only be portrayed as draconian. No other group in Canada is 'protected' from 'hate' speech in the way that homosexuals are under the guise of 'human rights'. Articles sent through the post and articles brought into the country from overseas can be deemed to be 'hate mail' just by arguing against the morality of homosexual practice and are outlawed by Canadian law.

It seems amazing that in countries that talk of 'freedom', of 'human rights', of 'freedom of religion' that little understanding exists about how the state can yet espouse such policies that rob citizens of basic freedoms and establish tyranny to the point of depriving those who hold views different from their own of their employment and dignity.

1.3 Disregarding and undermining parental rights

'disregarding and undermining parental rights and family interests in the moral education of their children' (Wardle, 2011, p. 612);

Massachusetts provided an example cited above of a school which conducted an unlawful activity in a state whose law requires that the school consult with parents when 'sex-education' or 'human sexuality issues' are broached in educational materials. Although the materials used in the case being discussed spoke of same-sex couples acting as parents, the school justified its use of the materials. Clearly the school was undermining the moral

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education of the children by the parents and only a highly contrived judgement by the court prevented the school being found at fault.

Cross-dressing days are another case in point and have been instanced above in other places leading to withdrawal of children onto home-schooling programs. Adams Middle School in Brentwood also tried the same thing with little effort made to inform parents about the event (Unruh, 2007).

The Canadian polity earlier appeared to earn top marks for 'the disregarding and undermining of parental rights' but in 2015 these earlier statements by commentators seem to be no longer applicable. Csanady (2015) reported on the authority of the Premier that Ontario parents can remove their children from sex-education programs and others as well. However, Urback (2015), an unsympathetic critic of things traditional, reported that some groups have begun to mobilise against this rethink of an earlier (2010) curriculum.

In fact, in Ontario, Canada, a mode of hiding the message of the positive morality of homosexual behaviour and SSM has been carried out and boasted about by a 'married' lesbian teacher, Alicia Gunn, with grade 4-5 pupils (Baklinski, 2015). She does this undermining of parents' wishes and beliefs by discussing 'social justice issues' which enable her to bring her own moral beliefs to the fore constantly. Her challenge to parents is that even if they withdraw their children from the 'Day of Pink' pro-homosexual day that her pupils will have received her unrelenting propaganda in her classes before and after that special day. Gunn believed parents to be naïve about the comprehensiveness of the 'education' their children were receiving in GLBTQ acceptance.

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One can only imagine the effect that the same sexual-values ideology has in the UK where the National Health Scheme (NHS) provides 'C-cards' whereby under-age 13 year-olds can receive up to three packs of 12 condoms. The implicit message is not hard for them to understand: 'It's all right for you to experiment sexually even though this is against the law and even though your parents may not think this is a wise or moral thing for you to be doing' (Christian.org.uk., 2015). Nevertheless, the NHS continues its work to the ruination of many young, vulnerable people.

Wardle (2011) ended this section by reference to Thomas Sowell, a senior fellow at the Hoover Institute in Stanford, California, who asserted that sex-education in schools has been nothing less than an embarrassing failure. Before the 1960s, when teenage pregnancy and venereal disease figures had been *reducing*, the introduction of sex-education into schools was correlated with a dramatic increase in both these figures (Sowell, 2014). Now the same defunct policies are being tried again and we await with concern to see the damage this action will again wreak on any nation's school pupils.

In speaking about President Obama's concerns (expressed in the early part of his term of office) that kindergarten children should get sex-education Sowell had this to say: 'What is called "sex education," whether for kindergartners or older children, is not education about biology but indoctrination in values that go against the traditional values that children learn in their families and in their communities' (Sowell, 2008). Hence, these actions with children of this age are designed to establish the school as the transmitter of sexual values and to devalue the central place that the family ought to play in this sphere.

1.4 Detrimental impacts upon religions

'detrimental impacts upon religions and their presence found in pupils, parents and teachers, and their relationship with schooling' (italics Wardle's, pp. 598-599).

Wardle (2011) reported that a large number of different types of educational organisations had run into trouble with various governmental structures set up to ensure that religions and religiously affected beliefs do not deviate from the government's wish to promote its own brand of order. Religious minorities are particularly vulnerable with one small group of Mennonites leaving Quebec because of government pressures to force them to teach evolution and SSM. In this case just 11 pupils were involved.

'Bill 10', a controversial anti-bullying bill, has been re-introduced in Alberta, Canada as Bill 202 'with significant amendments on March 10 of this year' [2015] as a private member's bill from a liberal MLA. This Bill now relaxes directions for schools to inform parents on various matters but mandates all schools to set up 'gay-straight alliance clubs (GSAs)' if just one school pupil asks for it (Schutten, 2015). This action has been taken without public debate or consultation and applies to all schools, state and independent.

In the US, other groups affected have included Jewish and Catholic schools being forced to fund clubs for gays and to provide married accommodation for SS couples. A Massachusetts state school, although bound by laws in the education act (Part 1, ch 71, Section 32A) that specifically required the informing of parents of school events involving sex-education, put these regulations to one side and counted the parents' religious beliefs as of no moment.

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The Humanist Society in Scotland called for the Scottish Parliament to force all teachers to 'promote same-sex marriage, even if it contravenes their religious conscience' (The Christian Institute, 2014). However, to its credit Scottish school sex education curricula do allow opt out provisions and hold to the general principle that it cannot be a sound idea to force teachers to teach what is against their deeply-held beliefs (McIvor, 2014). On the other hand, it should be said that this result followed strong representations being made to the Scottish government when it appeared to threaten to take a much stronger line against Catholic schools on this matter.

In an article already cited by Zaimov (2015) (in connection with special provisions being made for LGBTI pupils in Manchester), Christian schools are reported as being threatened by a Sir Michael Wilshaw, a chief inspector of schools, that if they do not provide education enabling students to live in modern Britain they 'will be subject to no-notice inspections, downgrades, and even possible closures' (Zaimov, 2015). Britain has already had that come to pass in the downgrading of Trinity Christian School in Reading because it taught traditional marriage and therefore failed 'to prepare its pupils for modern Britain'.

1.5 Summary

These four negative impacts of SSM legislation enacted in a cultural ethos of neo-progressivism show its effects to be far from benign. If families and children come from a faith-based position that is opposed to hedonism and its expression in deviant sexual practices then the brief portrayal of the overseas material above might fill their hearts with a foreboding for the future in Australia.

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The outstanding characteristic of the state's actions in the matter of school education in the above examples is its profound misunderstanding of its proper responsibility to the children in its educative care. Its misconception rests on its pretentious view of its rights and responsibilities over the lives of its pupils and students to the point where their freedom and the responsibility of their parents have been seriously compromised.

Various data re school education from Canada, Australia, the US, and the UK have been presented that point to disturbing occurrences of 'ideological indoctrination', the suppression of 'dissenting views', a disregard for and 'undermining' of 'parental rights' and 'detrimental impacts upon religions' (Wardle, 2011). In the next main section 2.0, an analysis will be made of the ideological force that lies behind the school educational programmes that are being worked out in the above countries.

