Sentiment Toward Same-Sex Divorce

9

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While scholarly and media attention in recent years has focused on the battle for marriage equality in the United States, the legal recognition of same-sex marriage in a number of states and the District of Columbia also means that divorces among some same-sex couples have begun to occur. To date, little attention has been paid to the legal and political dynamics that will shape such divorces, particularly as couples cross state lines into locales that lack a legal recognition of same-sex marriages. Sentiment toward same-sex marriage and divorce plays an important role in shaping the law. This multifaceted chapter will attempt to fill that void by examining community sentiment toward same-sex divorce by various actors in the United States: judges, lawmakers, and rank-and-file citizens.

First, we examine statistics on divorce rates in states where same-sex marriages have occurred and in the handful of states that recognize marriages carried out in other states and nations with an eye to the frequency of same-sex divorces as compared to heterosexual divorces. After this snapshot of the patterns of divorce, we then turn our attention to a legal analysis of same-sex divorce with a focus on how judges' sentiment toward same-sex divorces parallel and diverge from divorce involving heterosexual couples, and we identify patterns that exist across the country. Within this analysis, we also examine the constraints placed on these judges by the language of state Defense of Marriage Acts (both statutory and constitutional) that are emblematic of legislators' sentiment on the topic of same-sex divorce. Finally, in the bulk of this paper, we analyze the politics of divorce for same-sex couples by using unique public opinion data from a decidedly non-marriage equality state (South Carolina). This allows us to see how attitudes on same-sex divorce vary from the patterns known regarding same-sex marriage with a particular focus on whether reframing the issue of divorce as being fundamentally about states' recognition of legal actions in another state (i.e., honoring the "Full Faith and Credit" Clause of the US Constitution) rather than being an issue of gay rights can alter attitudes on the subject. We find, interestingly, that community sentiment toward divorce among same-sex couples—at least in the non-marriage equality state examined—is driven by their attitudes toward same-sex marriage and appears to be impervious from being primed.

All aspects of family law involving same-sex couples will continue to quickly evolve in the coming years (see Chap. 13, this volume), but this chapter—a rare scholarly examination of same-sex divorce—attempts to provide a foundation for what we know in the earliest years of

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America's experience with same-sex partnership recognition. What is clear is that the sentiment of various political and legal actors is crucial to that story both in the present and in the future.

Patterns of Same-Sex Divorce

Have same-sex couples tended to divorce at higher or lower rates than their heterosexual peers? Have they stayed married longer or shorter periods of time than similarly situated heterosexual couples? These straightforward questions are surprisingly difficult ones to answer because of several factors. First, according to US Census analysis, the median length of a marriage that ends in divorce in the United States is 8 years (Kreider & Ellis, 2011). The longest-married same-sex couples in the United States have been married just over a decade with most legally married for a much shorter period of time. Thus, the relatively short legal marriages of same-sex couples in the United States means that we would expect that the *number* of divorces each year would be lower than average. We would also expect that the *length* of marriage before divorce to be lower for same-sex couples. Second, newly married same-sex couples tend to be older and tend to have been in lengthier relationships before marriage; both factors would reduce the likelihood of divorce (Badgett & Herman, 2011). Third, as will be discussed more fully later in the chapter, same-sex couples that marry in marriage equality states but reside in states that do not recognize same-sex marriages face legal hurdles to the dissolution of their legal relationships not faced by heterosexual couples who can gain divorces relatively easily. Finally, not all states track marriage dissolutions in a manner that allows comparison of same-sex and heterosexual couples' divorce rates across the entire population.

With those important caveats in mind, the Williams Institute has done some initial analysis of divorce patterns in a handful of states, recognizing that their data lacks the controls necessary for a true comparison of same-sex and heterosexual divorce (Badgett & Herman, 2011). Their analysis found that while heterosexual couples end their legal partnerships at a rate of 2 % per year, dissolution rates for same-sex couples appear—at the present—to be just about half that rate (1.1 % across states examined). However, it will only be after a generation of same-sex marriages when we can accurately gauge the dynamics of same-sex marriages and fully answer the questions at the beginning of this section. What is true—and will remain true for the foreseeable future—is that legally those same-sex couples who wish to dissolve their marriages face a different, but quickly evolving, legal landscape.[1]

