

Queer and Religious Alliances in Family Law, Politics, and Beyond.

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A reoccurring theme in queer critical jurisprudence is the contemplation of seemingly inevitable but completely artificial dichotomies. Such dichotomies, like good/bad, gay/straight, man/woman, private/public, are imposed on our thinking by society and law, and these dichotomies are then replicated and enforced through our thoughts and behaviors. Queer theory recognizes that these dualistic categories inhibit our imaginative capacity for problem solving—that to create a more inclusive society, queer advocates must identify these limiting binaries, deconstruct the values bound up within them, then propose a new, more equitable paradigm. The anthology *Queer and Religious Alliances in Family Law, Politics, and Beyond*, edited by Nausica Palazzo and Jeffrey A. Redding, addresses the conflicts and potential areas of collaboration between religious and queer communities and ultimately moves the legal conversation between these groups beyond the binary of queer equality versus religious freedom. The contributing authors are as diverse as the analytical approaches taken; from law professors to sociologists, the authors variously propose areas of alliance, interrogate current calls for alliance, or examine case studies of past cooperation and synchronicities. From polygamy to marriage abolition to reciprocal benefit schemes, Redding and Palazzo have invited a thought-provoking assortment of voices to comment on the complex relationships between religion, the state, and the families that come into conflict with the definition of a legal marriage.

Mariano Croce begins the book with a deconstruction of secularism, including a vigorous interrogation of the secular/religion dichotomy and the associated assumptions at the core of the current culture wars. The widespread narrative of secularism—that religion is pushed from the political sphere—“rests on major claims about the social and political withdrawal of religion” (16–17). But the story is more complicated than that, and Croce describes the relationship between religion and the state throughout the past four centuries as “a history of jurisdictional conflicts” (18) rather than the mutually exclusive, waxing-waning relationship that dominates discussions of secularism.

In the tug-of-war for political supremacy over all sources of law, Croce argues that the state used the hyper-politicization of religion to demote it to an internal belief system, isolated to the individual (19). Modernity’s shift from legal pluralism (where the state and



religion held separate jurisdictions) to legal monism (where the state reigns supreme) provides a more accurate expression of the project of secularism as the state elbowed religious institutions away from power. To build a postsecularism world, scholars can look to the ways that different religious communities or substate societies adapt their habits and customs to the laws of their host nation. These communities follow informal rule systems that challenge the mono-legalistic state model. The “coexistence among equally valuable normative orderings” provides an approach to family law and relationship recognition that could serve both religious and queer communities (25).

The legitimizing power of the state bogs down legal marriage with baggage, and many of the contributors to this anthology wrangle with the heavy historical weight of marriage and its role in society. In chapter 3, Robin Fretwell Wilson and Rebecca Valek examine the legal entanglement between religious and civil marriage and discuss whether this relationship ought to be severed. After the legalization of same-sex marriage, conservative politicians called for the privatization of marriage, demanding that the government should be out of the marriage business altogether. Their calls echo those of members of the queer community who feel that same-sex marriage only enforces assimilation and heteronormativity rather than liberates intimacy. Wilson and Valek walk through a variety of legal proposals from marriage contracts to domestic partnerships to areligious marriages but find few workable solutions that might disentangle legal and religious marriage without destroying marriage altogether. Instead, they argue that to cleave the religion-state relationship regarding marriage would fail to solve the current conflicts identified by both queer and religious writers and would only “diminish the institution of marriage for the religious and secular alike” (62).

Some contributors examine the expansion of marriage through the legitimization of polygamy as fertile ground for a religious-queer alliance. For example, Frederick Mark Gedicks compares the similarities between natural law arguments used by historical opponents to Mormon polygamy and those used to support modern, jurisprudential objections to same-sex marriage. He finds the same assumption at the core of the natural law claims for same-sex monogamy: a white Christian nation requires families to differentiate themselves from non-white, non-Christian families (39–40). As common ground, both religious polygamists and the LGBTQ+ community can share in their skepticism for natural law legal arguments.