2.0 Ideology in Contemporary Politics

In this section, the qualities of the ideological forces powering the present social changes being felt in marriage and family, particularly in the latter third of the 20th century and into the 21st century in the western nations will be examined using the relevant literature. This task is not easy, as some variety exists among commentators in vocabulary shaped as it is by their pre-theoretical commitments, and writing intentions.

Even a brief survey of the literature shows a variety of emphases that makes identification of one comprehensive ideology difficult. For the terms used by or referred to by writers include 'neo-progressivism' (Bradley, 2013; Slack, 2013a), 'progressivism' (Bradley, 2013;

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Carson, 1964), 'progressive liberalism' (Deneen, 2015), 'new liberals' (Waldman, 2013), 'new liberalism' = 'progressivism' (Lynch, 2013), 'radicalised liberalism' (Slack, 2013b), and 'social-justice liberalism' (Gaus, 2014). However, 'contemporary liberalism'⁶ has been chosen to signify the ideology that this essay describes while realising that all the names above focus on valuable aspects of what is "contemporary."

The twin features of liberalism, 'liberty' and 'equality' (are found to be in a sharp conflict at this time. Madsen (2010) dreamed that a balance between liberty and equality within liberalism could be maintained but equality has now become so dominant now that liberty - except for certain minorities - has been severely curtailed. Madsen even remarked that

[t]he essence of liberalism is the search for a politics in which liberty and equality are sufficiently balanced so as to avoid the danger of the many absolutisms which threaten us, whether public or private. For only by avoiding absolutisms can we achieve, preserve, and defend the liberty to which we aspire (2010).

However, the examples above in section 1.0 do not reveal that a 'balance' has been found in the present situations in the US or in Canada either. In fact, even the history of progressivism, a bedfellow with liberalism at times, shows an obvious contempt for the notion of the 'individual' and hence, for 'individual freedom' according to Loberfeld (2004).

Therefore, it will be maintained that SSM is emblematic of the larger Western culture which has a *contemporary liberal* ideology at its core and sexual acting out as one of its expressions. As has been documented in various places, homosexual practices have

⁶ This choice is meant to be sufficiently vague so as to allow for the indefinable character of contemporary liberalism (McAlister, 2009).

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existed⁷ for many centuries; however, only in the 21st century has a US president, Barak Obama, the so-called leader of the 'free world', been applauded as the US's 'First Gay President' for affirming LGBTIQ rights.

His declaration arose out of a particular ideology, a sexually permissive orientation that began in the Jazz⁸ era post-world war 1 and then reappeared in another sexual revolution of the 1960s promoted by Wilhelm Reich (1897-1957) and others (Slack, 2013b). Allied with this social-psychological movement was the powerful sociological critique of post-world war II liberalism spearheaded by the flamboyant sociologist, C. Wright Mills (1916-1962) (Elwell, n.d.).

2.1 The character of contemporary liberalism

Three major characteristics of contemporary liberalism relevant to the topic of SSM are its exercise of state power for progressive societal change; the downgrading and abandonment of past traditional social structures; and the obsessive pursuit of state-enforced 'equality'.

2.11 The exercise of state power

Most contemporary liberalism which is also influenced with progressive ideas assume that

7 Such observations by themselves don't argue that homosexual practice is right, proper and good for mankind. Those who argue that homosexual practice is a good often accept that the presence of sexual desire requires/demands expression but that conclusion also doesn't follow. For instance, desire for wealth does not justify theft. Our desires do not need to be acted on, without thereby causing harm to the individual. Ability to control our desires is one of the characteristics of maturity.

8 Code or slang word for 'sexual intercourse'.

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for progress to be achieved human-social reform is demanded (rather than waiting for progress to happen in a developmental way) (Federici, 2011; West & Schambra, 2007).⁹ contemporary liberals typically seek to use centralised state power to effect social change and new freedoms. Although this particular use of state power began in the early progressivism of the 20th century, the same commitment to the state as the power house of progress is now also found in present politics.

According to Grondelski (2015), contemporary liberalism (or what can be called 'progressive liberalism') has no fully developed category of *society*; that is, 'progressives really do not believe in society. They believe in the State' and tend to conflate if not actually merge the two. Through centralised power it is easier, it is said, to correct perceived injustices being perpetrated by the majority culture or one part of that majority towards *particular*¹⁰ minority groups (Bradley, 2013). In this way, the State pursues its greater purpose of 'equality by command' (Kalb, 2008, book subtitle) to bring about 'equal freedom' (Kalb, 2008, p. 14). An equality goal particularly judged in material or status terms requires the use of state coercive power to bring about a more socially just society according to contemporary liberal politics.

2.12 Abandoning the goodness of past traditional structures and standards

Contemporary liberalism downgrades and then tends to abandon traditional structures of

9 West and Schambra (2007) quoted Dewey as saying that 'freedom is something to be achieved' not a God-given natural endowment. This freedom, furthermore, is a gift of the state!

10 Those minorities being victimised because of their gender, sexual orientation, race, religion, etc.

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family, marriage, youthful sexual behaviour standards and gender roles built up over hundreds and thousands of years because such institutions as family and marriage by historical study belong to the past. And the past is passé, obsolete and old-fashioned so it can be readily discarded and society can move into the new utopia planned by the contemporary liberal vision. So gender roles, even 'gender assignment' itself, can be let go. However, in this way, this liberal vision places its trust in the abstract gods of 'nature, science, technology, and reason' (Federici, 2011). The problem with liberalism is not simply reliance on the foregoing avenues of knowledge but its false belief that advancement is bound to take place if only the right models replace the outmoded structures of the past. So, the past has nothing valuable to teach contemporary liberals whose views are tied to their rejection of the place of any transcendent 'law-order' (Troost, 2012, p. 55) in the affairs of mankind.

2.13 State imposed equality

As early as 1974, Robert Nisbet had highlighted the great importance of 'equality' as being the idea that 'will be sovereign for the rest of this century in just about all circles concerned with the philosophical bases of public policy' (Nisbet, 1974). The equality ideal has become dominant because of the diminution of the old Lockean liberalism of small government and individual rights (Lynch, 2013). However, 'new-style liberalism' (Lynch, 2013) or new-progressivism understands society differently. Liberalism 'is now identified with group rights – deriving from class, race, gender, and sexual preference – and expansive government – in order to dispense benefits and make us more equal' (Lynch, 2013). However, professor Roger Trigg observed at an Iona Institute conference in 2010

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that judges were over-emphasising 'nondiscrimination' and 'equality' in the face of religious freedom considerations (Admin, 2012). Cochran (2015) argued in an extensive piece that ideas about 'equality' have contributed to mankind's benefit in some areas but that more recently, the application of 'equality' to issues where it shouldn't belong has turned equality into a god instead of a servant.¹¹

In Australia, SSM has been largely prosecuted in terms of equality¹² and the popular catch-cry in its promotion has been 'marriage equality' for all (Australian Marriage Equality, 2014). If two homosexuals are unable to get legally married, so the argument goes, then they must be unequal before the law with unmarried opposite-sexed, heterosexuals. However, at least one political analyst Carlson-Thies (2014), questioned the expectation of positive results arising from SSM legislation under the slogan of 'marriage equality'. He contended that it could *not* be successfully argued that such legislation would produce greater civil equality.

