Everything I Know About Marriage I Learned from Law Professors

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I. INTRODUCTION

The first question that should probably come to mind when a group of law professors—and other academics willing to be seen with a group of law professors—get together to discuss the meaning and future of marriage, as they have at the present conference, is this: What grounds do lawyers and legal academics have for discussing this issue at all?

This article steps back, in part, from the current debates on marriage to reflect upon what special expertise, if any, lawyers and legal academics bring to the issues.

II. LEGAL ACADEMICS AND LEGAL EXPERTISE

Of course, as citizens of this country, lawyers and legal academics have a right—and perhaps even a moral obligation—to offer our views on social and political issues of importance. Nevertheless, our status as lawyers or legal academics does not seem to give us either any greater standing or any greater obligation regarding such public policy debates.

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Our most obvious point of special expertise is our knowledge of the law. There are, of course, a number of distinctively legal issues relating to current discussions of marriage. For example, whether a proper understanding of the United States Constitution, various state constitutional provisions, or prior court decisions, individually or collectively, require the recognition of same-sex marriages;[1] questions about the application or constitutionality of the Defense of Marriage Act (DoMA);[2] and choice of law issues raised by the recognition of same-sex marriage in Massachusetts.[3] In particular, marriage regulation raises thorny problems of federalism and choice of law—matters that are often as mysterious to lawyers and legal academics as they are to the general public. Even some prominent constitutional law experts seem to get badly lost when entering this thicket. Nonetheless, while the interjurisdictional issues may be difficult and important for legal regulation of marriage, interjurisdictional issues do not usually receive the most attention when lawyers and legal academics discuss marriage. The discussion of marriage, in both the general media and in the law journals, touches—perhaps inevitably—on certain constitutional issues: what the Due Process and Equal Protection Clauses of the Constitution prohibit, permit, or require.[4]

There are well-known and oft-discussed problems with "constitutionalizing" all policy issues: in part, the danger of removing issues from democratic deliberation and decision-making; and in part, the distortion in fitting all moral and policy issues into constitutional text or existing constitutional law doctrinal categories. There are aspects of policy decision-making that go beyond whatever rights the United States Constitution grants. Further, these aspects are also beyond the arguably larger category of natural, moral, and human rights that individuals have against the state—a category that many commentators assume overlaps, but does not coincide with, our constitutional rights. These nonconstitutional policy questions usually include questions regarding long-term consequences: questions that do not translate, or at least does

1. Cass R. Sunstein, *What Did* Lawrence *Hold? Of Autonomy, Desuetude, Sexuality, and Marriage*, 2003 SUP. CT. REV. 27.

2. *See, e.g.*, Wilson v. Ake, 354 F. Supp. 2d 1298, 1309 (M.D. Fla. 2005) (dismissing complaint seeking declaration that DoMA is unconstitutional); Note, *Litigating the Defense of Marriage Act: The Next Battleground for Same-Sex Marriage*, 117 HARV. L. REV. 2684, 2695 (2004) (summarizing arguments against the validity of DoMA).

3. *See, e.g.*, Brian H. Bix, *State Interests in Marriage, Interstate Recognition, and Choice of Law*, 38 CREIGHTON L. REV. 337 (2005).

4. For a recent constitutional argument about prohibition that comes neither from the equality and substantive due process clauses nor from the federalism clauses, see Largess v. Supreme Judicial Court, 373 F.3d 219, 229 (1st Cir. 2004), *cert. denied*, 125 S. Ct. 618 (2004) (holding that judicially-required recognition of same-sex marriage did not violate Guarantee Clause of the U.S. Constitution).

not translate well or easily, into rights-talk. Such policy questions are prevalent in the marriage debates.

III. CONFERENCE TOPICS

Whatever one might say about legal topics, narrowly understood, this conference seeks to discuss matters broader or more basic than the proper understanding of current law, or even the best way to draft future statutes or constitutional amendments. Participants in this conference have been sent specific questions, and should consider whether lawyers and legal academics are well placed to answer these questions. The conference invitation letter asks the following questions:

(1) What is the state's interest in regulating marriage?
(2) What does the answer to (1) suggest should be the definition of marriage?
(3) What does the answer to (1) suggest should be the legal requirements for entering and exiting a marriage?
(4) How does the presence of children, either as a marital aim or as a marital reality, affect these questions? [5]

As regards the first question, why would we assume that legal academics have any special insight on what the state's interests are?[6] Before even facing that problem, one might initially note that the first question is deceptively difficult to even understand. Is the question of "state interests" one of prescriptive political theory—what is the ideal role of the state?—or one of descriptive, political, or legal theory—what state interests are reflected in actions the current government has taken? Or does the question reflect an entirely different inquiry?