Because same-sex marriage and divorce is an area of public policy in which change has been so quick, gauging patterns of change is challenging. However, in examining the sentiment on the subject among key political and legal actors, it is possible to ascertain if divorce is seen as wholly linked to marriage or a separate legal construct in which change can occur without alterations in undergirding marriage law in a given state. We do find limited support in the analysis of judicial actions below for the hypothesis that state judges, who have traditionally driven this aspect of family law, do see some relevant difference between divorce and marriage. However, importantly, in our analysis of mass attitudes, which has been so fundamentally important to shaping American state-level policy toward same-sex relationships through their votes, that pattern is not found.

The Legalities of Same-Sex Divorce

In examining judges' sentiment toward same-sex divorce, it is crucial to discuss the legal aspects of same-sex divorce in the broader historical context of divorce in the United States. Indeed, the story of divorce in America is the story of sentiment change among the nation's judges, who are crucial actors in shaping divorce law. Same-sex divorce is a possible next stage in the evolution of divorce law.

[1] For a recent journalistic account of the personal and legal aspects of same-sex divorce, see Green (2013).

Both law and social custom shunned divorce throughout most of the nation's history, although it was allowed in limited cases in the colonies of the North and these legal structures remained in the United States after Independence (Furstenberg, 1994). Although little in the way of reliable data regarding marriage dissolution was maintained, before the American Civil War, divorce was exceptionally rare; informal separations and desertions did occur more regularly (Furstenberg, 1994). Only about 5 % of marriages ended in divorce in the years just after the Civil War (Preston & McDonald, 1979).

Divorce rates began to rise in the second half of the nineteenth century as the country became more mobile and more industrialized and as perceptions of marriage as a "duty" tied to child rearing began to fade. Instead, expectations that marriages would provide partners ongoing "fulfillment" began to rise. In the words of marriage and divorce historian, Kristin Celello (2009), marriage also began to be perceived as something one had to "work" at if they were to succeed. With this view came an increase in "marriage counseling," a European technique employed to save rocky marriages. Societal conversations about the purpose of marriage (and the appropriateness of divorce when marriages had failed to "work") were both reflected in and promoted by pop culture portrayals of divorce such as in the 1930 film *The Divorcee*. Even before then, key figures in the women's rights movement had called for liberalization of divorce laws as crucial to making women equals by allowing them to escape unhealthy marriages (Stanton, 1871).

Despite the growing acceptance that divorce was appropriate when marriages had failed, legal divorce remained difficult to achieve in that one party had to provide proof of "fault" by the other party. State law, which fully governed this aspect of family law (in 1859, the Supreme Court had "disclaim[ed]" jurisdiction for federal courts), articulated the appropriate grounds for divorce in a given state. Appropriate grounds ranged dramatically from the populous New York (which saw only adultery as grounds for divorce) and South Carolina (with an outright constitutional ban on divorce) to states like New Mexico (which in the 1930s broadened its divorce laws by adding simple incompatibility to the list of appropriate grounds; Estin, 2007, p. 419).[2]

This diversity of state laws intersected with enhanced mobility to create increasing rates of "Reno divorces" in which a person temporarily migrates to another state to establish residency and gain a divorce (Nevada, the so-called "divorce capital," had reduced its residency requirement to gain a divorce down to 6 weeks by 1931, making it easier to obtain a divorce there than in almost any other state).[3] Unsurprisingly, such dynamics also created federalism crises related to divorce that were ultimately addressed by the US Supreme Court. In 1906, a Supreme Court ruling had declared that a state that was the original "matrimonial domicile" of a party (and where the spouse remained) could refuse to recognize his divorce granted by another state if the party seeking divorce had not provided evidence for the proper grounds for divorce in the state of "matrimonial domicile."[4] The decision in *Haddock* was much criticized as being too dismissive of the Constitution's Full Faith and Credit Clause, which says that states must respect the "public acts, records, and judicial proceedings of every other state," but it partly undermined (but certainly did not stop) migratory divorces.