To the contrary, Carlson-Thies argued that SSM legislation will promote greater civil *inequality*. This unexpected situation arises, he asserted, because the implementation of SSM law leads to consequent social inequalities for religious minorities and others who oppose SSM. Faith-based or humanitarian minorities bear losses of freedom by significant

11 From a different angle, SSM has been said to promote a form of homophobia (Scruton & Blond, 2013)! Scruton and Blond (2013) contend that SSM --as some homosexuals ('queers') understand-- sells out homosexuality to the mores of a *heterosexual institution* by compromising the validity of homosexuality as a lifestyle in its own right (Schmitz, 2012).

12 'Classical liberals' might agree by saying that the question of equality before the law (i.e., race, sexual orientation, gender) is treated as part of the 'rule of law' to which all governments everywhere should adhere (Ashford, 2011). However, classical liberals would avoid the use of state power to bring this 'equality' about.

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restrictions in practising their faith in ways consistent with their beliefs held for millennia. In other words, what is given to one minority by the State is taken from another group of minorities (or indeed taken from a majority!).

An example of this is to be found in the Catholic church's adoption agencies in some states of the US (Messner, 2014). Carlson-Thies described the situation in this way,

When the official definition of marriage changes to include same-sex couples along with opposite-sex couples, the government requirement of nondiscrimination . . . results in requiring all people and organizations to act as if marriage extends to same-sex couples, even though many people and organizations have deep convictions to the contrary.

His point is that organisations and individuals in adoption agencies who wish to be resolute regarding their convictions about marriage and parenting have already been forced to give up the adoption practice of placing children with only mother-father families. Consequently, such agencies have been closed rather than placing children with SS couples which would go against their beliefs of right/wrong. Anti-discrimination law, in this case, has robbed children, couples and the community in general of a valuable civic organisation. Further examples can be found in other areas such as when school teachers are directed to teach pupils material that compromises their beliefs about marriage or when medical doctors find their power to advise their patients about the unhealthiness of the certain lifestyle practices is constrained.

Carlson-Thies (2014) commented pithily on this new social reality by asserting:

[t]his isn't marriage equality, it's marriage inequality. Those convinced that marriage includes same-sex as well as opposite-sex couples will serve both

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kinds of couples without any conscience concerns. Those convinced that marriage still is what it has been for millennia will find that they can no longer act in harmony with that conviction but now must, in effect, change their view of marriage.

In fact, the new legal reality which obtains with SSM legislation is one where same-sex (SS) and opposite-sex (OS) couples who agree that *marriage* includes both these couple types face no pressures regarding change in their convictions. However, for those convinced that marriage can only involve OS couples are forced to confront a new civil order which will attempt to reform their thought, speech and behaviour in a variety of situations.

Carlson-Thies added that the introduction of SSM legislation will necessarily involve many people in an inner conflict between their long-held, deep convictions about marriage -convictions that their own society almost unanimously held in law and practice barely 20 years ago- and their ability to operate without sanction within their societies. Failure to make that change will cause stress and conflict in their families, churches, synagogues, mosques, at places of employment, as parents of children in schools or of older young adults in higher education, and throughout a broad range of their social reality. And this situation of legalised 'marriage equality' will force every now married couple who accepts complementarian marriage to accept tacitly or to pay lip service to what is for them a ersatz marriage form alongside their own. This type of inner struggle of conscience will be the consequence if SSM law is adopted in Australia unless acknowledgement is made of the importance of religious minority views in the process of legal changes by provision of 'robust religious protections in law at the same time as legalizing same-sex marriage'

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(Carlson-Thies, 2014).

The battles between state legislation and matters of religious conscience bring to the fore the spectacle of various non-government institutions (in particular schools, school teachers, school pupils) in conflict with government-funded 'equality' or 'inclusion' or 'non-discrimination' commissions of various types. The latter are government instrumentalities and therefore have taxpayer funds to fight court cases which mean that small, non-government entities, or individuals find themselves in costly litigation with little means to defend their actions.

2.2 The practice of contemporary liberalism in identity politics

Contemporary liberalism is practised in the context of 'identity politics' by involving genderless marriage (SSM) and novel types of sexuality expression. York (2015) provided a good example of present day identity politics at work with the launch of Governor from Maryland, O'Malley's Presidential candidacy. O'Malley had four people to introduce him to the crowd before he spoke and each person was from a minority group: a black, gay, and an illegal migrant; the next, a student raised by two lesbians, and so on. When O'Malley finally did speak, he concentrated on economic matters with a bit of populism by saying in effect that others are making money and leaving the average citizen behind, a common contemporary theme. However, the implicit message of his presentation was that his presidency will be for minority groups and that common folk will hardly qualify for his focussed attention.

2.21 The emergence of contemporary sexual permissiveness

Behind the powerful move to legalise a form of genderless marriage, a 19th century foundation had been laid for sexual permissiveness via the academic studies of Krafft-Ebing (1840-1902) and Moll (1862-1939) in 19th century Germany. These studies generated sexology attitudes still current in Western society today (Oosterhuis 2012). Chief among these ideas was that what were originally described as 'perversions' and 'deviations' related to psychiatric disorders were re-conceived as 'an integral part of a more general, autonomous and continuous sexual instinct' (Oosterhuis, 2012, p. 133). In other words, these sexual deviations were part of a sexual instinctual normality common to all people. As is well known, Sigmund Freud (1859-1939) took up this same idea arguing (pessimistically) that therefore, mankind was caught in a dreadful bind between 'id' or instinctual impulses demanding expression and the laws of society and inner conscience ('superego') urging self-control. Freud argued that the impasse between these two forces resulted in neurosis if the mature ego cannot resolve the conflict.

Wilhelm Reich, a brilliant, one-time disciple of Freud's psychoanalysis, sided with instinctual forces against what he believed was an oppressive, capitalistic society. In so doing, he contended that any society with a number of citizens who had achieved 'orgiastic potency' could bring about political freedom by the application of Marxist principles (Turner, 2011): his basic contention was that without 'orgiastic power'—the essence of character—political freedom was impossible. In his thinking, sexual freedom led to political freedom because sexuality was the centre of society just as it was the centre of the individual's inner world (Slack, 2013b). Reich participated in the sexual revolution of the 1920s and

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Reichian thinking influenced the counter-culture of the 50s and 60s (Slack, 2013b).

Reichian psychology deeply affected significant writers of the time such as J.D. Salinger, Norman Mailer and Saul Bellow.

