Canadian political theorist and statesman, Pierre Trudeau, spearheaded a number of important developments in the evolving tradition of Canadian political liberalism. One critical contribution was his push to curtail government regulation of sexuality—memorialized in his legal battle cry to keep the state out of “the bedrooms of the nation.” This resistance to the imposition of state-imposed public standards on consensual adult sexuality was anchored in a recognition of the personal and inviolable nature of sexual intimacy.

These developments have led to a fundamental redefinition of marriage. Arguably, well before the same-sex marriage debate, the public norm of marriage had already shifted away from the historic conjugal conception of marriage as an integrative bridging of sex difference that serves as a stable union of life for the children who are born of that conjugal bond. Marriage has been reconceived as a uniquely recognized and protected site for conjugal freedom. The state does not construct or create this domain but recognizes and respects these self-constituting spheres of conjugal life.

However, these legal redefinitions are implicated in a number of confusions, tensions, and incoherencies in marriage and family law exemplified in Canada’s historic Civil Marriage Act (2005). In part this is due to the fact that there is a continued appropriation of important relics of the historic conjugal view such as monogamy and parenthood in these revised definitions. This conception of conjugal rights as a category that intrinsically includes parental rights is an inflation that works to bracket out critical questions about the kinship bonds and affiliational rights of children.

The most predictable consequence of redefining marriage to include same-sex couples will be to change the default rules for determining legal parent status. Default rules of parenthood have been closely linked to marriage since doing so reflected biological realities and advanced compelling public interests such as encouraging stability for children, channeling adult relationships into child-friendly institutions and ensuring the maximal likelihood that children would be raised by their own mothers and fathers. Family deconstruction and other social and legal trends have contributed to acceptance of
radically different legal rules meant to advance very different goals. As a result, there has developed a growing body of precedent that reflects a significant deconstruction of legal rules of parenthood. When marriage is redefined to entirely sever the link between the marriage institution and male-female complementarity, the deconstruction process is accelerated and codified in the law.

**The Protectionist Conception of Children in Criminal and Civil Cases**  
*Martin R. Gardner*

In recent cases, the United States Supreme Court has given its blessing to social science studies establishing that, when compared to adults, adolescents constitute a categorically distinct class for purposes of assessing the constitutionality of severe criminal punishment under the Cruel and Unusual Punishments Clause of the Eighth Amendment. The Court found that young people up to the age of 18 are less able than adults to make mature choices and to act as independent moral agents. These decisions constitute the Court’s most extensive recognition of social science evidence, thus providing empirical support for its previous—and for some controversial—assumption that adolescents differ from adults in legally significant ways. While emanating from the Eighth Amendment, the Court’s conclusions suggest significant implications for a variety of unresolved issues of juvenile law.

This paper examines some ways that the conception of adolescence embraced in the punishment cases might further sound analysis of cases in the heretofore largely unexamined context of children raising constitutional claims against their parents. The paper poses several such potential cases and argues that their resolution is facilitated by applying the protectionist concept of adolescence articulated in the punishment cases.

**Facilitating Forever: A Feasible Public Policy Agenda to Help Couples Form and Sustain Healthy Relationships and Enduring Marriages**  
*Alan J. Hawkins*

In the presentation, I will briefly argue that family instability is the most serious and far-reaching social problem in the United States, with enormous personal, public, and civic costs. The focus of the presentation, however, will not be the problems, but rather a feasible agenda of public policy actions that can help more couples form healthy relationships and enduring marriages for the sake of the next generation. In addition, I will highlight the research that speaks to the potential effectiveness of the proposed policies.

In our contemporary society there are many challenges to forming and sustaining healthy relationships and enduring marriages. Of course, these are embedded within broader, contextual challenges to forming and sustaining healthy relationships, including macroeconomic challenges such as diminishing educational and employment opportunities, incarceration, high rates of substance abuse, mental health problems, and violence and abuse, as well as historical cultural forces such as increasing individualism, and a de-institutionalization of romantic relationships. Positive changes in these challenges will indirectly strengthen the institution of marriage. But as
a result of these contextual and relational challenges, there is a direct and increasing need for education to help individuals and couples develop stronger relationship skills and greater knowledge in order to form and sustain healthy relationships and enduring marriages. And this education needs to be targeted especially to less educated and lower income individuals and couples who experience more external stress and are at greatest risk for relationship problems and family instability.

