

*[I]t is not too much to say that the nation's future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this Nation of many peoples. . . .*

*The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned.<sup>1</sup>*

It was this quote, from the landmark affirmative action decision of *Regents of University of California v. Bakke*, that inspired the *Syracuse Law and Civic Engagement Forum* (“*SLACE*”).

As the Nation’s future leaders, it is imperative that law students be exposed to the pressing public policy challenges of our time. Further, because the study and practice of law has become an increasingly interdisciplinary endeavor, students must learn to analyze the law and its attendant public policy issues from an integrative perspective. Not only must modern lawyers consider a diversity of disciplines, they must also appreciate a multiplicity of ideological and cultural beliefs. Finally, the rise of internet has impelled practitioners and students of law to embrace new technologies and new forms of media.

In short, the law, like the rest of American society, is progressing to become more integrated, more diverse, and more technologically advanced. Law schools and law journals must keep up. *SLACE* is a public policy publication that recognizes this changing legal landscape. *SLACE* is committed to three foundational principles: interdisciplinary diversity, ideological diversity and new media. First, each issue of the *SLACE Journal* explores a broad public policy topic with articles from advocates, academics and practitioners from a range of different fields of study. Second, *SLACE* encourages debate and welcomes perspectives from across the ideological spectrum. Third, *SLACE* not only includes an online academic journal but also a public policy blog (and hopefully soon a podcast).

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<sup>1</sup> *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 313-14 (1978) (quotations omitted).

The inaugural issue of the *SLACE Journal* focuses on LBTG rights and issues of family. In the first article, titled *Marriage is ~~a Fundamental Right~~ an Option*, Syracuse University College of Law Professor Charles M. Sprock Jr. observes same-sex marriage through a unique and innovative lens. Instead of determining whether marriage is a “fundamental right” or not, this article will look at the options same-sex couples currently have available to them. This article provides a tri-fold perspective on the changing legal landscape of same-sex marriage and how same-sex couples should now evaluate the options which are best suited for their individual relationships.

First, the article explores the status of legal recognition for same-sex couples in the United States. Many states have now sanctioned same-sex marriage. Others have struck down bans on same-sex marriage. Following the Supreme Court’s decision in *United States v. Windsor*, many questions remain unsettled in terms of marital benefits same-sex couples have access to. Next, the multiple marriage options for same-sex couples are discussed in turn. Same-sex couples now have four options: no marriage, federal-recognition-only marriage, full marriage, and divorce. Each option has several benefits and drawbacks despite the changed legal landscape post-*Windsor*. Finally, trends in opposite-sex marriages are explored along with what same-sex couples might learn from these trends. In conclusion, Professor Sprock drives home the point that marriage no longer remains the only option for same-sex couples. Now that the right is available, same-sex couples have a choice to marry or not marry. This choice now includes a thorough inquiry into the benefits and drawbacks of all options available to same-sex couples.

Professor Elizabeth Brake of Arizona State University poses the view that people often believe of marriage and the accompanying benefits to exist solely between a single man and

woman - a traditional partnership. On the contrary, however, it appears that the entitlements that come with marriage should actually be awarded to non-traditional types of partnerships such as friendships, urban tribes, overlapping care networks, and Polyamory.

The focal point of this discussion, political liberalism, excludes the use of arguments that depend on comprehensive moral, religious, and philosophical doctrines from public forums. Relying on this theory, it's argued that the exclusion of non-amorous or polyamorous relationships cannot be justified without political reasons. Offering such equal treatment can however be rationalized by two means; first, the creation of marriage by private contract or second, either abolishing marriage as a legal category or offering the same incentives to all caring relationships. However, the state has a real interest in distributing primary goods to citizens. As such, caring relationships should instead be seen as a primary good with the entitlements of marriage accompanying a caring relationship to be delegated by the state - not by private contracts. Thus, a liberal state, in which no set principled restrictions on sex, number of spouses, or nature of relationship is necessary; the only consideration for marriage should be whether the nature of the relationship is a caring one. Handling every angle of this argument, Professor Brake indicates how our reality can finally inch closer to equality for all if the benefits and rights flowing from current spousal relationships would be extended to all caring relationships.

Professor Tara Helfman's article, titled *U.S. v. Windsor and the Judicial Politics of the Roberts Court* has quickly become one of the top ten most downloaded papers within the Social Science Research Network's (SSRN) Sexuality, Marriage and Constitution Claims categories. Her article seeks to examine the political implications of interpretive discord among the governmental branches on critical constitutional issues. In particular, the article will explore the

Supreme Court's ruling in *United States v. Windsor*, in which the Executive refused to defend the Defense of Marriage Act (DOMA) on equal protection and Fifth Amendment grounds. This subject matter gives rise to important questions regarding what happens when the President believes that a duly enacted law is unconstitutional, as well as the long-term constitutional implications of the outcome in *Windsor*.

Part I of her article will view *Windsor* with a critical eye, arguing that the majority overreached on the jurisdiction issue and failed with respect to the protection of gay rights. Part II will contemplate the propriety and profoundly problematic implications of the Executive's defend-but-do-not-enforce posture in the context of the DOMA question. In closing, Part III will consider *Windsor* with respect to Chief Justice Robert's leadership on the Court, further examining the potential for the role of the Supreme Court in the national debate on gay rights.

Founding Editor-in-Chief of *SLACE* Matthew L. Clemente reviews Sherif Girgis, Ryan T. Anderson's book *What Is Marriage?: Man and Woman: A Defense?*. The review, entitled *Modern Marriage and Same-Sex Couples: Expanding the Good of Marriage*, explores Girgis, Anderson and George's most recent iteration of their argument against gay marriage. *What Is Marriage?* advances a "traditionalist" understanding of marriage that requires coitus and heterosexual couples. *Modern Marriage and Same-Sex Couples* contends that Girgis, Anderson and George's conception of marriage is antiquated insofar as it (1) fails to capture that the marriage debate is fundamentally a civil institution, (2) debases marriage by trivializing the foundation of marriage—spousal love—and fetishizing vaginal-penile penetration and (3) excludes vast swaths of heterosexuals who are unable to achieve vaginal-penile penetration including the impotent, imprisoned, and physically incapacitated as well as those who are simply uninterested in coitus.

The review argues most Americans today do not recognize a coitus-centric definition of marriage but, instead a more modern conception of marriage. Modern marriage defines the institution as a legal commitment based on consent, monogamy, fidelity and, most basically, love—an understanding of marriage that dates back to the founding and represents a historical evolution of marriage. Modern marriage, it is argued, has developed and adapted as American society at large has progressed to become more just, more tolerant and more respectful of the status of women, African Americans and homosexuals. At bottom, the review argues that the same-sex marriage debate goes beyond gay rights. It offers an opportunity to reflect on marriage, and its social function, more generally. Enshrining modern marriage and recognizing gay marriage, it is argued, would strengthen the institution of marriage by making clear that marriage's primary purpose is to encourage love, fidelity and monogamy.