To extend his therapy practice which had begun with full body massage (Bean, 1972) to break down 'character armour', Reich switched to a controversial treatment involving a telephone-sized box in which the 'life-force' (sexuality) was hypothesised to actively permeate those who spent time in a compartment, graphically dubbed, the 'Orgone'¹³ Energy Accumulator' (Turner, 2011). This accumulator and his claims about its powers got him into serious trouble with the Federal Drug Administration which accused him of false advertising and overblown claims resulting in a prison sentence of two years. He died while in prison.

Another important element in the building of a new contemporary movement in sexual expression was the work of Alfred Kinsey and associates. They published the results of interviews featuring subjects' answers to questions about their sexual behaviour: the first publication under the title of *Sexual Behavior In The Human Male* (1948), and another in 1953, *Sexual Behavior In The Human Female* ("The Kinsey Institute - Kinsey Study Data [Research Program]," 2015).

These books were greeted with dismay by those who believed that such publications had immorally delved into a taboo subject and moreover, that the information was flawed having been gained from suspect sources such as prostitutes. Judith Reisman subjected

¹³ 'Orgone' was the name that Reich gave to this life energy he believed pervaded the universe and could be captured in his 'accumulator'.

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Kinsey's work to ruthless criticism concluding that his own sex history was consonant with the bizarre and illegitimate methods that he used to gain his information (Reisman, 2010). Nevertheless, Kinsey's studies were applauded by others who saw them as a sign of sexual liberation. To these studies were added the works of William Masters and Virginia Johnson¹⁴ who observed (!) sexual behaviour in their subjects (1954¹⁵-1994) rather than doing interviews (as Kinsey and associates had done) (Editors of Encyclopedia Britannica, 2014).

2.22 The sociological catalyst for identity politics

C Wright Mills (1916-1962), a sociologist of great intellect, influence and clarity of expression who wrote within the 19th century tradition of Max Weber, Karl Marx et al. (Elwell, n.d.) did not agree with Freudian and neo-Freudian psychologists who talked about people being controlled by inner forces. Rather, Mills' idea reversed Reich's conception above. For Mills believed strongly that US capitalist society was ruled by what he called 'the power elite', a group militarily, politically or economically powerful, which continually made decisions to protect its own predominant position¹⁶ (Marshall, 2012).

Wright strategised that this power elite needed to be weakened if freedom was to flourish in the US and equality was to be restored. But to weaken this elite he needed to identify a

14 Masters and Johnson married in 1971 and divorced in 1993. However, they continued to work together until Masters' retirement in 1994.

15 Masters began the work in 1954 and was later joined by Johnson as a research assistant in 1957.

16 Wright wrote *The Power Elite* in 1956.

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major dissatisfied group who would become a new 'proletariat' working for change. He concluded that the young intellectual group was disgruntled with the way things were in America (Slack, 2013b) and Mills turned to them to 'create new authoritative communities' (Slack, 2013b) which would be embodiments of true humanity, examples of *community*¹⁷ in contrast to the liberal American way of oppressive life.

The New Left of the 60s (Hales, n.d.) wanted to promote freedom for those minority groups in bondage to the dictates of capitalism. Mills' work sided with a large number of groups who were discriminated against: not just racial discrimination but also on the basis of sex (gender), sexual orientation, sexual expression, religion, beliefs, social class, medical condition, and age. This work later led to the notion of *identity politics* becoming dominant whereby firstly politicians, but then especially voters within the electorate, were to be known by their membership of a particular minority group - gender¹⁸, sexual orientation, race¹⁹, religion²⁰, etc. (Braceras, 2015).

The general movement comprising the sexual permissiveness ideology, the *anti-liberalism* trend of Mills' sociology, the anti-liberalism of the New Left and particularly the civil rights

17 In contemporary society, every group seems to be styled as a 'community' which seems to be derived from the work of C. Wright Mills.

18 Hillary Clinton's stand for the US presidency could be understood as an example of identity politics in which the hope of Democrats is that she will receive votes from some on the basis that she is a female rather than because of her superior qualities by comparison with her opponents.

19 Barak Obama as a black American is a case in point.

20 Mitt Romney, a member of the Mormon church, is another example of identity politics.

movement promoted a break between followers of the old liberalism and a break-away from the 1980s onwards which has been called neo-progressivism (Slack, 2013a).

3.0 Contemporary Liberalism in Australia

3.1 World War II

The advance of the Japanese Imperial Army into waters and territories north of Australia during World War II saw the stationing of up to one million US troops in Australia from 1941 to 1945 (Courier Mail, n.d.) bringing with them aspects of American culture. Although the comradeship between the American and Australian *troops* wasn't always friendly—the Americans were viewed by the Australian soldiers as being 'over-paid, over-sexed and over here' dating 'our' women—the Australian populace received the Americans with friendly hospitality and cordiality (Lewis. n. d.).

3.2 'The American century'

To this influx of American mores into Australian life must be added the introduction of commercial and government television in the same year as the holding of the Olympic Games in Melbourne in 1956. The cultural impact of this event can hardly be underestimated, for the television age brought the American culture as the now major Western cultural power into Australian living rooms in a way undreamt of before that time. Its entertainment businesses, TV news programs and formats, and old and even more recent cinema films could now be seen on the family living room television set. None of

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these media has failed in bringing about profound changes in Australian culture in the second half of the 20th century. To these influences can also be added the subsequent introduction of the newer book publishing houses, cable TV, US universities and finally the Internet, exerting a continuous intellectual influence on Australia directly (and indirectly). The second half of the 20th century has been 'the American century' according to White (1999). Hence, it is hardly surprising that Australia has also been influenced by American beliefs and its philosophies, most notably, American liberalism and its companion neo-progressivism.

3.3 Liberalisation of laws re marriage, abortion, homosexuality, and sex

None of the above is to say that Australia was passive in its relationship with the US, but the shift away from Britain to a greater focus on the US (both in WW II and the post war period) perhaps contributed to the liberalisation of Australian culture. It is hardly newsworthy to remark that over the past 60 years a move has occurred towards more liberal sexual beliefs and practices in Australia²¹ than had been the case before World War II. The quick introduction of the oral contraceptive pill (1961)²²; no-fault divorce (Commonwealth: 1975); decriminalisation of homosexuality (Victoria: 1981); legislation granting SS couples almost the same rights as married couples (Commonwealth: 2004); decriminalisation of abortion providing the most liberal termination dates possible (Victoria: 2008); and the series of efforts at state and Commonwealth levels to pass SSM legislation

21 Australian law-making is divided between Commonwealth and State responsibilities.

22 Australia was the second country in the world to begin its use.

after 2004 indicated decisive changes in the last decades in attitudes to SSM.

3.4 Australian contemporary liberal groups

Liberalism can also be found in the political parties of the latter part of the 20th century and also in many trade unions although some 'right-wing' unions are opposed to social liberalism.

3.41 Contemporary liberal political parties

Without doubt, the major contemporary liberal political party in Australia is *The Greens* with about 9% of the nation's voting support in the Federal elections of 2013. Beginning with political action in 1972, the formation of a national Greens Party took place in 1992, with the support of its various state parties (Allman-Payne & Watson, n.d.). Its website lists four main core beliefs: 'ecological sustainability', 'grassroots participatory democracy', 'social justice', 'peace and non-violence' (Allan-Payne & Watson, n.d.). The party strongly supports SSM (Magarey, 2010) and does so using the popular argument based on 'equality'.