Specifically, I will propose public support for a series of educational interventions across the early life course, beginning with relationship literacy education for youth and young adults (delivered primarily through high schools, community colleges, and universities), relationship development education for cohabiting parents with aspirations for marriage (delivered primarily through human service agencies), marriage preparation education for formally engaged couples (delivered primarily through religious organizations), marriage maintenance education for married couples, especially early married couples (delivered through a variety of religious organizations, human service agencies, and self-directed Internet programs), and divorce orientation education for couples at the crossroads of divorce to help them make careful decisions about the best path forward (delivered primarily by self-directed Internet programs). These efforts can be funded by a 1% set-aside of TANF block grant funds to state-directed Healthy Marriages and Relationships Initiatives supplemented by a $5–$10 surcharge on marriage licenses. These funds would be administered by state TANF offices guided by an active volunteer advisory board of experts.

This integrated set of educational interventions experienced over the early life course by an increasing number of at-risk individuals and couples will produce a greater incidence of proximal, positive relational outcomes, as outlined in the “Intended Personal and Relational Outcomes” stratum of the logic model. This, in turn, increases distal outcomes such as the proportion of healthy romantic relationships and stable, two-parent families, which ultimately reduces poverty and improves child well-being in our society.

Truth is Expensive, Have We Paid the Required Price?: A Closer Examination of American Psychological Association’s Brief on Lesbian and Gay Parenting. Loren Marks

In 2005, the American Psychological Association (APA) issued an official brief on Lesbian and Gay Parenting. This brief included the assertion: “Not a single study has found children of lesbian or gay parents to be disadvantaged in any significant respect relative to children of heterosexual parents” (p. 15). The present article closely examines this assertion and the 59 published studies cited by the APA to support it. Seven central questions address: (1) homogeneous sampling, (2) absence of comparison groups, (3) comparison group characteristics, (4) contradictory data, (5) the limited scope of children’s outcomes studied, (6) paucity of long-term outcome data, and (7) lack of APA-urged statistical power. The conclusion is that strong assertions, including those made by the APA, were not empirically warranted.
The Number of Children Being Raised by Gay or Lesbian Parents

Joseph Price

Much of the current debate about gay or lesbian parental rights includes a discussion about the number of children who are being raised by gay or lesbian parents. We use a household roster based approach to calculate the number of children being raised by same-sex couples using data from the American Community Survey and four other nationally representative datasets. We also use data on sexual orientation from the National Survey of Family Growth to calculate the number of children being raised by gay or lesbian single parents. We estimate that there are 290,000 children in the US being raised by same-sex couples. There are an additional 150,000 children being raised by a lesbian single parent and 60,000 being raised by a gay single parent. These estimates are significantly lower than previous estimates, in part, due to the way in which we categorize parents who report being bisexual.

Fact or fiction: The Challenges of Assessing the Outcomes of Same-sex Parenting

Walter R. Schumm

Are same-sex parents no more likely to raise gay, lesbian, or bisexual children than heterosexual parents? Will children adopted by same-sex parents function as well as those adopted by heterosexual parents? These are important and interesting questions. Many have long claimed and continue to claim that research provides an affirmative answer to both of those questions. However, careful assessment of research on these topics reveals that the truth is otherwise. It appears in several recent studies that same-sex parents are more likely to raise children who engage in same-sex sexual behavior and/or adopt non-heterosexual sexual orientations and that children adopted by same-sex parents fare less well than those adopted by heterosexual parents. In studies in which no differences are found for adopted children, same-sex parents were considerably advantaged over the comparison group of heterosexual parents in terms of socioeconomic and other factors.

Marriage, Moms and Dads: Of Children, Parents and the Law

Lynn D. Wardle

This paper examines the deterioration and abandonment of what was once the ubiquitous ideal, goal and expectation of families: that children would be raised by their loving, jointly married mother and father. First, there is evidence that the most pervasive, powerful, effective social influences once emphasized the value and importance of children being raised by their married parents. Second, there is evidence that these same influences now discount, devalue and marginalize the value and importance of children being raised by their married mother and father. Third, reasons for this significant chance in social values are examined.

Next, evidence will be offered that the law once emphasized the value and importance of children being raised by their parents who are married to each other. However, now there is
evidence that the law no longer values as highly, indeed often devalues and marginalizes the importance of children being raised by their jointly married mother and father. Third, reasons for this significant change in legal policies are examined.

Finally, evidence that despite the social and legal changes, many (perhaps most) Americans still cling to the ideal and personally desire that their children will be raised by their loving, jointly married mothers and fathers. There also is significant evidence to support the benefits that ideal. The importance of the law protecting and fostering that ideal – for the sake of children as well as for the sakes of their parents and of society, is considered.