Even if one assumes that the question is one of description or rational reconstruction of existing practices—likely the most reasonable understanding—the question arises whether the focus should be on the surface language or rhetoric of constitutional provisions, legislative

5. Letter from Larry A. Alexander & Steven D. Smith, faculty members, University of San Diego School of Law, to author (Mar. 2, 2004) (I have every reason to believe that similarly-worded letters were received by the other conference participants).

6. As it happens, I have written articles purporting to discuss just this topic: the states' interest(s) in the marital status of their citizens. Brian H. Bix, *State of the Union: The States' Interest in the Marital Status of Their Citizens*, 55 U. MIAMI L. REV. 1 (2000); Brian H. Bix, *The Public and Private Ordering of Marriage*, 2004 U. CHI. LEGAL F. 295 (2004). However, I am not of the opinion that merely writing articles on a subject necessarily makes the author an expert on it.

preambles and court decisions, or whether we should assume that such sources are often mere propaganda, and instead derive the state's "real" interests from its actions, whatever the justificatory rhetoric.[7] As noted earlier, there is an additional complication in talking about "state" interests in a federal system. Does the federal government's interests—either prescriptively or descriptively understood—differ from interests of the state governments and the local governments? The derivation of "state interests" from government actions, legislative language, and federalist structures may be something law professors can do competently, though one might suppose it a task better suited for political theorists and sociologists.

Lawyers and legal academics *might* have some special expertise on the second and third questions, if these questions are understood as questions of how governmental objectives are best translated into concrete legal rules and principles. Even here, however, a larger part of the inquiry would likely be best left to other disciplines. From observation and anecdote, lawyers and legal academics might have some sense of how certain objectives are best translated into legislation and regulation—or at least some sense, based on hard experience, on what *not* to do. However, even on this inquiry, we are, at best, armchair theorists compared to the sociologists, economists, and empirical political theorists who can come to a more scientific view of the consequences of past legal norms. Moreover, the rules of marriage entry and exit are perhaps as good an example as any for the limits of our expertise when discussing policy questions. As the debate thrives about whether and how to reform rules in this area,[8] even well-trained sociologists, economists, and political theorists have not yet reached consensus on relatively straightforward questions, like whether the move from fault to no-fault divorce rules had a significant effect on the divorce rate, a minimal effect, or none at all.[9]

The second and third questions also raise an interesting additional query: To what extent are these questions distinct, and should they be? Some legal realists might say that "marriage" is defined by its legal terms—who can enter, when, with what legal consequences, and with what options for exit. That is, the legal status of marriage *just is* whatever the state says it is. Whenever the legal terms change, then marriage changes as well. When jurisdictions moved from fault divorce to a

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7. *See infra* text accompanying note 32.

8. *See, e.g.*, Leslie Eaton, *A New Push to Loosen New York's Divorce Law*, N.Y. TIMES, Nov. 30, 2004, at A1.

9. *See, e.g.*, Douglas W. Allen, *The Impact of Legal Reforms on Marriage and Divorce*, *in* THE LAW AND ECONOMICS OF MARRIAGE & DIVORCE 191–211 (Antony W. Dnes & Robert Rowthorn eds., 2002).

no-fault option, marriage changed from a difficult exit to a relatively easy one. This is not a generally accepted view, but the view that is generally accepted—that there is a practice or institution called marriage, that predates and underlies the (often imperfect) efforts to legislate about that status[10]—is pushing a large part of the policy debate, in particular, the opposition to extending marriage to same-sex couples. The debate about whether the definition of marriage should be seen as something quite distinct from its legal terms is an intriguing debate, and one that does have policy implications. Yet, again, it is not clear that the debate is one on which lawyers and legal academics have any special expertise. Though, one might add, it is not immediately clear who would.

The fourth question is a basic one, and will be discussed in greater detail in the next section. As will be argued then, it is not obvious that lawyers and legal academics have anything distinctive to add to the query.