The Sex Party (Victoria) is a much smaller party than the Greens but even more contemporary liberal in character (Swan, n.d.) particularly with regard to gender and sex discrimination and prostitution and drugs; it adds to all this an aggressive desire to reduce the position of religious organisation and their tax-free status.

The *Australian Equality Party*, another small and new party, uses the watchwords 'Fairness', 'Human Rights', 'Equality' which are used however, completely in the service

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and for the cause of 'LGBTIQ Inclusion and Human Rights' (Australian Equality, 2015).

That is, in its reckoning, its party does not apply these major ideas to any group other than the LGBTIQ one. It hopes to put a representative into the Senate at the next Federal election in 2016.

'Contemporary liberalist' political elements also exist in both the Labor and Liberal parties, the major political parties; but The Australian Labor Party (ALP) is more socially liberal than the Liberal Party-National Party (LNP) Coalition. The ALP shows its support for SSM by allowing a conscience vote in parliament on the issue at present. It is influenced by the Trade Union movement which has gradually shown greater support for SSM in the last decade. Moreover, the ALP's present deputy-leader has suggested that the party should take a stronger line, declaring SSM should be party policy (Hurst, 2015). This decision would force all present Labor parliamentarians to choose between their party's policy and their conscience (or their electorate's expressed preference) should be parliamentary vote be taken.

The Liberal-National Party (LNP) is more conservative than Labor, with the present Prime Minister Tony Abbott, a Roman Catholic, being decidedly against changing the present marriage act and against giving his party a conscience vote on the SSM issue.

3.42 Contemporary liberal trade unions

Within the Trade Union movement, the strongly contemporary liberal *Australian Education Union* has expressed blunt approval for the contemporary liberal trend within Western societies (Australian Education Union, 2006). It not only supports teachers who are

members of minorities (which is its responsibility) but wants to prosecute the cause for societal approval of pupils who are LGBTI through the school education process itself (Australian Education Union, 2006).

4.0 Australian Secular School Education

It is proper now to examine briefly how Victorian government became the largest provider of school education in the state. Victoria separated from New South Wales in 1851 (Hooper, 2008) and took control of the schooling by and large previously run by Christian denominations (Church of England, Presbyterian, and Methodist - with notable exceptions) in school education until 1872.²³

4.1 'Secular' and its meanings

In 1872 the Victorian State Government took over administration and running of most school education, and in 1873-1874 support for all denominational schools was phased out. However, the major group that stood outside the state system was the Catholic system which saw the new state system as threatening its presence in the school education of Catholic children. The Protestants largely accepted the new state school system with only a few wealthy Protestant denominational schools continuing after 1874.

What should be said was that the Catholic church realised that this shift from church responsibility for school education to state responsibility was a change in which the latter

²³ 'Ragged schools' which has been established in the 1850s by philanthropic Christians also became a state responsibility in 1872.

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had assumed a power over its citizenry to which it was not entitled. Brick (2008)

commented on this aspect more extensively:

The [Victorian] *Education Act 1872* represented a radical realignment of the relationship between Church and state. Where, traditionally, education had been seen as a religious activity, the state took on an expanded role in placing demands on its citizens, for example requiring them, compulsorily, to attend school The Catholic bishops decided to maintain a system of Catholic schools with the ideal - never to be achieved - of having every Catholic child in a Catholic school. This policy was based on the theological understanding that life is essentially religious, and something as important as the rearing of the young should take place in a home open to religious sensibilities and practices and in schools which extended that environment - an understanding that continues today.

The newly introduced government system of education was heralded as 'free, compulsory and secular' but secular was not defined in the *Act* and arguably became a loaded term.

The present Department of Education and Training (2013) website indicated that the *1872 Education Act* 'did not define secular, presumably on the basis that the community had an agreed understanding of what secular meant'. However, it is just as likely that some confusion existed as to possible conflicting meanings of the word or that cultural forces were at work to modify the word so as to give it an 'anti-religion' turn. Indeed, a noted legal scholar Benson (2000), writing about the meaning of secular, has said that its meaning in the 19th century changed from its earlier predominant meaning ('in the world') to 'free from religion' (Benson, 2000). He argued that at the time of the Reformation, Roman priests could be termed 'religious' or 'secular' with the distinction still being observed today. A diocesan priest is secular because his work is 'in the world', whereas the 'religious' priest, sister, or brother follows the rule of a particular order (e. g., Benedictine, Franciscan, Society of Jesus, etc.).

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The most recent legislation, Education and Training Reform Act 2006, lays down that:

Today, secular may mean different things to different people. It is for this reason that the new Act, while reaffirming the principle of secular education, defines it in modern democratic language.

The legislation clearly states that the government school system is secular, and open to the adherents of any philosophy, religion, or faith. It specifies the curriculum and teaching in government schools will 'not promote any particular religious practice, denomination or sect' (Education.vic.gov.au, 2015).

The contemporary contemporary ideology is assumed to superintend the 'unproven' starting points or beliefs of other religious authorities. Hence, the ideology has taken for granted its own starting point as neutral; and from this 'high point' it dictates the logical and moral boundaries of all religions, faiths, or philosophies that may be represented in schools.

4.2 State power with respect to funding and registration

All schools 'must be registered with the state or territory education department and are subject to government requirements in terms of infrastructure and teacher registration' according to the Federal Government website (Future Unlimited, n. d.). Government controls the training of teachers in all schools by laying down the conditions under which degrees and diplomas of teachers are to be granted, which allows teachers to be registered to teach in any type of school.

Australian schooling education is either completely tax-funded (government school sector) or about 60% funded (in the non-government sector) by Federal and state governments with the remainder coming from families or other institutional sources such as Christian

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denominations, other religious organisations (e.g., Judaism, Islam). The government schools are made up of open admission schools and also elite schools entered only by scholarship or the payment of high fees. The non-government school sector is comprised of: a number of low-fee, non-denominational, parent-controlled schools; large and wealthy independent schools often denominationally-based; and denominational Christian schools of different types; Muslim schools; Jewish schools; Montessori schools; along with a significant Catholic parochial school system. All these operate under educational and administrative guidelines set by the state.

In October 2014, the Australian Federal government released its reply²⁴ to a Senate Select Committee's (majority and critical) response to an important School Funding Report (Equity and Excellence in Australian Schools).²⁵ Two important facts are to be highlighted from the introduction: most funding of *government schools* comes indirectly from the Federal government *via* the state and territory government – more than five times what the Australian government provides directly. For the non-government schools it is roughly reversed with the Federal government the much larger *direct* contributor (approx 2 ½ times) than the states. Second, the size of the governments' contribution to school education was \$40 billion in total for 2011-2012 which all came originally from the

24 This government reply was part of a political argument that is not relevant in this present context but the way funding is allocated is important for gaining a brief outline of state power over schools in the way of funding.