This decision was overturned in a 1942 case involving two North Carolina residents married to other spouses who had traveled to Nevada, obtained divorces, and married one another before returning to their home states. They were immediately charged with bigamous cohabitation, as North Carolina refused to recognize the ex parte divorces (i.e., divorces where only one party is residing). In *Williams* v. *North Carolina* (1942), the US Supreme Court vacated the convictions saying that the Full Faith and Credit

[2] Barber v. Barber, 62 U.S. 582 (1859).

[3] The dynamics around the law's origins can be found in Nevada Press Association, "From 1931: Divorce, Gambling Get Nevada Governor's Signature," http://www.rgj.com/story/life/2014/04/01/divorce-gambling-get-governors-signature/7135497/

[4] Haddock v. Haddock, 201 U.S. 562 (1906).

Clause required states to recognize divorces acquired in a state where one party had gained state residency.[5] In 1948, the Supreme Court went further, saying that couples desiring to divorce to evade the laws of their home state could legally obtain a divorce in a state with less restrictive laws. In rejecting the home state of Massachusetts' interest in stopping the Florida divorce, the Supreme Court majority in *Sherrer* v. *Sherrer* articulated an individual right to divorce that suddenly made divorce a reliable option in divorce-friendly states like Nevada or Florida (Estin, 2007).[6] Such decisions by the nation's highest court marked a significant shift in judicial sentiment toward divorce.

Because those wishing to divorce faced either the expense of temporarily relocating to another state or the reality of committing perjury to lie about the grounds for a divorce (in what was often a scripted divorce proceeding), societal pressure rose for reform in divorce law. This reshaped the sentiment of the actors who determined the shape of divorce law. Modern women's rights activists were particularly interested in divorce reform to aid women who lacked the resources to gain the legal assistance often necessary to extricate oneself from an unsatisfying (or worse) marriage. No matter these obstacles, by 1964, 36 % of marriages in the United States ended in divorce (Furstenberg, 1994).

While other states were arguably ahead of California in terms of adopting more liberal divorce laws, in September 1969, Governor Ronald Reagan signed legislation making his state the first truly "no-fault" divorce state in the country and began a revolution in divorce laws across the country (Vlosky & Monroe, 2002). Over the next decade and a half, every state except one (New York) adopted "no-fault" divorce. With these changes in law came dramatic jumps in divorce rates in the 1970s although that pattern flattened in the 1980s and has shifted slightly downward since then. In response to these increases in divorce, there was a small burst of interest within states for the development of optional "covenant marriages" which, in addition to other requirements like premarital counseling, would limit the grounds for divorce; three states passed legislation creating such options in the late 1990s while others considered such legislation. While New York had significantly loosened its divorce laws in 1966, it became the last state to embrace "no-fault" divorce in 2010, with both the Roman Catholic Church and the National Organization for Women objecting to that decision based on the experiences from other states ("Is New York Ready for No-Fault Divorce?," 2010).

Legally recognized same-sex partnerships, including marriages that began in Massachusetts in 2003, arrived into an America where divorce had been normalized by changed legal structures and changing community sentiment. By then, as one analyst put it, divorce was generally seen as a "social necessity": "Imagine our social landscape if divorce was not there to soak up the enmity divorces present, if all financial resolutions left by broken marriages ended up being settled in favor of the stronger or the wealthier or the faster or the trickier partner" (Cantor, 2006, p. 139).

Interestingly, however, same-sex marriage advocates hesitated to employ "social necessity" as an argument for marriage equality. In a rare, recent scholarly treatment of same-sex divorce, Andersen (2009, p. 282) argues that, despite its legal importance, "access to the courts to determine the rights and responsibilities of each spouse after a relationship's dissolution," or, "[i]n a word, divorce," has been deemed inappropriate for public discourse by marriage equality advocates. That is because emphasizing divorce emphasizes marital failure, a problem for a group wanting to highlight the more happy qualities of marital benefits. Thus, while focusing on divorce's benefits might make sense legally, it

[5] North Carolina immediately took the cases back to trial and challenged whether the two divorcees had actually gained residency in Nevada; the jury considered the evidence, deemed the tourists as nonresidents of Nevada, and reaffirmed the bigamy conviction. When the case returned to the Court in 1945 in *Williams II*, swing justices on the Court upheld the convictions saying that the couple was properly divorced in the eyes of Nevada but that they had taken a risk that North Carolina would not recognize the divorce based on the lingering questions regarding whether they had become residents of Nevada during their short stay at a motor lodge.

