

Lewis concludes by stating that “the politics of abortion may be responsible for the future detente in the culture wars of yesteryear” (p. 175). This conclusion is not juxtaposed with the irony that given current age-specific abortion rates, one out of every four American women will have an abortion by the time she reaches menopause (Rachel Jones and Jenna Jerman, “Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014,” *American Journal of Public Health* 107(12), 2018).

**Beyond Marriage: Continuing Battles for LGBT Rights.**

By Susan Gluck Mezey. Lanham, MD: Rowman & Littlefield, 2017. 320p. \$80.00 cloth, \$35.00 paper.

**America’s War on Same-Sex Couples and Their Families: And How the Courts Rescued Them.**

By Daniel R. Pinello. New York: Cambridge University Press, 2017. 330p. \$99.99 cloth, \$32.99 paper.

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— Clyde Wilcox, *Georgetown University*

These two fine books tell different stories of the long and ongoing struggle for LGBT equality. Daniel Pinello focuses on the passage of state “Super DOMAs”—strong constitutional amendments banning not only same-sex marriage but also a variety of other legal arrangements for same-sex couples. Susan Gluck Mezey focuses on a series of separate struggles—for marriage equality, employment equality, and transgender rights, and against new religious freedom statutes that permit continued discrimination. Both books focus primarily, but not exclusively, on judicial politics.

I recently had a student ask me why states bothered to enact constitutional amendments such as Super DOMAs when they already had legislative bans in place barring same sex marriage. She then asked why the LGBT community and their allies had fought so hard against these amendments. Pinello answers these questions, and although the era of Super DOMAs was brief, his book makes clear why it was such a critical time for sexual minorities.

In *America’s War on Same-Sex Couples and Their Families*, Pinello proclaims that Congress declared war against LGBT couples with the passage in 1996 of the Defense of Marriage Act (DOMA), which required that the federal government only recognize marriages between one man and one woman, and permitted the states to refuse to recognize any same-sex marriage performed legally in another country or state. Some 30 states reinforced this declaration with amendments to their state constitutions barring same-sex marriage. In 20 of those states, the amendment went much further, barring civil unions, domestic partnerships, or other legal arrangements

that would provide same-sex couples all or some of the rights of married heterosexual couples.

Pinello weaves together three themes. First, he examines the development and enactment of different state Super DOMAs, including interviews with activists on both sides of the battles. This is a story of federalism and of state constitutional law, and it is complicated because the language of these amendments differed. Moreover, state governments (and especially state courts) interpreted these amendments differently, and this had a profound impact in some states on their practical effects. As Pinello shows, rulings by state courts reflected the composition and culture of those courts, as well as various legal precedents and legislative history. He walks us systematically through these different DOMAs in language and in implementation. His accounts of Ohio, Michigan, and Wisconsin show that the story of Super DOMAs is more complicated than it might initially seem.

Second, Pinello tells the story of same-sex couples who lived in states where Super-DOMAs were enacted. These are not merely a handful of quotations to provide color; rather, there are more than 100 pages of quotations that make individuals in each state come alive. He conducted more than 200 interviews, including 175 with same-sex couples with a standard interview protocol. Interviews were in the largest city in each of several states, and they provide a powerful mosaic of individual experiences after the adoption of DOMAs. Pinello does not pretend that these interviews are in any way a random sample of same sex-couples in each state, but the interviews reveal a variety of impacts and reactions that show that the story of how these super DOMAs affected individuals is not a simple one.

These interviews disclose the financial, legal, and emotional strain on couples living in states that voted to deny them marriage equality. Some of the most moving interviews deal with the emotional distress caused by the votes of citizens in their states, by children asking for explanations, and by couples who seek to end their relationships in states where they were not permitted to divorce and where one partner had no legally recognized rights. Pinello describes a woman who was gradually denied access to her daughter because she had no legal right to access, and another biological mother who was using her legal status in ways she thought protected her son, but was deeply troubled that the law permitted her to do this. Her ambivalence shows again the complicated effects of these amendments.

An entire chapter is devoted to decisions by couples concerning whether to remain in states that had adopted Super DOMAs or to move to states that permitted marriage. Pinello compares this decision to that of Jews in Germany in 1939, a comparison not all readers will appreciate. But this chapter shows the emotional turmoil for many couples, as well as the confusion that some

super DOMAs (e.g., Virginia's) caused ordinary LGBT citizens.