IV. WHOSE EXPERTISE, THEN?

Of course, to state that lawyers and legal academics may have no superior perspective is not to say something distinct to the policy debates relating to marriage: it seems largely true of most of the policy debates in which lawyers and legal academics intervene—and, to be sure, are frequently asked to do so, by the media, and sometimes by lawmakers.

If there is a reason behind turning to lawyers and legal academics for policy questions, it is because of the peculiar legal culture in the United States. In the United States, most major issues have, or are thought by some to have, constitutional implications—arguments that the Constitution, properly understood, requires some practice, prohibits some practice, or significantly restrains regulation in the area. This possible justification for the role of lawyers and legal academics has already been mentioned. Also previously mentioned, a role hypothesizing how proposed regulations in an area might work out—where legal scholars' familiarity with the current set of regulations, and of how past regulations in related areas have worked

10. This focus on a preexisting institution called "marriage" may also explain why some of those opposed to recognizing same-sex marriage do not oppose the establishment of "civil unions" or "domestic partnerships" for same-sex couples, even if such a status would carry the same legal rights and obligations currently associated with marriage. *See infra* notes 19–20 and accompanying text.

out—might be a valuable contribution from legal academics. However, many of the pressing questions in the marriage debates lie elsewhere.

Much of the current debate about marriage regulation turns on claims regarding the short-term and long-term effects both of social practices and of the legal regulation of those practices: for example, whether the move from fault to no-fault divorce increased the rate of divorce or—slightly different—the commitment married people have to their marriages;[11] whether recognition of domestic or registered partnership undermined marriage in the countries which have such a status;[12] and the relative effects on children for their being raised in different sorts of households (married, opposite-sex cohabitants, single parents, same-sex partners, etc.).[13]

Discussions of the history of marriage are also common.[14] The turn to history is meant to ground some broader view about marriage: either that it has an unchanging nature that has been realized by all societies over time; or that its nature has changed and evolved in significant ways over time.[15] The "unchanging" view might ground a Burkean conservative argument that traditional institutions have developed the way they have for good reasons—they likely serve important societal functions that could not be served equally effectively by an alternative—and one removes such an institution or alters it radically only at a strong risk of doing significant harm.[16]

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11. *See, e.g.*, Allen, *supra* note 9, at 191–211.

12. *Compare* Stanley Kurtz, *The End of Marriage in Scandinavia: The 'Conservative Case' for Same-Sex Marriage Collapses*, THE WKLY. STANDARD, Feb. 2, 2004, at 26 (arguing that registered partnerships have undermined marriage in Scandinavia), *with* William N. Eskridge, Jr. et al., *Nordic Bliss? Scandinavian Registered Partnerships and the Same-Sex Marriage Debate*, 2004 ISSUES IN LEGAL SCHOLARSHIP art. 4, http://www.bepress.com/ils/iss5/art4/ (taking a contrary position).

13. *E.g.*, Jennifer L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, 75 CHILD DEV. 1886 (2004).

14. Again, I am as guilty as many others. *See* Brian H. Bix, *Reflections on the Nature of Marriage*, *in* REVITALIZING THE INSTITUTION OF MARRIAGE FOR THE TWENTY-FIRST CENTURY 111–19 (Alan J. Hawkins et al. eds., 2002) (discussing the history of marriage in the context of evaluating positions in the current marriage debates).

15. Historical works frequently cited include LAWRENCE STONE, ROAD TO DIVORCE: ENGLAND 1530–1987 (1990); NANCY F. COTT, PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION (2000); HENDRIK HARTOG, MAN AND WIFE IN AMERICA: A HISTORY (2000). See E. J. GRAFF, WHAT IS MARRIAGE FOR? (1999), for a recent effort (by a nonhistorian—though in this case *not* a legal academic) to call upon the history of marriage to justify legal reform to recognize same-sex marriages.

16. *See generally* EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE (1790).

It is important to note that even if one accepts the view of marriage as a long-standing institution for which there are Burkean reasons not to modify, this need not be the end of the argument. For example, one could argue that while there may be a presumption against modifying long-standing institutions, that presumption might be overcome by

Legal academics tend to recycle the historical scholarship we can get our hands on—inevitably more often the popularized versions of serious scholarship—without being in a position to distinguish good work from poor work.[17] In this, of course, legal scholars are no worse than other participants in the public policy debate—politicians, cable news commentators, newspaper columnists, and the like—and probably do a good deal better. Most legal scholars, unlike others involved in the debate, at least make an effort to cite actual scholarly work, even if it may sometimes be more controversial and more out-of-date than we realize. However, that still leaves us as secondhand and second-rate compared to actual historians. To whatever extent that historical research is relevant to the question of how marriage should be regulated today, should that part of the question not be left to historians?