25 States and territories are the major funder of government schools and also provide funding to non-government schools. In 2011-12, state and territory governments provided 84 per cent of total government recurrent expenditure on government schools, with the Australian Government providing 16 per cent. For non-government *schools*, the Australian Government provided 73 per cent of total government funding and states and territories provided 27 per cent. In dollar terms, states and territories provided a total of \$27.7 billion to Australian schools in 2011-12 and the Commonwealth provided \$12.3 billion.

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Australian government was then paid either directly or indirectly (through the states and territories) to school systems.

The point of this excursion into finance is to show how vulnerable non-government schools are to any state pressures because of finances. Whereas, before 1972, when the Commonwealth Government first began to finance non-government schooling directly such schools were virtually self-supporting, now they are dependent on government finances and hence open to the power of the state to coerce changes that non-government schools may not be eager to implement, as has occurred in Canada, the US, Scotland and England, detailed in section 2.0 above.

4.3 School education and its scope

The Future Unlimited website outlined a mission statement for Australian schools in whichever school they might be, using these significant words:

Australian schools do more than just educate students. They prepare them for life – developing communication skills, self-discipline and respect for themselves, their peers and their world. Schools offer a broad curriculum in the key learning areas – English, mathematics, studies of society and the environment, science, arts, Languages Other Than English (LOTE), technology, health and physical education. They also believe strongly in the benefits of a rounded education – including the teamwork, self-expression and personal development that happen outside the classroom.

The opening words of this paragraph should give the reader pause for reflection although they are heard often enough by trainee teachers in training institutions. Such phrases as, 'schools exist to educate the whole person' were common in the mouths of lecturers in

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teacher colleges back in the 1960s and yet, they betray a serious exaggeration of the calling of the institutional school. This feature has been referred to above and is perfectly consistent with the ideology of contemporary liberalism and its idolisation of the state.

In this mission statement, the state has forgotten that the school is only one of the civic structures that contribute to the education of a nation's children. Other groups or institutions include, chiefly, parents, the extended family, worship structures, the neighbourhood, sporting clubs, music teachers (private), and scouting and other youth organisations as well many forms of popular media.

5.0 Australia's past and present legislative history on SSM

To the present time, a number of states of Australia have tried to introduce SSM legislation.²⁶ These included Tasmania, NSW and South Australia but all these attempts have failed. Bills have also been presented at the Federal level but not one has passed the Senate (Upper House) where the Government Party, the Liberal-National Party Coalition, has been committed to vote along party lines against such bills and is not given the opportunity to exercise a 'conscience' vote by its Prime Minister.²⁷

One interesting recent example can be found in an Australian *Liberal Democratic* Senator, David Leyonhjelm, who recently put forward a private member's Bill entitled *Freedom to*

²⁶ Such efforts have now been extinguished by an Australian High Court ruling that has found that the Federal Parliament is responsible for establishing law with regard to marriage and therefore, the making of SSM by states is unconstitutional.

²⁷ Although the PM leads the Liberal-National Party Coalition this party is more conservative than liberal as the last two Liberal PMs have been conservative rather than liberal.

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Marry (at the end of 2014). The Bill presently at the second reading stage in the Senate of the Federal Parliament revealed some of the contradictions mentioned by O'Neil (2014) in regard to some libertarians. For example, Senator Leyonhjelm who is supposedly committed to *diminishing* the power of the State ("Liberal Democratic Party", 2009) has by this Bill alarmingly strengthened the State's power with regard to marriage (although the Senator rejected my contention) (private communication 16th February 2015)²⁸.

Leyonhjelm would extend the power of the state by assuming the state's power to *define* marriage rather than merely to *declare* the marriage institution,²⁹ a given loyalty bond between a man and a woman which has existed throughout human history, long before the appearance of political states or the Christian church. In doing this, he has contradicted one of the tenets of libertarianism according to O'Neil's words, by giving power to 'the elbow of the state' (2014).

These types of provision call for greater acknowledgement to be given to the diversity in our culture, rather than compelling all sub-cultures to conform to one uniform view. Such a condition can be met by SSM legislation only if it also recognises religious freedom. Fortunately for Australia and other places such legislation has been drafted and some even enacted in parts of the world which would give a basis for such religious freedom provisions in any Australian legislation.

28 It was pointed out to him that his Bill has nothing to do with reducing the power of the State but inadvertently would extend the power of the State to alter the character of a given institution (marriage) by legislation.

29 The Australian Marriage Act 1961, and The Marriage Amendment Act 2004.

6.0 Religious Freedom in the US

In the US State of Indiana, a heated argument broke out about its wish to adopt a Federal law, the *Religious Freedom Restoration Act* (RFRA: 1993) into its own polity. The law is presently in the statute books of 31 other US states so it is hardly an oddity. Such laws say in essence that the government acknowledges freedom to all religions to practice their faith and 'quite rightly places the burden of proof on government when it infringes on people's religious beliefs' (Meese III & Anderson, 2015). However, although Indiana appeared poised to adopt this legislation recently (Bomboy, 2015), the combined pressure of the LGBT community and more especially the corporate sector (e.g., Apple, Walmart, and the NCAA [basketball] with its Final Four Tournament) has led the state to adopt a law that makes religious objections about services for SSM events problematic (Clark, 2015). Contemporary liberal ideology is not interested in civil freedom for all, and it is implacably opposed to those who oppose SSM on religious grounds.

Orthodox Christianity and others fighting for recognition of religious liberty where there is proposed recognition of SSM are having a hard time, because recognition of SSM is the contemporary liberal cause of the moment and for liberalism, *religious* liberty hardly rates. Nazworth (2015) showed the difficulty those who hold a traditional view of marriage, when the issue of religious freedom is opposed to 'sexual liberty,' in these words:

Chai Feldblum, a Georgetown University law professor who was appointed to head the Equal Employment Opportunity Commission by President Barack Obama, argued in a 2006 interview that liberals should demonstrate a "respectful awareness" of the views of conservative Christians, then added that this view does not represent the majority in her community of fellow liberals. Additionally, she said that when religious liberty and sexual liberty conflict, "I'm

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having a hard time coming up with any case in which religious liberty should win."

If that is the situation, one wonders how the issue of religious liberty can possibly be raised in any court case in the US involving sexual freedom with even a *prima facie* hope of being heard fairly? Eugene Robinson, an opinion writer for the *Washington Post*, recently voiced that negative view by saying, 'The only purpose of the "religious freedom laws in Indiana" and other states is to assert that discrimination against gay people is acceptable' (2015). However, Robinson wrongly construed the intent of the RFRA because the *Act* does not cover every single transaction with the LGBT community or anyone else for that matter. It only affects situations where the implied contract between sellers and buyers raises questions of the religious freedom of sellers not to be coerced into providing items of sale that conflict with their religious conscience. That stipulation also applies to those *Christian* (and other) buyers who want a product/service from someone who takes a stand for SSM. So in fact, the law also protects SSM supporters who are bakers!