[6] Sherrer v. Sherrer 334 U.S. 343 (1948).

makes less sense as a frame for viewing the fight for marriage equality (particularly for a social group for whom some see relationship instability as a defining characteristic).

Despite this avoidance of the issue by marriage equality advocates, the need for divorce has been addressed more frequently in family law in recent years as same-sex couples who have legally married need to dissolve their relationship in a state where they are residing that does not recognize same-sex marriages. While various book-length works have examined the road toward marriage equality in the courts (see Mezey, 2007, 2009, and Pierceson, 2013, in particular), issues of divorce have been given limited coverage in such works.

Things are simple in states that allow same-sex marriages or which recognize same-sex marriages validly created in other states. This minority of states now allows divorces for same-sex couples to be treated as those for heterosexual couples. On the other end of the continuum, in relatively rare instances, the laws of given states explicitly note that state courts should not recognize marriages from another state even for the purposes of divorce (Holzer, 2011).[7] This is true in Georgia's 2004 state constitutional amendment regarding marriage ("The courts of this state shall have no jurisdiction to grant a divorce or separate maintenance with respect to any such relationship or otherwise to consider or rule on any of the parties' respective rights arising as a result of or in connection with such relationship") and in Ohio's Defense of Marriage statute from the same year ("Any public act, record, or judicial proceeding of any other state, country, or other jurisdiction outside this state that extends the specific benefits of legal marriage to nonmarital relationships between persons of the same sex or different sexes shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state").[8]

In between these two extremes are Defense of Marriage statutes and constitutional amendments that lack any specific language regarding divorce or dissolution of marriages performed in other states and countries. As such, they have provided judges a good deal of discretion on how to handle the recognition of same-sex marriages for the purposes of making them null and void. Many of the states have no state court decisions regarding the issue. According to a 2011 analysis, however, a number of others have (Holzer, 2011). In general, they have bent toward not recognizing the same-sex partnerships for the purposes of dissolution. This was true even in Rhode Island in 2007 (when it was already a state allowing civil unions between same-sex couples on its way to establishing same-sex marriage in 2013). There, the state Supreme Court said that a lower court could not handle the divorce of a Rhode Island same-sex couple legally married in Massachusetts because the state's Family Court was clearly limited to only hearing cases involving legal marriages in Rhode Island; the same-sex marriage was outside those boundaries.[9]

Most interesting, however, a series of state courts have allowed same-sex divorces to proceed in their states even when the state laws are clear in barring same-sex marriages (at least at that point in time).[10] There is no clear geographical pattern, though there is some relationship between a state being on its way to becoming a marriage equality state and having its courts deviate from the norm of refusing same-sex divorces. For example, in Maryland, the state Court of Appeals allowed the divorce of a same-

[7] Section 2 of the 1996 federal Defense of Marriage Act provides that "No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship." This section of the law remained in effect even after the landmark *Windsor* v. *United States* decision in 2013.

[8] Later in 2004, the voters of Ohio also passed a separate DOMA constitutional amendment (James Dao, "Same-Sex Marriage Issue Key to Some G.O.P. Races," *New York Times*, 4 November 2004).

[9] Chambers v. Ormiston, 935 A. 2d 956 (2007).

[10] In addition to the Maryland case discussed below, these states include Delaware, Minnesota, New Jersey, New Mexico, and Washington (Holzer, 2011).

sex couple legally married in California to proceed despite the state's Defense of Marriage Act (DOMA). This occurred just months before marriage equality came to Maryland through vote of the people in 2012. Saying that the "treatment given [same-sex] relationships by the Maryland Legislature (until recently) may be characterized as a case of multiple personality disorder," the Court found that recognition of the marriage for the purposes of divorce was not "repugnant" to the "public policy" of the state.[11] Stating that "[t]he bar in meeting the 'repugnancy' standard is set intentionally very high" and "prohibits generally conduct that injures or tends to injure the public good," the Court found that recognition of a California same-sex marriage failed to meet that "very high" bar.[12]

