

Joseph Mello. *The Courts, the Ballot Box, and Gay Rights: How Our Governing Institutions Shape the Same-Sex Marriage Debate.* Lawrence: University of Kansas Press, 2016. viii, 240 pp. (\$34.95 cloth).

Joseph Mello's study of rights discourse takes the debate about gay and lesbian marriage as a source of data in order to deepen our understanding of how conservative arguments operate in different institutional settings. His conclusions are summarized early in chapter 1:

I find that conservative opponents of same-sex marriage were able to use rights language to effectively argue against marriage equality in ballot measure campaigns but that they typically avoided using the language of rights to frame their arguments after the debate moved inside the courtroom (p. 3).

This counterintuitive finding is built upon the results of three interconnected studies that utilize both quantitative and qualitative methodologies. Chapter 1 serves as an introduction, providing readers with a preview of what is to come and introducing the author's methodology. Chapter 2 opens with the 1970s and Anita Bryant's homophobic moment in the national spotlight. From there Mello moves quickly through the HIV/AIDS crisis in the 1980s and on into the 1990s when the marriage debate first made national headlines in Hawaii. This schematic history, well grounded in sexuality scholarship, provides a necessary framework for understanding the gay rights movement and conservative backlash against it.

Chapter 3 reports Mello's findings from a quantitative content analysis. Drawing from online sources, the author collected materials used in state ballot measure campaigns, court documents, and publications produced by conservative interest groups. Mello coded these texts for the presence of four different narrative frames: populist appeals, rights-based appeals, moral appeals, and constitutional arguments. What is most notable about the findings in this chapter is that while all four frames appeared in the data with reasonable frequency, sharp differences emerged when institutional context was taken into account. Rights discourse, he finds, was most successful in ballot measure campaigns and interest group materials but was much less effective in court. To add analytic detail to this unexpected finding, Mello turns his attention to qualitative analyses of the ballot initiatives in California and Maine.

Chapter 4 examines data taken from the volatile events in California including the Proposition 8 campaign and major legal cases. Mello argues that opponents of lesbian and gay marriage relied heavily on rights discourse during the Prop 8 campaign and that their rhetorical strategy converted moral arguments into rights claims. In short, opponents argued that parents, children, and Christians, in particular, would become victims of a powerful LGBT minority and that the right to raise children or practice faith freely would be undermined if gays and lesbians could marry. Proponents of marriage rights imported these claims into the courtroom where they collapsed under the evidentiary requirements of that setting, revealing their irrational and discriminatory intent. Mello writes that this translation was imperfect because "it is easy for information to be presented in a way that distorts voters' understanding of the issue" in public campaigns, but that when such claims were raised in court they demanded evidence, scrutiny,

and detail that did not exist (p. 94). By denying these claims, however, marriage proponents implicitly left intact the assumption that telling children about married gays and lesbians was a bad thing.

Chapter 5 takes the debate from Maine as its centerpiece. Aware of the many differences between California and Maine (demographics, population size, initiative processes, procedural variations), Mello shows that in Maine lower levels of citizen involvement made it difficult for opponents of same-sex marriage to use rights discourse effectively in their advertising. As the debate unfolded across three ballot initiatives, proponents of marriage equality learned an important lesson from California. Rather than directly refute the claims of marriage opponents, proponents shifted the narrative from individual gays and lesbians to their families. New ads featured heterosexual parents wishing marriage for their gay and lesbian children, and heterosexual children wishing marriage for their gay and lesbian parents. As Mello observes, “In the rare cases in which gays did appear in campaign advertisements, they largely remained silent — only one of the thirteen television advertisements produced by the Yes on 1 campaign included a gay person with a speaking role” (p. 145). This shift from rights claims by individual gays to rights claims by gay families also had some contradictory effects. Mello notes that when the Yes on 1 campaign put actual gay and lesbian people into the background of their advertising, it perpetuated the belief that rights are only extended to people who are seen as “exhibiting behavior acceptable to the majority population” (p. 146).

In Chapter 6 Mello concludes with a summary of his findings, two of which stand out as particularly important. First, rights claims failed in court because the courtroom environment demands attention to procedures and evidence rather than the emotional appeals seen in advertising campaigns. Thus, he writes, “it is not *who* decides questions of fundamental rights but *how* they undertake their decision making process that should concern us most” (p. 164). Second, he observes that his results give us “reason to doubt that ballot measure campaigns are the best environment for making decisions about fundamental rights” (p. 165). Exactly.

Mello’s book will be of greatest use to scholars and students working in the field of Law & Society. It is a model of lucid, accessible prose, suitable for assignment to both graduate and undergraduate students. Mello gives his audience an excellent example of a mixed methodology in practice and sheds light on important issues of interest to legal scholars, sociologists, and political scientists alike. Scholars of sexuality will be familiar with most of the history and strategy presented but there is much to be gained from attending Mello’s insights. Despite the U.S. Supreme Court’s ruling in favor of marriage equality it seems that the battle is far from over. Scholars and activists committed to social justice and fundamental rights will appreciate and learn from the lessons Mello offers.

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