Robinson forgot completely to list the times the RFRA as Federal legislation or similar Acts later enacted as state legislation (– the Federal law does not apply directly to the states –) has assisted *non-Christians*³⁰ as listed in Hemingway (2015) which included eagle feathers returned to an Apache leader for use in a dance, a Sikh federal employee's knife as a reminder of the Sikh's commitment to justice, and kosher meals in a Florida gaol, are some of the successful causes appealed using RFRA. Moreover, not all cases listed by Hemingway were successful which means that the appeal to RFRA *does not guarantee a win; defeats have occurred* for both Christians and non-Christians in courts trying appeals

³⁰ In fact, it was originally drafted to protect non-Christian religious practices (but not to exclude them)!

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on the basis of RFRA.

However, just in case any thought that only Christians (Muslims, Jews and others) were guilty of 'discrimination' it is evident that liberals also discriminate and do so with impunity in the same US city in which Christians have been litigated against for doing so. Nazworth (2015) reported that in Denver, Colorado a bakery can decline to make a cake if Bible verses are on the cake, for example, and they conflict with the maker's values; however, *in the same state*, the Masterpiece Cake business was successfully sued for 'declining to make a wedding cake for a same-sex wedding'!

Furthermore, many liberal news outlets have commended the actions of pharmacists in refusing to sell 'death penalty drugs' to government agencies but on the other hand these same liberals oppose doctors who refuse to be involved in the abortion industry. So apparently it's morally principled, according to liberal organisations, for large corporations to boycott states such as Indiana with regard to RFRA legislation but the moral principles of bakeries, photographers, wedding accommodation providers are not to be considered if they clash with those of neo-progressivism.

Carlson-Thies and Langston (2015) expressed well the contradiction between these two *moralties* in the following words: 'Whatever the motives, what many opponents of the Indiana RFRA law have actually done, in the name of bringing justice to one group, is to label as bigots other people whose faiths call them to unpopular beliefs about marriage.'

A summary of the conflict in the US can be found in the statement released by leaders of

the Roman Catholic church and Southern Baptist convention:

In recent days we have heard claims that a belief central to Judaism, Christianity, and Islam—that we are created male and female, and that marriage unites these two basic expressions of humanity in a unique covenant—amounts to a form of bigotry. Such arguments only increase public confusion on a vitally important issue. When basic moral convictions and historic religious wisdom rooted in experience are deemed “discrimination,” our ability to achieve civic harmony, or even to reason clearly, is impossible.

America was founded on the idea that religious liberty matters because religious belief matters in a uniquely life-giving and powerful way. We need to take that birthright seriously, or we become a people alien to our own founding principles. Religious liberty is precisely what allows a pluralistic society to live together in peace (Chaput, George, Lori, Mohler and Moore, 2015).

7.0 Religious Freedom in Australia

Australia's distinctive European culture was originally derived from convicts being transported from Britain in 1788 along with a smaller number of free settlers. These and subsequent shiploads came to Sydney Cove and later Hobart. Mainland European Australians created with the southern island of Tasmania six self-governing British colonies during the 19th century and in the latter quarter of the 19th century efforts were made to bring the colonies together (Kilcullen, 2012) to form a Commonwealth of Australia. This Commonwealth, created as a Constitutional Monarchy, was officially proclaimed on the first of January 1901. Although Australia's Constitution was influenced by principles and values from the US, Canadian and other constitutions, the major influence stemmed from the British Constitution (Issue 1. Constitutional Form and Values, 1996).

The British influence can be seen in the basic Westminster form of government and the absence of a Bill of Rights, in agreement with British tradition. This lack of a Bill of Rights in Australia's polity, where religious freedom may not be as well tolerated as it might be in

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the US, could make the task of arguing for acknowledgement of religious liberty more difficult in a context where contemporary liberalism is urging greater sexual permissiveness and diversity of expression.

The Australian Constitution mentions religion in section 116³¹:

Commonwealth not to legislate in respect of religion

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth ("Commonwealth of Australia Constitution Act 1900," n.d.).

It should be borne in mind that the Australian Constitution provides limits to the powers of the *Commonwealth* (Federal) government. It is the Commonwealth that is not permitted to act in these four ways with regard to 'religion'.³²

Victoria is the only state³³ of Australia that has a 'Charter of Human Rights and Responsibilities' (2006) which guarantees 'freedom of religion' in the following terms in section 14:

(1) Every person has the right to freedom of thought, conscience, religion and belief, including-

(a) the freedom to have or to adopt a religion or belief of his or her choice; and

31 The words used parallel those of the US Constitution on the same topic.

32 'Religion' may have referred to a Christian denomination in 1901 (Davis, 2009) but its definition has been disputed right up to the High Court. For example, the case of the Church of the New Faith (Scientology) vs Commissioner of Pay-Roll Tax (Vic) (1983).

33 The Australian Capital Territory (ACT) also has a Charter of Rights but the ACT is a territory not a state.

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(b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.

(2) A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

The freedom of thought, conscience, religion and belief is modelled on Article 18 of the International Covenant on Civil and Political Rights, a treaty to which Australia became a party in 1980.

Under the Charter, all rights may be subject to reasonable limits (section 7(2)). The nature of the right is relevant when considering what is reasonable (The Human Rights Commission, 2006) .

The Charter has received mixed reviews mainly on the basis that legislation on rights and responsibilities can produce more unwise restraint than order and liberty according to Garrick Professor of Law, James Allan (2011a, 2011b) who listed a dozen illustrations showing that the Victorian Charter of Rights is an expensive approach to rights, involving work for lawyers and judges with these players turning all types of issues into questions of rights which leads to further work for them at public expense. More positive assessments had come from one Catholic source Isaiahone earlier but it has subsequently expressed reservations (McLeay & Webb, n.d.). McBeth (2010) argued that the Charter promoted rights for the individual over against government employees and should certainly be retained in Victoria for that reason.

However, it is not at all clear how the Charter would have much effect on the public practice of the Christian faith in various civil spheres of life such as school education. That might only become clear from experience gained when SSM becomes law. How the Charter and Commonwealth SSM legislation would connect is not yet clear; it would appear that Commonwealth law would take precedence over State law in this instance

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because the High Court has judged that marriage law is a specific area of Commonwealth responsibility.

The fact that marriage law is a Commonwealth responsibility makes it important that religious freedom provisions are written into any marriage legislation that the Commonwealth may enact.

8.0 Examples of Conciliative Law-Making

Carlson-Thies (2014) ably defined the spirit of religious freedom law with regard to SSM legislation as protection of 'religious persons and institutions from being compelled to celebrate or assist in celebrating a relationship they believe is not a marriage' at the risk of fines, bankruptcy or imprisonment. Two illustrative examples given by Carlson-Thies put the meaning of such laws into a broader context. First, while it is unlawful to discriminate against customers on the basis of sexual orientation or marital status who are wanting to buy the products of a business establishment, it should also be unlawful for a business catering for weddings to be forced to provide its facilities for the celebration of a same-sex wedding ceremony or wedding breakfast. Similarly, although laws exist to allow SS couples to adopt children, the law should also protect faith-based agencies from being compelled to place children with SS couples and thereby being forced to close down their services.