However, examples of recognizing marriages for the purposes of divorce occur even in states with no real likelihood of becoming marriage equality locales anytime soon. In *Christiansen* v. *Christiansen* (2011), the Supreme Court of Wyoming found that the divorce proceedings of two residents of Wyoming who were legally married in Canada could proceed despite the state's Defense of Marriage statute.[13] The Court emphasized both the breadth of the district court's powers in Wyoming as well as the "limited purpose of entertaining a divorce proceeding" in arguing that the action would not "lessen the law or policy of Wyoming against the allowing of same-sex marriages."[14] In its brief opinion, the Court went on to say, "Specifically, Paula and Victoria are not seeking to live in Wyoming as a married couple. They are not seeking to enforce any right incident to the status of being married. In fact, it is quite the opposite. They are seeking to dissolve a legal relationship entered into under the laws of Canada."[15]

At present, the Texas Supreme Court is grappling with the same issue in two cases that represent division in the lower courts of that state. In a Dallas case of a couple married in Massachusetts, a district court ruled that it did have jurisdiction to consider the case and also rejected the state's attempt to intervene in the case. However, in 2010, a Texas Court of Appeals overturned the district court and found that the lower court lacked jurisdiction to deal with the case because of its origins in a same-sex marriage, which was contrary to the public policy of Texas.[16] In an Austin case about the same time, however, a district court judge granted the divorce of an Austin couple married in Massachusetts before relocating to Texas. A Texas Court of Appeals rejected the state's attempt to intervene in that case.[17] In the state Supreme Court oral arguments in the combined cases in November 2013, the state's deputy attorney general argued, "There is no way to grant a divorce without recognizing a marriage" (Fikac, 2013).[18] On the other hand, a lawyer for the couples seeking the divorce, following the logic of the Wyoming Supreme Court in treating marriage and divorce as separate legal constructs, argued, "Marriage and divorce are opposites of each other" (Ibid.).

There are several patterns related to community sentiment across the policymakers and judges that have grappled with same-sex divorce in non-marriage equality states. First, in both DOMAs and so-called superDOMAs, lawmakers have tended to not isolate divorce as a separate aspect of marital law, making it unclear if lawmakers (and, in cases when constitutional amendments have been placed before voters through a petition process, people play the role of lawmakers themselves) see divorce as inherently linked to marriage or a legal practice that operates in a separate dimension. Second, the absence of clarity in the law has left it up to judges to interpret whether same-sex divorces are allowed or not in

[11] Port v. Cowan, 46 Md. 435 (2012).

[12] Port v. Cowan, p. 14.

[13] Christiansen v. Christiansen 253 P. 3d 153 Supreme Court of Wyoming (2011).

[14] Christiansen v. Christiansen, p. 4.

[15] Ibid.

[16] In the Matter of the Marriage of J.B. and H.B., 326 S.W. 3d 654 (2010).

[17] State of Texas v. Angelique Naylor and Sabina Daly (2013).

[18] http://www.mysanantonio.com/news/local/article/Texas-court-is-cautious-on-allowing-gay-divorce-4956376.php

the state. While judges have generally chosen not to grant same-sex divorces, there are deviations from that norm, particularly in states where marriage law is in flux, suggesting that some judges do see the issues of marriage separately (or, in some cases, as "opposites").

The Mass Public's Sentiment Toward Same-Sex Divorce

In the closing portion of this chapter, we move to the mass public level to investigate community sentiment in a state where same-sex marriage is not permitted. Specifically, we assess whether people view same-sex marriage and same-sex divorce as being inherently linked or as quite different legal constructs. We examined this possible divergence between public attitudes about marriage and divorce in two ways. First, analyzing unique survey data, we determined whether the political, social, and demographic variables that drive attitudes toward same-sex marriage and same-sex divorce are the same or different in the state of South Carolina. We hypothesized that they will differ as a sign of the marriage and divorce operating as separate, yet related, attitudinal phenomena, as judicial opinions from states such as Wyoming have expressed. Second, we employed a priming experiment grounded in the same survey data to see if framing the marriage debate as a "full faith and credit" issue activates an increased support for the recognition of same-sex divorce no matter one's underlying attitudes about marriage (see also Chaps. 8 and 11 for discussion of how sentiment can change based on receipt of information). This would gauge the possibility for creating sentiment change through enhancement of the public's consciousness that the legal system of its state is part of a broader national structure.

