

# Religion, Same-Sex Marriage, and the Language of the Public Square

Written by Cynthia Burack

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CYNTHIA BURACK, APR 15 2013

### Same-Sex Marriage in U.S. Politics Today

Recently, American policymakers, media personalities, leaders of political organizations, political activists, and prominent attorneys have debated the constitutionality of same-sex marriage and the rights of lesbian, gay, bisexual, and transgender (LGBT) Americans. In the course of this public discussion, Fox News host and conservative political commentator Bill O'Reilly surprised many Americans by speaking favorably of a right to same-sex marriage in a March, 2013 conversation with Fox News anchor Megyn Kelly during his program, *The O'Reilly Factor*.<sup>[1]</sup> O'Reilly noted that in the political argument over same-sex marriage, *"the compelling argument is on the side of homosexuals"* and that those who disapprove must do more than "thump the Bible"—they must present a *"strong argument,"* presumably one that is secular and that enunciates a principle that is recognizable in liberal-democratic discourse. After he was criticized by many conservatives, including radio talk show host Rush Limbaugh, O'Reilly defended his comments in an on-air debate with conservative author and commentator Laura Ingraham. The comments and responses to them continue to inspire comment on the political left and right.

Why is this series of public conversations on same-sex marriage significant for American politics? To answer this question we need to take a brief look at history, electoral politics, and political theory. The earliest court case involving same-sex marriage in the U.S. was heard in 1971, in the early years of the movement for what was then called gay liberation. However, it was not until the 1990s that these marriages appeared likely to achieve state recognition, and conservatives who opposed same-sex marriage responded by enacting the Defense of Marriage Act (DOMA), which was signed into law by President Bill Clinton in 1996. DOMA restricted federal recognition of marriage to opposite-sex couples and ensured that states would not be required to recognize same-sex marriages legally performed in other states. In 2003, in the case of *Lawrence v. Texas*, the Supreme Court ruled that state laws against sodomy were unconstitutional, and LGBT civil rights organizations began to focus their attention on the right to same-sex marriage in addition to other goals such as protection from employment discrimination and ending the "don't ask, don't tell" (DADT) policy that prevented open military service by gay, lesbian, and bisexual Americans.

In March, 2013, the Supreme Court heard oral arguments in two cases that bear on a right of U.S. citizens to same-sex marriage: *Hollingsworth v. Perry* and *United States v. Windsor*. It is this extraordinary confluence of challenges to LGBT exclusion that inspired Bill O'Reilly's statements in support of marriage equality. The first case constitutes a challenge to Proposition 8, a ballot initiative that curtailed same-sex marriages in California in 2008, and the second is a challenge to the standard of unequal treatment of opposite-sex and same-sex marriages established by DOMA. The decisions in these cases will not be announced until the summer of 2013, but the cases and the issue they represent have received high levels of attention in national politics. In addition to the cases before the Supreme Court, this attention has been driven by the outcome of the 2012 Presidential election and Republican attempts to expand their constituency.

The loss of two sequential presidential elections—and the larger pattern revealed by the failure of the Republican presidential candidate to attract a majority of the popular vote in five of six presidential elections since 1992—has encouraged Republican leaders to conduct focus groups and use other methods to examine perceptions of the Party,

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and to perform an “autopsy” of the 2012 defeat. The outcome of that study is a report, the “Growth and Opportunity Project,” presented to the public by Reince Priebus, Chair of the Republican National Committee. The report notes low and declining levels of support among key constituencies, including “*Hispanics/Latinos, Asian/Pacific Islanders, and “younger voters,” whom the report described as “increasingly put off by the GOP.*”[2]

However, since the election—and even before the “Growth and Opportunity Project” was published—political scientists, survey researchers, and others were identifying particular key policy areas in which it likely would be necessary for the Republican Party to redefine its positions to recuperate support from these groups. In the context of the 2012 loss to President Obama, the recent and projected growth of Latino communities in the U.S. has led many political professionals and some policymakers to urge Republican support for immigration reform, and even for a path to citizenship that majorities of conservatives have rejected in the past.[3] A similar calculation was at work on the issue of same-sex marriage, as the Republican Party weighed a more agnostic approach that would take into account rising support for marriage equality as well as younger conservatives’ greater comfort with both same-sex sexuality and marriage.[4]

## Whither the Republican Party?

These considerations—changing attitudes and demographics, and Republicans’ concerns about the future of their Party—have combined to foster an attempt by many Republicans and conservative opinion leaders to shift the terms of debate on issues such as immigration and same-sex marriage. One sign of this shift is the number of Republican, as well as Democratic, public officials who have recently announced their personal support for immigration reform and same-sex marriage. However, this attempt of many public officials, political professionals, and other opinion leaders to move the Republican Party to the left on these issues that appeal to a wider set of constituencies has not gone unchallenged among conservatives. Christian conservatives strongly oppose same-sex marriage, and Christian conservative groups like the Family Research Council organize and lobby on the issue. In a direct response to recent Republican defections on the issue, a group of prominent Christian conservatives has addressed a letter to RNC Chair Reince Priebus threatening to leave the Party if it abandons support for traditional opposite-sex marriage.