Of course, one difficulty with leaving historical claims to historians—and it exemplifies a problem with interdisciplinary work generally—is that if most legal scholars are not well versed in history, it is equally true that most historians may not be well trained to discuss legal matters. This tends to leave the field to the handful of scholars who can claim to have substantial training in both law and history—which might be okay if there were more of them and if their collective interests and expertise extended to all the topics on which a historical understanding of the law was sought. However, there is probably not that sort of "critical mass" of interdisciplinary scholars.

One also comes across legal academics offering biographical or autobiographical stories trying to explain what it is like to be in a certain

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strong countervailing reasons of justice to modify where the long-standing institutions arguably oppress or exclude a group unfairly. *See* JONATHAN RAUCH, GAY MARRIAGE 160–71 (2004).

17. For example, it is common for legal scholars working on the history of marriage and divorce, including the present author in his prior works, to cite to the work of the English historian Lawrence Stone. However, Stone's reputation in the field of the history of family law is, to put it charitably, controversial. Consider the following backhanded compliment appearing in his obituary in *The Times* (London): "It is unlikely that there will be an enduring Stone interpretation in many or any of the fields he worked . . . but he provoked many to think about the history of private life in a new way . . . ." *Obituary: Lawrence Stone*, THE TIMES (London), June 21, 1999, at 23.

Although I am raising, or at least reporting, doubts about the value of Professor Stone's work in this area, I do not wish to cast any aspersions on other works cited earlier. In particular, I think the work of Professors Hartog and Cott, cited *supra* note 15, reflect just the sort of work that should be informing the marriage debates. Of course, this still leaves open the question of the ways in which legal scholars can and should use that work within their own scholarship.

position in this society relative to marriage regulation: for example, a homosexual seeking legitimation or state benefits for that writer and his or her same-sex partner, or discussing the day-to-day difficulties that come with not being able to marry. This sort of presentation—meant to help others not similarly situated to learn more about the context of the debate and to gain some empathy for those seeking reform—is generally more common within critical race theory and feminist legal theory, and has been labeled "narrative scholarship." Whatever the advantages and disadvantages of such writings, or their merits as "legal scholarship,"[18] one thing that seems relatively clear is that there is little reason to believe that legal academics have either more significant personal stories to tell or are better at telling such stories than are others. At best, legal academics may just have the advantage of more numerous places to publish. To be fair, while there may be examples of narrative or autobiographical snippets in the legal academic contributions to the marriage debates, they are relatively rare compared with such contributions to other policy debates.

At times within the marriage debate, what seems necessary is not a legal analysis, but a psychological one. For example, policy makers might want to hear cogent explanations for why both the President[19] and much of the public[20] can strongly oppose same-sex marriage, but simultaneously accept—or at least not strongly reject—offering same-sex couples identical or nearly-identical rights and benefits under a rubric like "civil unions." Legal academics could offer theories about this, too, but legal scholars are not likely to be experts on how or why someone can hold this seemingly inconsistent grouping of positions.

Some legal scholars have published work on the economic analysis of marriage: on the decisions relating to entering and leaving marriage, and the likely effects of current or proposed legal regulation on those decisions.[21] Here, there are two objections or questions that might be

18. *Compare, e.g.*, Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991) (praising narrative scholarship), *with* Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 854 (1993) (raising doubts about narrative scholarship).

19. *See, e.g.*, Elisabeth Bumiller, *Bush Says His Party is Wrong to Oppose Gay Civil Unions*, N.Y. TIMES, Oct. 25, 2004, at A21.

20. *See, e.g.*, *USA Today/CNN/Gallup Poll Results*, USA TODAY, Nov. 22, 2004, http://www.usatoday.com/news/polls/tables/live/2004-11-22-poll.htm (poll result showing that 32% of people support civil unions while 21% support same-sex marriage); David Brooks, *The Value-Vote Myth*, N.Y. TIMES, Nov. 6, 2004, at A19 ("[I]n . . . exit polls . . . 25 percent of the voters supported gay marriage and 35 percent of voters supported civil unions.").