The December 2012 Winthrop Poll interviewed 929 adults living in South Carolina.[19] South Carolina is a decidedly non-marriage equality state where voters affirmed that marriage was between one man and one woman in supporting a constitutional amendment by a 78–22 % margin in 2006. Thus, examining South Carolinians on the issue presents a perfect test case on this topic. The survey was carried out from November 25 to December 2, 2012.[20] After weights (for sex, age, and race according to the known population of residents of South Carolina age 18 and older) were applied, results which use all respondents have a margin of error of approximately ±3.5 % at the 95 % confidence level. To ensure no adult in the state was systematically excluded from the sample, the survey used (1) random digit dialing (RDD) and (2) wireless phone number sampling since both RDD and wireless samples are crucial.[21]

These data were unique because in addition to a question regarding attitudes toward altering South Carolina policy toward same-sex marriage, there was also a question regarding sentiment toward same-sex divorce.[22] Specifically, the survey asked: "Regardless of your attitudes

[19] The Winthrop Poll is produced by the Social and Behavioral Research Lab at Winthrop University in Rock Hill, SC. The Winthrop Poll is paid for by Winthrop University with additional support from the West Forum on Politics and Policy at Winthrop University.

[20] Phone calls were made during weekday evenings, all day Saturday, and Sunday afternoon and evening. Weekday daytime calls are generally not made to avoid oversampling those who are more likely to be at home during the day (e.g., retirees, stay-at-home moms, etc.). Conducting weekend calls is important to avoid systematically excluding certain populations (such as those who may work second or third shift during the week).

[21] Both the RDD sample and the wireless sample were purchased from Survey Sampling International (SSI). Phone numbers selected for the survey were redialed five or more times in an attempt to reach a respondent. Once a household was reached, we also employed procedures to randomize within households for RDD sample. Additionally, the wireless sample was screened for wireless-only status since individuals who have a cell phone and a landline already have an established probability of appearing in the RDD. Computerized autodialers were not used in order to ensure the survey of wireless phones complied with the Telephone Consumers Protection Act and all FCC rules regarding contacting wireless telephones.

[22] The authors appreciate the assistance of Marvin Overby in the design of the survey. The baseline marriage question was: "Currently nine states and the District of Columbia permit same-sex marriages. Do you think South Carolina *should* or *should not* recognize the legality of such unions performed in other states?"

toward same-sex marriage, do you think South Carolina should or should not permit gay couples who were married in other states to have their divorce decided under the rules of South Carolina law?"[23]

We first compare whether the variables that shape attitudes toward marriage policy differ from those that shape opinions about permitting judges to consider divorces of same-sex couples. The survey included questions tapping into the key variables that previous research, including our own, has shown to be vital in explaining attitudes about same-sex marriage (see, e.g., Barth, Overby, & Huffmon, 2009; Barth & Parry, 2009; Lewis, 2005; see Chaps. 5 and 6, this volume, for more on studying individual differences in sentiment). These included:

- Gender (with men expected to be more opposed to same-sex marriage)
- Marital status (with married South Carolinians more opposed to same-sex marriage)
- Education (with less educated South Carolinians expected to be more opposed to same-sex marriage)
- Race (with African-Americans more likely to be opposed to same-sex marriage, although as this survey was carried out following President Obama's statement expressing support for marriage equality, we would not be surprised if that pattern from older surveys was not replicated)
- Age (with older citizens more opposed to same-sex marriage)
- Political ideology (with more conservative voters more firmly opposed to same-sex marriage)
- And religious evangelicalism (with those self-identifying as evangelical being more opposed to same-sex marriage)

Finally, our past research has indicated that interpersonal contact with gays and lesbians can be important in reshaping community sentiment through lessening antipathy for same-sex marriage. In the measure of interpersonal contact included in this survey, a focus is on the number of "close friends or family members" who are gay and lesbian as a gauge of the breadth of respondents' interpersonal contact with gays and lesbians (Barth et al., 2009). The exact questions employed for each of these variables, as well as information about the coding of the responses, are shown in an appendix.

Table 9.1 shows the results of an ordinal regression analysis with opposition to same-sex marriage as the dependent variable. All but two variables—gender and race—were statistically significant in the model and all that are significant performed as expected. Gender comes close to achieving significance at the .05 level, with women less opposed to marriage equality.