The final section of the book describes challenges in federal courts culminating in the 2015 *Obergefell v. Hodges* decision that struck down all state Super DOMAs. Here, the most interesting analysis is the power of Justice Antonin Scalia's dissents in *Lawrence* and *Windsor*. In decision after decision, courts overturning DOMAs quoted Scalia's dire warnings as justification for taking the next logical step toward marriage equality. Pinello refers to Scalia in jest as a "double agent" and says that Scalia was "one of the best judicial friends that the American gay community has ever had" (p. 241). But the author's legal analysis in this section is strong and nuanced, and here the story is at heart simpler than it might have been, one of steady progress in federal courts.

The period from the passage of the Defense of Marriage Act to *Obergefell* was less than 20 years, and the era of Super DOMAs was even shorter. But what this book shows is that this short time profoundly affected many Americans in a variety of ways. A book that goes from state referenda and court decisions to interviews with same-sex couples to federal court decisions is covering not only a lot of substantive ground but stylistic ground as well. In less capable hands, this might have produced a book with little unity. But Pinello pulls it off, richly informing us about state-level court cases and about individual lives with equal aplomb.

Susan Gluck Mezey's *Beyond Marriage* traces the development of legislative action, executive orders, and court actions on issues such as employment opportunity, transgender equality, and marriage equality. The chapters go into legal maneuvering, arguments, and court decisions in great detail: The chapter on same-sex marriage, for example, goes through a variety of lower and appellate court rulings challenging DOMAs and other bars to marriage equality. As in her prior work in this field, the research is thorough and the writing is clear and full of detail. The book serves, therefore, as an excellent resource for those seeking to trace rulings in Ohio and Wisconsin, for example, and in understanding the different rationales for each decision.

The two final chapters are especially interesting. In one, Mezey traces state legislative action and court rulings on religious freedom statutes, passed to allow religious conservatives to refuse to provide services to same-sex marriages, but in some cases going much further. These statutes arose after a series of rulings in state courts that wedding photographers, bakers, and florists violated equal-rights protections by refusing to do business with same-sex couples. The chapter does a fine job of tracing the evolution of these cases and the arguments posed. It then goes on to discuss the latest developments in bathroom battles over transgender rights and a plethora of other issues, detailing various injunctions and other

legal actions, as well as social and economic pressure such as those on the National Collegiate Athletic Association and the Atlantic Coast Conference to relocate basketball play-offs from North Carolina to other states.

The final chapter takes an international perspective, a challenging undertaking for a book on litigation, given the wide range of constitutional, legal, and judicial systems. Here, Mezey focuses primarily on Canada, South Africa, and the European Union. In the United States, Canada, and South Africa, the common law tradition in each country allowed courts to weigh the potential challenge to their legitimacy from unpopular decisions, but ultimately decided "that their responsibility to adjudicate constitutional challenges and to give effect to their country's foundational documents outweighed their duty to defer to the people's elected representatives" (p. 209). In contrast, the lack of a common law tradition in Europe led the European Court of Human Rights to support challenges to many forms of discrimination, but not to overturn national marriage bans.

These are both fine books that I recommend highly. *America's War on Same-Sex Couples and Their Families* is exceptional for its weaving of legal analysis and narratives of the impact of Super DOMAs on the lives of LGBT couples. It is a rare feat to combine detailed legal analysis and such a rich set of in-depth interviews into a readable book. The result is a book that is useful not only for scholars interested in LGBT policy, but also potentially useful in the classroom. Pinello shows that the mere passage of these amendments affected the connections of citizens to their governments and to their fellow citizens. *Beyond Marriage* provides incredible detail on every step of recent policymaking in a variety of policy areas, making it source material for anyone seeking to understand the complexity of executive, legislative, bureaucratic, and especially judicial action. Although Mezey spends less time discussing societal aspects of the ongoing struggles, her work helps us understand the backlash against equality that is manifest in state legislative "religious freedom" acts, in bathroom access bills, and in the social disappropriation that is widespread in South Africa, despite that country's progressive policies.

**Common Law Judging: Subjectivity, Impartiality, and the Making of Law.** By Douglas E. Edlin. Ann Arbor: University of Michigan Press, 2016. 280p. \$75.00 cloth.

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— Ken I. Kersch, *Boston College*

Alluding to the contretemps sparked by Sonia Sotomayor's comments about the distinctive perspective a "wise Latina" might bring to the Supreme Court, Douglas Edlin asks that we "move beyond the familiar civic phobia that judges will decide cases on the basis of their own values rather than the law" and recognize "that