

**Pinello, Daniel R.** *America's War on Same-Sex Couples and Their Families: And How the Courts Rescued Them.* New York: Cambridge University Press, 2017. xiii, 330 pp. (\$99.99 cloth, \$28.35 paper).

This book examines the impact of state laws denying relationship rights to same-sex couples, what Pinello refers to as “Super DOMAs.” He conducts 175 in-depth interviews with same-sex couples living in six Super DOMA states to help assess both the instrumental and the symbolic impact that these laws had on them (pp. 9-10). Conservative activists who advocated for these laws repeatedly argued that their goal was to protect marriage, not to harm gays and lesbians. However, Pinello’s findings indicate that Super DOMAs had substantial impact on gay and lesbian couples while doing little to strengthen marriage generally.

He begins his analysis in chapter 2 by examining how state appellate courts interpreted Super DOMAs. Only three state courts of last resort ever sought to define the scope of a Super DOMA. The few cases where these laws were discussed were complicated by the fact that Super DOMAs were typically produced as a result of a citizens initiative, meaning that there was no legislative record for the Court to draw on. In some states, like Wisconsin, the court accounted for this deficiency by examining statements made by proponents of the measure during the campaign. As a result they defined the law narrowly (pp. 50-53). In Michigan however, the Court declined to do so, interpreting the text of the law literally, and as a result, finding that it barred civil unions in addition to marriages for same-sex couples (pp. 43-48).

Chapters 3 and 4 are the empirical core of the book. Here Pinello shares lengthy excerpts from his interviews with gay and lesbian couples discussing how these laws impacted their lives. Pinello’s subjects report that Super DOMAs made their lives more complicated in numerous ways. They were used to deny them access to a number of rights and benefits such as health insurance, inheritance rights, and tax breaks (pp. 69-89). They also report that the laws had powerful symbolic impacts on them, making them feel like “outsiders,” who were not wanted in their own communities (pp. 60-62, 89-96). Chapter 4 focuses on how these laws impacted the children of same-sex couples. The interviewees discussed how their children reported that the law made them feel like they were not accepted as a real family (pp. 135-136). Non-biological parents also reported struggling with legal issues like the limited availability of second parent adoption in some states (pp. 111-126), and difficulty maintaining parental rights after a divorce (pp. 137-143).

One of the key findings of the book is that, in the absence of federal marriage protections, geography played a major role in determining rights for same-sex couples. Even if they took the time to draft the necessary legal paperwork granting their partner power of attorney over medical decisions, for example, same-sex couples still had no guarantee that hospital officials would recognize those agreements as valid. Within Super DOMA states, those who lived in big cities with liberal political cultures report faring better than those who lived in more rural areas. In chapter 5 Pinello explores these geographic constraints in more detail, examining how gay and lesbian couples grappled with the question of whether or not to migrate out of Super DOMA states. While most of the couples he interviewed chose not to leave for

personal or economic reasons, some did move away, exacting a financial cost on the states they exited.

In chapter 6 Pinello provides extended analysis of *Obergefell v. Hodges* (2015). Perhaps most intriguing is his contention that Justice Scalia acted as a “double agent” for marriage equality by offering a caustic dissent in *US v. Windsor* (2013) in which he lamented that the decision made the constitutional protection of marriage equality an inevitability. Pinello point out that this dissent was subsequently cited by a number of appellate judge’s as evidence that gays and lesbians did enjoy a fundamental right to marry (p. 238).

While Pinello’s study is methodologically sound, the demographics of the sample skew a bit whiter and wealthier than the gay population on average. There are good practical and theoretical reasons for this. As Pinello himself points out, it is logical to focus on this population because they are the ones who clamor the most for marriage rights, and are thus most likely to be impacted by these laws. From a practical standpoint, these individuals are also most likely to be openly gay, and thus easier to identify and contact for a study like this. While I do not think there is anything wrong with using this sample, there are moments in the book where we get a hint at a perspective that might be missing from this analysis. For example, in chapter 5 Pinello includes an interview with Martha and Debra, a lesbian couple who is less educated, and more conservative than others in his sample. He notes that the couple had a perspective that was different from others he interviewed. They were more closeted about their sexuality, and less interested in marriage rights as a result (pp. 168-170). I suspect there are many more couples like this out there, and it would be interesting to see their perspective as well.

Overall, this book is an excellent oral history of the impact of Super DOMAs on same-sex couples. Pinello has conducted an impressive number of interviews, and he allows the voices of his subjects to shine by transcribing them at length with minimal editorial interruptions. There are over one hundred pages of interview transcripts in this book. The result is a vivid and often moving account of the struggles that same-sex couples experienced as a result of these laws. This historical analysis is an important reminder that same-sex marriage was not an inevitability. Instead, it was a long hard fight which experienced a number of setbacks along the way. It reminds us that such setbacks are a natural and expected part of the long slog towards social change. A lesson that I think has particular salience at this moment in our political history.

Joseph Mello  
*DePaul University*