We next turn to an analysis of support/opposition to same-sex divorce. As Table 9.2 shows, in conflict with our hypothesis that different demographic and political variables would drive attitudes on this different dependent variable, the variables perform *remarkably* similarly in the marriage and divorce models. There are only two meaningful differences between the two models. First, gender, barely nonsignificant in the marriage model, does achieve significance at the .01 level in the divorce model. This suggests that women are more sensitive to providing access to divorce than are men. This is not surprising, considering the history of divorce being viewed as a way for women to escape a bad marriage, as noted earlier. The other change is that marital status slips slightly in its explanatory power in the divorce model, becoming nonsignificant.

Together, these two models suggest that—at least in terms of the political, social, and demographic factors that drive them—same-sex marriage and same-sex divorce operate almost identically in terms of community sentiment. Although not a direct test of whether divorce and marriage are seen as "different," our hypothesis that different demographic, political, and social forces will shape attitudes about them is not supported by these data.

[23] After the initial question, for those who provided an initial response, they were then asked, "Do you feel that way very strongly or somewhat strongly?" This created four ordinal responses (very strongly should, somewhat strongly should, somewhat strongly should not, very strongly should not). All other responses were coded as missing.

Table 9.1 Opposition to same-sex marriage in South Carolina (ordered logistic regression)

Variable	Estimate (std. error)	Wald
Gay interpersonal contact	−.456 (.070)***	43.040
Evangelical	1.143 (.156)***	53.384
Ideology	.600 (.070)***	72.853
Marriage status	.435 (.164)**	7.036
Education	−.167 (.052)***	10.154
Age	.012 (.005)*	6.349
Race: White	−.014 (.184)	.006
Sex	−.225 (.155)	2.092
LR x^2	288.298***	
Pseudo R^2	.320	
$N = 748$		

*$p < .05$; **$p < .01$; ***$p < .001$

Table 9.2 Opposition to same-sex divorce in South Carolina (ordered logistic regression)

Variable	Estimate (std. error)	Wald
Gay interpersonal contact	−.347 (.069)***	25.139
Evangelical	.970 (.156)***	38.840
Ideology	.592 (.071)***	69.687
Marriage status	.234 (.164)	2.025
Education	−.133 (.052)*	6.522
Age	.010 (.005)*	3.956
Race: White	−.237 (.186)	1.622
Sex	−.423 (.155)**	7.423
LR x^2	218.048***	
Pseudo R^2	.266	
$N = 748$		

*$p < .05$; **$p < .01$; ***$p < .001$

We think it is also important, however, to ascertain if, through priming, South Carolina residents can be nudged to think about divorce in a manner as certain courts around the nation have. For the priming experiment, respondents were randomly assigned into three groups with one-third asked the baseline question and two other groups of the same size having the baseline marriage question tweaked in one of two ways. One of the two primed groups had the marriage question asked in a manner that emphasized the concept of "full faith and credit": "Currently nine states and the District of Columbia permit same-sex marriages and the US Constitution requires that 'Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.' Do you think South Carolina *should* or *should not* recognize the legality of such unions performed in other states?" According to our hypothesis, enhanced consciousness of the concept of "full faith and credit"—a key force in prior court proceedings regarding divorce as Americans move across state lines—should reduce opposition to the providing of divorces in a non-marriage state.

The other group had the marriage question altered in a way that emphasized the federal definition of marriage as being between one man and one woman (as in place until the summer 2013 *United States* v. *Windsor* Supreme Court decision): "Currently nine states and the District of Columbia permit same-sex marriages, even though the federal Defense of Marriage Act limits marriages to one man and one woman. Do you think South Carolina *should* or *should not* recognize the legality of such unions performed in other states?"[24] Because South Carolina is a state with consistent opposition to same-sex marriage, we anticipate that this frame will have little effect on attitudes about same-sex divorce.

As shown in Table 9.3, neither frame shifted mass sentiment regarding same-sex divorce. While the priming experiment was not particularly heavy-handed, we did anticipate that introduction of the text of the Full Faith and Credit Clause would activate consciousness of South Carolina's being part of a nation where a need for uniformity as citizens moved from state to state would be valued as in the case of same-sex divorce. That was not the case. Perhaps sentiment about same-sex marriage and divorce is not very malleable, or perhaps the argument intended to encourage participants to view rights in terms of the Full Faith and Credit Clause is simply not persuasive enough to change sentiment.