21. *See, e.g.*, THE LAW AND ECONOMICS OF MARRIAGE & DIVORCE (Anthony W. Dnes & Robert Rowthorn eds., 2002). The important initial work in this field is GARY S. BECKER, A TREATISE ON THE FAMILY (enlarged ed., Harvard Univ. Press 1991). Becker

raised: first, whether the legal scholars who conduct economic analysis are doing it well or correctly, or whether, instead, this is a matter that should be left to economists; and second, whether economic analysis is valuable in that it does more good than harm. The second question is difficult—but I do not think the answer is obviously "no"—I leave it to others, or at least to another time, to discuss that question more fully.[22] As to the first question, it seems that today, unlike a decade or two ago, law and economics does not suffer as much from "amateur" efforts,[23] though these do occur from time to time. Many of the legal academics working in this field have doctoral degrees in economics or otherwise have significant training in the area. Thus, economically-trained legal academics likely have something substantial to offer to marriage debates in general, though, as already discussed, it is unlikely that they would be able to offer complete or conclusive responses to the conference questions.

None of this is to assert that legal scholars have little to add to the marriage debates. Some of the legal expertise relevant to the debates comes simply from familiarity with legal analysis, including knowledge of bodies of case law relevant to the questions being considered. For example, when the question arises of a state's "interest" in marriage, as mentioned in the conference questions, law professors knowledgeable in family law, constitutional law, or civil procedure know that this "interest" could be either direct or indirect[24]—"indirect" here exemplified by the holding that a state court has the power, or jurisdiction, to impose alimony on an out-of-state spouse, because the in-state spouse seeking alimony was only in the state after being sent there by the out-of-state spouse.[25] A commentator could certainly come to this conceptual distinction

is an economist, but many of the contributors in the Dnes & Rowthorn collection are legal academics.

22. I have touched upon the question in Brian H. Bix, *How to Plot Love on an Indifference Curve*, 99 MICH. L. REV. 1439 (2001); *see also* Brian H. Bix, Engagement with Economics: The New Hybrids of Family Law/Law & Economics Thinking (Mar. 1, 2001) (unpublished manuscript), *available at* http://ssrn.com/abstract=263192.

23. By contrast, I think that there is still too high a percentage of amateur, and amateurish, efforts in both "legal philosophy" and "legal history."

24. On this topic generally, see Brian H. Bix, *State of the Union: The States' Interest in the Marital Status of Their Citizens*, 55 U. MIAMI L. REV. 1 (2000).

25. *See* Hines v. Clendenning, 465 P.2d 460, 463 (Okla. 1970). In *Hines*, the court stated, referring to an earlier U.S. Supreme Court decision allowing state jurisdiction for a citizen's suit against an out-of-state insurance company: "The 'manifest interest' of the State of Oklahoma in the marital status, and financial relief incident thereto, of its

between "direct" and "indirect" interests without any legal training, but experience with the "applied ethics" of legal decisions—especially the hundreds, if not thousands, of cases one becomes familiar with in the course of legal education, legal practice, and preparation for teaching—can make such conclusions easier to reach.

Another topic in which legal academics are relatively expert is the way that family law doctrine and practice may seem to instantiate a different understanding of state views and purposes than one might get from listening to the rhetoric of political and media debate. To put the point a different way, official actions frequently belie public proclamations. It is not that this divergence between rhetoric and practice shows fraud; at times, decisions reasonable at the time can have consequences not fully intended or fully welcome by the officials who made the decisions, but the consequences are there nevertheless. For example, officials may speak at length about the obligations spouses owe one another, but rarely mention that such obligations are generally unenforceable. Courts rarely order someone to support his or her spouse within an intact marriage,[26] and will not impose a fine or award damages if the duty is violated. Failure to support would likely ground a fault-based divorce in jurisdictions that still have fault-based divorce; however, this is a minor victory, given the availability of divorce on no-fault grounds. The only small way in which some states punish breaches of marital duties is that some, but far from all,[27] states allow consideration of marital fault in making property division and alimony decisions.[28]

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residents, is surely as great as the interest of California in providing effective redress for insurance policy beneficiaries residing within its borders." *Id.*

26. The standard citation for this nonconstitutional doctrine of "family privacy" is *McGuire v. McGuire*, 59 N.W.2d 336, 342 (Neb. 1953), where the court refused to order the husband to give greater support to his wife in an intact marriage. There are a few, but highly exceptional, cases that allow an award of maintenance despite the marriage's still being intact. *See* Coltea v. Coltea, 856 So. 2d 1047, 1053 (Fla. Dist. Ct. App. 2003).

