

**A RESPONSE TO THE STATEMENTS OF THE KING'S COLLEGE CONFERENCE
BY THE MARRIAGE LAW PROJECT**

WASHINGTON, D.C.

JULY 14, 1999

I. BACKGROUND

In response to a conference held 1-3 July 1999 at King's College London, a group of 163 professors issued "To Reaffirm Marriage," a Declaration stating their continued support for the legal definition of marriage as the union of one man and one woman. The statement also criticized the King's College Conference for not adequately representing this point of view, especially given the fact that prominent jurists were featured participants in the conference.

In response to the Declaration, the Conference participants adopted a statement on 3 July 1999. This statement alleged that the Declaration "misstates the content of the conference," "illustrates a dogmatism and ignorance about legal developments and scholarship" in this area, and "reflects a refusal by the critics to participate and learn, which is anti-intellectual and unworthy of true scholars." The statement concluded by reminding the Declaration signers "to remember Galileo" and "to reflect wholeheartedly on the Prayer of the Millennium." This prayer was revised by the participants to remove any explicit references to God, and to remove the word "Amen" at its end.

In addition to the official Conference response, two Separate Statements were appended.

The first was offered by Dr. Robert Wintemute of King's College, Conference Co-Director. Professor Wintemute stated that the critics would have been welcome to participate in the Conference, and had they come, "might have learned something about lesbian, gay, bisexual and transgendered persons and their partnerships." He justified the exclusion of speakers representing the Declaration's point of view on the grounds that "it would be highly unusual for a conference dealing with discrimination against a particular group, such as women or an ethnic or religious minority, to include speakers who advocate discrimination against that group."

The second was presented by Professor Andrew Koppelman, Northwestern University School of Law (Chicago, Illinois, USA). Professor Koppelman referred to an earlier conference held in 1997 by the Marriage Law Project on the 30th anniversary of *Loving v. Virginia*. Koppelman affirmed the legitimacy of both that conference *and* the King's College conference. Therefore he accused the Marriage Law Project of hypocrisy. "The authors of the Marriage Law Project Statement," he concluded, "are entitled to have a different view. What they may not do without hypocrisy is to have one standard for themselves and a different standard for others."

II. RESPONSE FROM THE MARRIAGE LAW PROJECT

To begin with, we need to state clearly that we speak as the organizers of the Marriage Declaration - no more, no less. Not every signer may necessarily agree with what we say.

Second, as we stated publicly at the conference itself, we learned a great deal by attending. Just as it would have been beneficial for gay, lesbian, bisexual and transgendered scholars (and their heterosexual supporters) to have attended the 1997 *Loving* conference - which they did not - we agree that it would have been beneficial for the 163 signers to have attended the King's College Conference. I think both viewpoints understand that while it may be legitimate, at least in some cases, to organize conferences solely around one point of view, the net effect - even if unintended - is that

those who disagree with the official point of view will be less likely to come. C'est la vie. Fortunately, in most cases papers will be published, and everyone can access them.

Third, the Conference statement is correct in noting that same-sex "marriage" was not only the only issue. The conference examined "the range of legal solutions for protecting people in same-sex relationships." The Marriage Declaration, however, never claimed that same-sex "marriage" was the only issue of the conference. All it claimed was (1) that the Declaration's focus was on marriage, and (2) that, to the best of its knowledge, all the U.S. and U.K. professors speaking supported legalizing same-sex "marriage". The Declaration took pains, even if this was not evident, to avoid attributing positions in advance to scholars whom we did not know, and we did not characterize the views of *any* jurists. This is why Declaration signers were only professors. We did make some mistakes, however, which I take responsibility for. We failed to state clearly that some of the U.S. and U.K. professors who spoke at the conference oppose marriage *per se*. As was clear at the conference, however, this hardly put them at odds with other participants.