It needs to be conceded that Australia will for all the wrong reasons legalise SSM.

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Christianity, especially Roman Catholic, Orthodox, Evangelical and Reformed Christianity,³⁴ will continue to fight against the 'marriage equality' movement (and also against the neo-progressivism that lies behind it). To not do so may seem to some to betray convictions of faithfulness to God and his revealed truth. However, Carlson-Thies, president of the Institutional Religious Freedom Alliance, has conceded that for two reasons, 'marriage equality' legislation cannot be stopped because not only are the young polling higher in their acceptance of the idea but, "[t]here is a decreasing worry about same-sex relations—maybe because a lot of us know somebody in a same-sex relationship There has also been a change in what people regard as equal treatment" (cited in Zylstra, 2014).

8.1 The Utah Compromise

On that note, some Christians and some non-Christians who are against SSM may believe it is time to seek an accommodation with the State and SSM advocates wherein religious liberty and SSM can be recognised together without rancour (Adams, 2015). Such legislation has been passed in Utah (although it has now been held up by the Supreme Court's Action in choosing to bring down an opinion on the matter itself).

The Utah experiment made sure that all the major stakeholders negotiated at the same table. Utah's legislators took the lead rather than appealing to the judiciary and took this action deliberately believing that the use of judicial means to be a serious mistake because

34 Some individuals and groups within Christianity may argue in favour of SSM but this is usually for reasons derived from "progressive liberalism" and not from Christian sources. Other Christians dispute the validity of arguments from Scripture and theology made by Christians in favour of SSM.

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judicial processes tend to create winners and losers (Adams, 2015). On the other hand,

[k]eeping everyone at the table is critical. Any heavy lift will require extensive negotiations; there was certainly no omission of that rule with what we accomplished in Utah. But learning to live and work with those who do not share beliefs and values is imperative. People view their religious identity and their sexual identity as core fundamental values and as such, those values deserve respect and fair treatment (Adams, 2015).

The legislation, which was overwhelmingly passed, tried to acknowledge the rights of LGBT persons as well as protect the religious freedom of those opposed to SSM (Goodstein, 2015). However, as with all compromises that seek to accommodate diverse marriage beliefs, some on each 'side' outside the negotiation process believe that their side gave up too much ground to the opposing point of view.

8.2 The Hawaiian Legislation

This state showed great endeavour on the same question of 'marriage equality'. Its Senate Committee had to read and hear an impressive amount of public testimony³⁵ on its draft Bill (Senate Bill 1: SB 1) which was a Bill to allow 'marriage equality' in the state of Hawaii.

If the Utah legislation involved a compromise then at least one submission to the Hawaiian Senate Committee on Judiciary and Labor showed a different way. A group of nine constitutional law professors *both for and against* 'marriage equality' met to determine the implications for religious liberty of the proposed Bill. The important foundation of this group was that *religious liberty* is a given (acknowledged) constitutional right in the US Constitution and that inclusion implies it should not be neglected in determining Hawaiian

35 Some 20,000 people or groups sent written evidence to the Senate Committee on Judiciary and Labor and another 5,100+ registered to appear before the Committee.

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law on the matter of 'marriage equality'.

The group presented its proposal with an 'executive summary' followed by a more detailed argument for its case to the Hawaiian Senate Committee on Judiciary and Labor on October 28, 2013 (Bassett et al., 2013). In short, this group was critical of the fact that the legislation provided minimal religious freedom –in fact– less than most other states in the Union (see map in Zylstra, 2014).

However, the lack even in this commendable work is concern directed towards civil institutions other than the church and businesses. Undoubtedly the excellent section (B) (below) of the professors' proposal would not cover the concern expressed in this essay about school education.

(B) Protection of Religious Conscience of Individuals and Small Businesses.

(1) Except as provided in paragraph (b)(2), no individual, sole proprietor, or small business shall be required to (A) provide goods or services that assist or promote the solemnization or celebration of any marriage, or provide counseling or other services that directly facilitate the perpetuation of any marriage; or (B) provide benefits to any spouse of an employee; or (C) provide housing to any married couple if providing such goods, services, benefits, or housing would cause such individuals or sole proprietors, or owners of such small businesses, to violate their sincerely held religious beliefs (p. 11).

Zylstra's article in *Christianity Today* (2014) summarised the situation regarding SSM legislation in 2014 in the US with the general advice by a number of religious freedom advocates that trying to stop the legalisation of SSM is futile. Those opposed to the legislation are better employed seeking to amend proposed restrictive legislation.³⁶

³⁶ Fortunately in Australia any SSM legislative process will be in the hands of the Federal government which will make the negotiation process easier than proceeding through courts (or several state legislatures).

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Zylstra helpfully instanced a law professor, a Robin Fretwell Wilson, from the University of Illinois 'who leads a group of legal scholars that advise lawmakers on religious exemptions' (2014) and has compiled a list of 'layers of protection': clergy; religious facilities; religious social services, universities, marriage counselling; people of faith in secular (out in the world) workplaces.

Another of Wilson's colleagues Thomas Berg, a St Thomas Law professor, noted the important issues of schools and penalties (should organisations not comply with SSM legislation) must also be included in discussions with legislators. Berg also was convinced that the major issue in 2014 was to work with legislators to make sure that adequate religious freedom provisions were included in legislation.

However, not all cited in Zylstra's piece above were in agreement with her conclusion 'if you can't beat them amend them'; some were decidedly against any capitulation to what they saw would do damage to the civil polity; others were preprepared to continue to fight for heterogeneous marriage but also to ensure that religious freedom was robustly incorporated into any legislation.

9.0 Conclusion

In summary, history shows clearly that usually when SSM legislation is enacted that negative impacts are felt by school systems, pupils, parents, teachers in training and teachers whose religious views in particular conflict with the new orthodoxy. Most legislation can be shown to be part of the outworking of a sexual permissiveness related to 20th century forms of social and political contemporary liberalism.

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Therefore, in order to bring about a more harmonious societal accord on marriage law, governments should strive for clear acknowledgement of both SSM and religious liberty in relevant legislation concerning school education.³⁷ For religious liberty will certainly become a conflict issue if the latter is not recognised from the outset in this vital educative sphere. The Hawaiian submission of Bassett et al., (2013) concluded with the following befitting paragraph:

Without adequate safeguards for religious liberty of the sort proposed above, the recognition of same-sex marriage will lead to socially divisive and entirely unnecessary conflicts between the exercise of rights pursuant to the same-sex marriage law and religious liberty. That is a destructive path leading to needless loss by both sides. A balanced “middle way” leads to a win-win solution for both sides. The Hawaii State Legislature should avoid both extremes and be the wise peacemaker (p. 15).

³⁷ Other relevant spheres include worship structures, business enterprises, marriage celebrants, and professional health services.

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