However, there is another dimension to Bill O’Reilly’s call to opponents of same-sex marriage to stop “thumping the Bible” and, instead, formulate reasoned, non-sectarian reasons for their opposition. This latest challenge to Christian conservatives to formulate their positions on same-sex marriage using what has often been understood as the language of the “public square” is part of a long history of thought about forms of expression and debate in public life. As Sanford Levinson points out, religious forms of argument and evidence have never been banned from American public discourse; quite the contrary—both leaders and ordinary Americans frequently have rendered their claims and ideals in religious terms.[5] At the same time, there is much disagreement about the virtue of sanctioning sectarian religious rhetoric in the public sphere, with many American political theorists arguing that political talk should seek to address itself to the widest possible audience in a religiously pluralistic society while other thinkers point out the merits of religiously-based values.[6]

In the 1990s, the intensity of cultural or morality debates over abortion and same-sex sexuality prompted theologian John D. Woodbridge to urge Christian conservatives who opposed both to exercise care in the kinds of language they used in public discourse. One concern for Woodbridge was that in the course of public debate Christians might use scripture to demonize their opponents, lose sight of their commitment to compassion, or fail to correct their own misperceptions if such correction failed to advance their political cause. Woodbridge also recommended that, rather than formulating their positions exclusively in biblical or doctrinal terms, Christian conservatives should take care to employ the “language of the public square,” and he cited Philip Johnson’s injunction to frame “*public questions in language that invites everyone to participate in the discussion on comfortable terms.*” [7] It is significant that James Dobson, founder of the Christian conservative organization Focus on the Family, responded to Woodbridge’s argument in a later issue of *Christianity Today*, defending both the rectitude of Christian conservatives’ use of the language of moral warfare and sectarian rhetoric on issues of broad public significance.[8]

In fact, Christian conservatives have been steadily reformulating many of their positions on cultural issues since the 1990s. Hence, arguments about LGBT rights issues that once were framed almost entirely in the language of biblical

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statements of sinfulness and God's plan for human sexuality increasingly have been reframed in terms of majoritarian democracy, choice, rights, and religious liberty. Christian conservatives have used arguments of choice, rights, and liberty to advance claims for recognition of ex-gay identity and claims that policies that grant LGBT people equal rights necessarily diminish the religious liberty of believers who oppose the recognition of those rights. Although this argument is no longer as available because of dramatic changes in support for same-sex marriage over time, until recently Christian conservatives have relied on arguments for majoritarian democracy to reject same-sex marriage.[9]

In spite of the uproar over Bill O'Reilly's disapproval of same-sex marriage opponents "thumping the Bible," Christian conservative elites do not completely oppose adjusting their public rhetoric to appeal to policymakers and citizens outside the movement. Indeed, much internal movement pedagogy consists of instructing activists and members of the Christian conservative movement in appropriate forms of public rhetoric. One example is the "Marriage Talking Points" of the National Organization for Marriage (NOM), a single-issue organization that opposes same-sex marriage. NOM's "Talking Points" are a vivid example of the socialization that takes place in Christian conservative organizations, but similar forms of socialization—many geared to instructing Christians to engage in secular forms of political rhetoric—occur routinely throughout the movement. It is probable that social conservatives contested O'Reilly's comments as strenuously as they did not because they rejected the ideal of rendering their arguments in the language of the public square but because they felt betrayed by being singled out by a conservative commentator speaking from the platform of a conservative media outlet.

One way to conceptualize what is currently taking place in political discourse on the subject of same-sex marriage is that Christian conservatives and the larger Republican coalition in which they are situated are undergoing a readjustment of public rhetoric, outreach, and perhaps of policy positions. That process is complicated by the fact that the Party's attempt to engage in outreach to current Democratic constituencies exposes intense preferences and disagreements within the Republican coalition that may conflict with programs of outreach. Just as many Americans wait to hear the decisions in the two cases on same-sex marriage heard recently by the Court, many political scientists will be waiting to see the outcome of the internal struggle of rhetoric and policy on cultural issues currently playing out between groups in the Republican Party.

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**Cynthia Burack** is professor of Women's, Gender and Sexuality Studies at The Ohio State University. Her new book, *Tough Love: Compassion, Sexuality, and the Christian Right*, will be published by SUNY Press in 2014.

[1] For an analysis of the ideological positioning of Fox News, see Richard J. Meagher, "The 'Vast Right-Wing Conspiracy': Media and Conservative Networks," *New Political Science* 34:4 (2012): 469-484.

[2] Republican National Committee, "Growth and Opportunity Project," (2013), p. 8

[3] Susanne Jonas, "Reflections on the Great Immigration Battle of 2006 and the Future of the Americas," *Social Justice* 33:1 (2006): 6-20.

[4] PEW Research Center, "Support for Same-Sex Marriage Grows as More Americans Change Their Views" (March 26, 2013).

[5] Sanford Levinson, "Religious Language and the Public Square," *Harvard Law Review* 105, 8 (1992): 2062-2063.

[6] In the first group, see Bruce A. Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980); Joseph Raz, "Facing Diversity: The Case of Epistemic Abstinence," *Philosophy and Public Affairs* 19, 3 (1990). In the second group, see Michael J. Perry, *Love and Power: The Role of Religion and Morality in American Politics* (New York: Oxford University Press, 1991).

[7] John D. Woodbridge, "Culture War Casualties: How Warfare Rhetoric is Hurting the Work of the Church,"

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*Christianity Today* 39, 3 (1995): 26.

[8] James Dobson, "Why I Use 'Fighting Words'," *Christianity Today* 39, 7 (1995): 27.

[9] See Cynthia Burack, *Sin, Sex, and Democracy: Antigay Rhetoric and the Christian Right* (Albany, New York: State University of New York Press, 2008).

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