Fourth, it is remarkable that the Conference Statements are prepared to accuse their professional colleagues of "dogmatism" and "ignorance," call them "anti-intellectual," and suggest that the Declaration signers "may be denying their students impartial access to important developments in law and human rights." Indeed, by reminding the signers of Galileo, the Conference participants suggest that their fellow scholars are members of the Geocentric Society. This is either rhetorical excess or professional slander. It reflects poorly on the participants to suggest that because someone has a different point of view, they are "ignorant" and probably professional incompetent. Imagine if the signers were to say the same thing about the participants! We would hear great cries of discrimination and bigotry. Let us spare you those. We simply suggest either that you lower the volume, or make your accusations more specific.

Unfortunately, the Separate Statement of Professor Wintemute reinforces this stereotyping. By characterizing the signers as "speakers who advocate discrimination against [a minority] group," he suggests that the Declaration signers would have been incapable of participating in the conference in a manner that would have been respectful and professionally competent. This is of course absurd. I speak from personal experience: In 1998 the MLP co-sponsored a conference on Inter-jurisdictional Recognition of Marriage issues at the Creighton University School of Law. This conference dealt with same-sex "marriage" issues, among others, and while the majority of speakers on that topic would agree with the Declaration signers, there were significant exceptions. One excellent speaker was Martha Bailey of Queen's University (Canada), also a participant in the King's conference. Hers and other voices significantly improved the event.

Fifth, the inclusion of the "Prayer of the Millennium" was simply a cheap shot. There is indisputable proof of this: during the public discussion of the Conference Statement, as various phrases were deleted (referring to God, etc.), Mr. Justice Michael Kirby of the High Court of Australia, chairing the discussion, blurted out, "The whole point is to hurt them like they hurt us." Our goal was not to "hurt" Justice Kirby or anyone else, although we knew our Declaration would be controversial to participants at the Conference. We suggest that the use of prayer to "hurt" others is and should be deeply offensive to any human being who takes prayer seriously. The cynical manipulation of a truly beautiful prayer is beneath the dignity of the participants.

Finally, having attend the Conference in person and having between us witnessed every Session, we must say that the most remarkable feature of the event was the participation of the jurists. I doubt

that any participant would disagree that this is what made the Conference extraordinary. The opportunity to engage in formal and informal dialogue with justices from high courts of Canada, Australia, and South Africa, as well as prominent jurists such as Lord Slynn and the Hon. Michael Elmer, was worth the price of admission. Yet this is precisely what deeply disturbs us.

Fundamental to the campaign to legalize same-sex "marriage," at least in the United States, is the strategy of removing the question from the democratic process and turning it over to the Courts. Brilliant litigators such as Evan Wolfson and Mary Bonauto were on hand and described it well. How coincidental, then, that Professors who agree with this approach, and litigators who pursue this approach, happen to find themselves with prominent jurists who could put this into practice. Much of the Q&A with the judges sounded like a dress rehearsal for forthcoming oral arguments. It makes us wonder about impartiality of these jurists and the tactics of those who wish to influence them. This is a totally different world from a *Loving* or Creighton (or Quinnipiac) conference. It is a small, tightly-knit elite legal world closed to almost all of the human race. We do not think this is the appropriate way of addressing such a crucial question.

We hope that future conferences - by whomever - will strive to characterize opponents' views in a fair-minded way. This does not require inviting opposing speakers. But it does, to our mind, oblige every conference to *acknowledge* other points of view, and to treat dissenting participants with basic respect. While the Conference organizers did this, unfortunately some speakers did not. One Session chair even suggested that dissenters "are bigots and probably shouldn't be here." We believe that the papers from the *Loving* and Creighton conferences tried to do this. We hope that if the Conference papers are published, opponents' views will be acknowledged.

The goal of the Marriage Law Project, and the Marriage Declaration which it organized, is not to attack persons who identify themselves as "gay, lesbian, bisexual, and transgendered." Its goal is to support marriage as the union of a man and a woman. This is a serious point of view in family law, whether one accepts it or not. Similarly, advocates of redefining or abolishing marriage have become serious players in family law as well. If we both claim to believe in truth, even while disagreeing about what the truth about marriage is, then our dialogue should continue. Granted, dialogue is not a substitute for politics. But neither is politics a substitute for dialogue.

We offer these thoughts respectfully to the participants in the King's College conference, and request that when possible, the Conference organizers distribute them to those participants.