[24] More states now permit same-sex marriage but nine was the correct number at the time of the survey.

Table 9.3 Opposition to same-sex divorce under South Carolina laws (ordered logistic regression)

Variable	Estimate (std. error)	Wald
Full faith and credit frame	−.044 (.184)	.058
DOMA frame	.118 (.187)	.401
Gay interpersonal contact	−.347 (.069)***	25.080
Evangelical	.974 (.156)***	39.082
Ideology	.592 (.071)***	69.679
Marriage status	.231 (.164)	1.976
Education	−.135 (.052)**	6.652
Age	.010 (.050)*	3.975
Race: White	−.238 (.186)	1.635
Sex	−.422 (.156)**	7.336
LR x^2	218.866***	
Pseudo R^2	.267	
$N = 748$		

*$p < .05$; **$p < .01$; ***$p < .001$

Together, these analyses of sentiment about same-sex divorce on the part of South Carolinians suggest that, at least in that venue, attitudes about divorce are tied tightly to those about same-sex marriage. Our evidence from this one state is that sentiment toward same-sex divorce is driven by the same personal factors that drive sentiment toward same-sex marriage. Moreover, the priming experiment included as a component of the survey suggests that attitudes about same-sex divorce are impervious to the key "full faith and credit" priming frame that has mattered in judicial consideration of the topic of divorce—both heterosexual and same sex—across time.

Conclusion

This chapter provides a foundation for those analyses of the politics surrounding same-sex divorce that will come as the concept of same-sex divorce becomes more common on the American political landscape. However, like all analyses of matters linked to the legal recognition of partnerships in the United States, this overview of community sentiment regarding same-sex divorce on the part of judges and the mass public should be seen as provisional. Both laws and sentiment concerning marriage equality are changing with a pace perhaps unmatched for a major aspect of public policy in modern times. This project suggests that, in general, same-sex marriage and divorce will shift in synchronicity with one another. As such, battles over same-sex divorce cases inevitably will make headlines (and, possibly, create important legal precedent) in the years ahead as the United States moves toward uniformity of its treatment of the marriage rights of same-sex couples. While there are important deviations from this norm, in general—both at the mass level and in the judiciary—marriage and divorce (despite being legal opposites) are tied together in the eyes of most at this stage of the short life of the battle for equal treatment for same-sex couples in the eye of the law. As a result, change in community sentiment regarding these two crucial legal institutions will likely come in lockstep in the years ahead.

Appendix. Coding of independent variables

Gay Interpersonal Contact

Do you have any close friends or family members who are gay or lesbian?"

[CALLER: If yes, ask, "About how many? Would you say it is about one or two, about three or four or five or more?"]

No	1
One or two	2
Three or Four	3
Five or more	4
Don't know/ Not Sure	(coded as missing in analysis)
Refused	(coded as missing in analysis)

Evangelical

Would you describe yourself as a "born again" or evangelical Christian, or not?

Yes	1
Any other answer	0

Ideology

Regardless of your political party affiliation, would you describe yourself as Very Liberal, Somewhat Liberal, Exactly in the Middle, Somewhat Conservative, or Very Conservative?

Very liberal	1
Somewhat liberal	2
Exact middle	3
Somewhat conservative	4
Very Conservative	5
Don't know	(coded as missing in analysis)
Refused	(coded as missing in analysis)

Marriage Status

Which of the following best describe your marital status: Currently married, living together with a partner, widowed, divorced, separated, or never married?

Currently married	1
Living together with a partner	0
Widowed	0
Divorced	0
Separated	0
Never married	0
Don't Know / Refused	(coded as missing in analysis)

Education

What is the highest level of education you have completed?

Less than High School	1
High School graduate / GED	2
Some college	3
Two-year tech college grad	4
Four-year college degree	5
Post Graduate	6
Don't Know / Refused	(coded as missing in analysis)

Age

Self-reported age
Refusals coded as missing in analysis

Race: White

What is your race or ethnicity?

Caucasian	1
All others	0

Refusals coded as missing in analysis

Sex

Female	1
Male	0

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