For evidence that medieval ecclesiastical courts would sometimes grant orders of "specific performance" during an intact marriage, see R. H. HELMHOLZ, MARRIAGE LITIGATION IN MEDIEVAL ENGLAND 67 (1974) (discussing specific enforcement of marriage contracts, including orders "that the defendant accept the plaintiff as his legitimate spouse and treat her with marital affection"); R. H. Helmholz, *Canonical Remedies in Medieval Marriage Law: The Contributions of Legal Practice*, 1 ST. THOMAS L.J. 647, 651 (2003).

27. Some states expressly hold that marital fault may *not* be used as a factor in dividing property or setting alimony obligations. *See, e.g.*, 750 ILL. COMP. STAT. ANN. 5/503(d) (West 1999 & Supp. 2004); MINN. STAT. § 518.58 (2004).

28. The relationship of marital fault and child custody is complex, and varies significantly from jurisdiction to jurisdiction—and often, it seems, from judge to judge. However, the trend appears to be towards discounting claims of marital misbehavior or personal immorality, short of domestic violence, unless or until it can be shown that those actions or tendencies directly affect the person's ability to be a fit parent. *See, e.g.*, MINN. STAT. § 518.17 subd. 1(b) (2004) ("The court shall not consider conduct of a

Additionally, many state rules regarding who may marry and what rules will govern dissolution are easily circumvented. For example, under traditional choice of law rules, a person could marry in one state with the general expectation that the marriage would be recognized as valid in any other state, at least for opposite-sex marriages[29]—thus, avoiding some state policies codified in the marriage-entry rules of that individual's home state.[30] A person can even obtain a divorce in a jurisdiction different from where he or she married or where he or she lived during the marriage, as long as the petitioner establishes domicile in the new jurisdiction;[31] and the jurisdiction hearing the divorce generally applies its own laws, even if that state had little prior connection to the couple or the marriage.[32] The resulting divorce judgment is enforceable in all other jurisdictions.[33]

Finally, there are substantive positions in this debate that turn on a sharp, or sharper, distinction between legal marriage—or, if one prefers, the legal recognition of marriage—and the civil, social, or religious views of the institution.[34] Obviously, such a position needs to be grounded on a clear articulation of what legal recognition of marital status entails, and an explanation for why it can and should be separated from social or religious views about who can marry and what follows from marital status.

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proposed custodian that does not affect the custodian's relationship to the child.").

29. *See* EUGENE F. SCOLES ET AL., CONFLICT OF LAWS § 13.5, at 564–66 (4th ed. 2004) (providing that a heterosexual marriage in one state will be recognized by other states). This is subject to limited exceptions based on "public policy" and, in a handful of states, "marriage evasion legislation." *Id.* at 570–80.

30. There are some limits, in some states, on the ability to circumvent state laws and policies. *See id.* (discussing marriage-evasion rules and public policy grounds supporting them).

31. Many jurisdictions also have residency durational requirements, so the petitioner may have to wait (in many such jurisdictions) six months or a year after moving to a new domicile to file. *See* Linda D. Elrod & Robert G. Spector, *A Review of the Year in Family Law: Children's Issues Remain the Focus*, 37 FAM. L.Q. 527, 580 (2004) ("Chart 4," listing residency duration requirements for all states).

32. *See* SCOLES ET AL., *supra* note 29, § 15.4, at 630–31.

33. *See* U.S. CONST. art. IV, § 1 (the Full Faith and Credit Clause); Williams v. North Carolina, 317 U.S. 287, 301 (1942) (holding that full faith and credit applies to divorce decrees).

34. *See* Mary Anne Case, *Marriage Licenses*, 89 MINN. L. REV. 1758 (2005) (analyzing the distinction between legal recognition of same-sex marriage and civil, social, and religious views on same-sex marriage).

V. CONCLUSION

This article raises questions about the extent to which legal scholars have anything special to add to the current debates about marriage. To be sure, having no special expertise on some matter has rarely stopped legal scholars from writing—or law journals from publishing—long articles. However, it is valuable to at least reflect on the question of relative expertise, to consider on which aspects of these debates legal academics are likely to have the most to add, and which aspects are better off deferred to others.