Rather than sexual intimacy (monogamous or otherwise) as the core criterion of a legal family, other authors advocate for different family models. For example, Ilaria Valenzi and Beatrice Gusmano argue that the legal identity of family ought to prioritize care, not sex, as the cornerstone to a stable home. Valenzi presents a case study of the Waldensian Church and its theological approach throughout the past thirty years to redefining family around egalitarian principles. A religious paranoid reading assumes that those churches that embraced their LGBTQ brethren faced pressure and influence from the outside secular world. But Valenzi’s examination of the Waldensian Church reveals the internal efforts of a religious organization to understand gender and homosexuality and to incorporate honest feminist and queer experiences into its discussions. Here, the church reoriented its views towards intimate relationships to include same-sex couples—instead of depending on sexual difference for marriage, the church found that the value of a relationship rests on it “being mutual and egalitarian” (78).

Similarly, Beatrice Gusmano advocates for a reorientation of relationship hierarchy around the concept of ‘ohana, the Hawaiian concept of family. Through an analysis of Mediterranean queer life, she reveals friendship as a cornerstone for chosen families within the queer community. Friendship, like marriage, requires the “sharing and redistributing of goods” often “in a context of precarious conditions of work, housing, and life” (90). At the core of these relationships are activities of care, or redistribution of emotional and physical

resources, which sustain the participants and create “stable reference points for everyday life” (100).

In true queer theory fashion, disagreements between authors abound—this is delightfully evident when comparing chapters addressing Israeli family law. Ayelet Blecher-Prigat and Noy Naaman examine Israeli marriages and find a strict religious monopoly on the legal legitimacy and personal status benefits of marriage. With access to marriage limited and marriage alternatives unpopular, Blecher-Prigat and Naaman propose that the queer community and religious minorities within Israel could build a coalition on the abolishment of legal marriage. They examine a variety of sources of conflict between religious minorities and the state of Israel, both real and theoretical. With regard to the exclusionary nature of marriage, Reform and Conservative Jews could be interested in ending the Orthodox monopoly on the requirements for marriage and divorce—the rise of unofficial, but religiously Jewish marriages could be evidence of this desire (112). Though the Israeli Supreme Court has avoided heavy-handed interventions into marriage and divorce, “the potential for broad state supervision and oversight exists” (113). Though both Blecher-Prigat and Naaman embrace the imagined possibilities of common ground, they pinpoint Israel as uniquely situated to abolish legal marriage due to its lack of a parallel institution of civil marriage.

Whereas Blecher-Prigat and Naaman take a dim view of existing pluralistic approaches in Israel, Laura T. Kessler, in contrast, embraces Israeli covenant marriages and informal families. Kessler examines the religious-secular conflicts around personal status law. She then argues that the Israeli model, despite religious monopoly over marriage and divorce, provides an avenue for family law reformers to build a pluralistic family law system, “absent strong constitutional protections for family equality” (177). In Israel, civil workarounds to bypass religious control of marriage and divorce abound: couples can marry outside of Israel, then register their marriages in Israel (179–80), and the reputed spouse doctrine expands the legal rights and obligations of partners without a formal marriage—a legal strategy that now affords same-sex couples “basically all the rights of a married couple” (180). Again, Israel is uniquely situated for these compromises between the religious and secular. The diverse nature of Israel’s population—religiously, racially, and ethnically—requires a tempering of religion’s more anachronistic, antifeminist tenets to maintain legitimacy and to maintain members (185). Where Blecher-Prigat and Naaman see oppression, Kessler sees opportunities for informal collaboration and religious moderation through Israeli alternatives to official marriage.

Alliance authenticity is another area of conflict between authors. Before *Obergefell v. Hodges*, 576 U.S. 644 (2015), when the first waves of same-sex marriage litigation began, a curious phenomenon occurred: a flurry of (poorly written) conservative laws calling for reciprocal beneficiary schemes inundated state legislatures. In essence, to fight against same-sex marriage, religious conservatives demanded (and, in some states, received) a legally expanded definition of marriage that defies the traditional conjugal-couple model—a decidedly queer undertaking. Here, while the queer community and anti-queer, faith-aligned political groups may be singing the same song, they are certainly not singing in the same tune.

In chapter 7, Palazzo identifies a quintessential Baptist-bootlegger relationship: religious conservatives and queer advocates both called for nonmarital family recognition, but each rationale was antithetical to the other: whereas queer allies wanted state benefits and social acceptance, religious conservatives wished to obstruct legal marriage equality (127–30). With an expansive comparative law section, Palazzo analyzes reciprocal beneficial and “caring relationship” schemes across the common law world and finds that there are a variety of mechanisms and proposals for bequeathing marriage benefits to nonmarried couples (129–30). However, these policies all suffer from marriage-centrism; thus, their

eligibility requirements follow the dyadic relationship model, and the consequences of breach echo those of marriage, rather than reflecting the fluidity of relationships (132).

A healthier area of alliance between queer and religious folks could attack the core of the legal family. As do Valenzi and Gusmano, Palazzo identifies shifting the legal family from being defined by sex to being defined by care. She identifies multigenerational households, a characteristic common in single-parent homes, as a form of non-queer desexualization of the family unit. Rather than determining the legal family by horizontal relations, the legal family could be determined by mutual agreements for resource sharing, child rearing, living arrangements, material contributions to the well-being of others, and financial support arrangements (139).

Christian Klesse also analyzes the potential for alliance over the pluralization of family forms with religious conservative groups. But Klesse strongly advises that hapless alliances around consensual nonmonogamies will do more harm than good, even if politically successful in the short term. Like practices of coalition-building, affirmation is also core to the queer community; to betray that core principle would transmute any subsequent success into something decidedly non-queer, regardless of policy victories (154–57). To form a coalition with partners who do not affirm queer, nonnormative, ways of life, according to Klesse, is “inimical to a radical queer political spirit” (162).

The motive of ultraconservative groups that push for marriage-lite alternatives, Klesse and Palazzo both assert, lies in delegitimizing same-sex marriage, rather than pro-pluralism intentions (Palazzo, 127–30; Klesse, 149–150). The importance of claiming and affirming identities is necessary to queer politics, but beyond identities, the intersectionality of queerness and other forms of identity requires solidarity (158). As such, a core component of queer politics is coalitional practice, as exhibited by a long history of intersectional coalition formation between queer, feminist, and antiracist advocates (147). Coalition building requires compromise, which can “exclude, instrumentalize, or render invisible multiply marginalized groups” (159); therefore, close attention should be paid to the parties at the table to protect the “ethical substance of political initiatives” (162). Instead of approaching partnerships with political pragmatism, Klesse argues, the queer community ought to adopt a principle of *do no harm*, whereby coalitions are built “in a way that no particular social group is harmed as a result” (148).

While both Palazzo and Klesse highlight the homophobic animus at the core of conservative calls for marriage alternatives and both examine the potential for a family pluralization coalition, Palazzo entertains the possibility of utilitarian successes, “in which queer activists get laws recognizing more families and religious denominations frustrate gay couples’ longing for marriage” (134). Klesse draws a line in the sand, ruling out such an alliance altogether. Both authors’ careful consideration of such a mismatched alliance is all the more significant after *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), in which Justice Thomas’s dissent contemplated subsequent claims against same-sex marriage.

In the final chapter, Redding ends the collection away from discussion of family and with a reparative reading of religious resistance toward COVID-19 shutdown mandates. He examines recent litigation against COVID-19–related shutdowns, and specifically, where places of worship were shut down despite following the same protocols used by comparative secular spaces that were exempt from shutdowns. Here, Redding finds an echo of earlier selective closings of sexually oriented businesses to mitigate the AIDS crisis, and queer advocates’ critique of such community-targeted public health mandates. The queer community has been burned by biopolitics in the name of hygiene before (205–06). When public health mandates shut down bathhouses, litigants responded with claims of free expression, privacy, and association all while promoting intercommunity health education and access to health care—just as religious litigants have today (210).

Redding concludes that connectivity and community are necessary to both the queer and religious identity. Neither mere belief nor practice fully encompasses the role these identities play in the inner and outer lives of people: “animating passions—whether sexual or religious—cannot be easily cabined” (208). Queer congregational spaces, like the bathhouses of the 1980s and drag shows of today are necessary for queer community building. Similarly, the faithful’s cry against COVID-19-related shutdowns “can just as readily be interpreted as a sincere demand for community ... rather than an endorsement of careless or caustic individualism” (208).

Perhaps this was a missed chance for alliance. Or perhaps, through this anthology, we can move past the queer and religious binary to a new conversation. This new conversation, be it about legalizing polygamy or abolishing marriage, can center on communities built of love and care, be they queer or religious. Redding and Palazzo’s volume on family law alliances opens the door beyond our current conversations—those about free exercise and equal protection—to something a little more affirming, reparative, and *queer*.