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Polygamy, Publicity, and Locality: The Place of the Public in Marriage Practice

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INTRODUCTION

In the *State of Utah v. Rodney Holm*,[1] the Utah Supreme Court considered the case of a polygamist marriage. Rodney Holm, a police officer in Hildale, Utah, followed the religious practice of the fundamentalist Mormons. He legally married one woman and subsequently was "sealed"[2] with two other wives in private, religious ceremonies. Anxious to convict Holm on bigamy charges, the Utah Attorney General's office requested that the second spiritual marriage, the one with Ruth Stubbs, be adjudicated to be a common-law marriage. The lower court agreed to adjudicate the marriage, and subsequently found Holm guilty on multiple charges of bigamy. When the case arrived before the Utah Supreme Court, it turned on the question of whether or not the informal, spiritual marriage between Holm and Stubbs

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1. State v. Holm, 2006 UT 31, 137 P.3d 726.
2. *Id.* at ¶ 143, 137 P.3d at 762.

could legally be defined as *marriage*. At stake, the court observed, were "important questions about the State's ability to regulate marital relationships and prevent the formation and propagation of marital forms that the citizens of the State deem harmful."[3] The concern that preoccupied the court, however, was not the propagation of inappropriate forms of marriage, but rather the repetition of appropriate forms and "the indicia of marriage [being] repeated more than once."[4]

This Article offers a reading of *State v. Holm* that highlights the Utah court's struggle to define marriage and presents the court's eventual definition of marriage as one that is based on visual indicators. Although a visual notion of marriage may seem idiosyncratic and out of place in the legal domain—this is the perspective put forth by the dissent in *Holm*—visuality connects to traditional ideas of performance, publicity, and place. Marriage made visible, performed before a public audience, enables and affirms the values attached to publicity—procedural transparency, evidentiary proof, and social legitimacy. A wedding ceremony invites public participation and allows the spectators to both witness pronouncements of fidelity and endow legitimating status on the married couple. However, bringing *public* into the process also raises question about *which* public. Publicity and public viewing attach to some particular communities, and it is important to keep in mind how each community defines itself through fundamental values.

I. PUBLIC AND PRIVATE WIVES: POLYGAMY'S IDIOSYNCRATIC INSIGHT

In 2002, the Attorney General charged Rodney Holm with felony bigamy and two counts of unlawful sex with a minor, his plural wife Ruth Stubbs. The Attorney General's successful prosecution a year earlier of Tom Green, a high-profile polygamist,[5] helped spur the office into action, as did a growing awareness about the plight of child brides in polygamous

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3. *Id.* at ¶ 57, 137 P.3d at 743.

4. *Id.* at ¶ 26, 137 P.3d at 736 (citing State v. Green, 2004 UT 76, ¶ 47, 99 P.3d 820, 832).

5. Tom Green began to make the media rounds in the late 1980s in order to publicize the message of plural marriage. "Between 1988 and 2001, Green appeared on various television shows with the women, consistently referring to the women as his wives, and the women likewise acknowledged spousal relationships." *Green*, 2004 UT 76, ¶ 6 , 99 P.3d at 823. According to one scholar, this

> string of appearances included stints on such evening news shows as NBC's *Dateline NBC*, ABC's *20/20*, and CNBC's *Rivera Live*, on such syndicated daytime talk shows as *The Sally Jesse Raphael Show*, *Queen Latifah*, and *The Jerry Springer Show*, and even in a documentary made by a French television station.

Ryan D. Tenney, *Tom Green, Common-law Marriage, and the Illegality of Putative Polygamy*, 17 BYU J. PUB. L. 141, 143 n.14 (2002). Media commentators called Tom Green's case Utah's "first [high-profile] bigamy case for fifty years." *Polygamy on Trial in Utah*, BBC NEWS (May 14, 2001, 14:34 GMT), http://news.bbc.co.uk/2/hi/americas /1329977.stm.

marriages.[6] The *Holm* case, like the *Green* case, was a result of significant media attention because Ruth Stubbs had fled from her marital home in December of 2001, and thereafter publicly denounced the plural marriage practice, its coercive nature, and its detrimental effects on underage girls.[7]

A. A Runaway Bride and a Custody Dispute

Ruth Stubbs was nineteen when she left Rodney Holm.[8] She had already been married for three years and given birth to two children. Rulon Jeffs, the leader of a breakaway Mormon sect known as the Fundamentalist Church of Latter-day Saints (FLDS), ordered Ruth Stubbs to marry Mr. Holm in 1998.[9] Stubbs had gone to see Jeffs in order to request permission to marry someone else, "a young man she had been seeing secretly for several months."[10] Jeffs declined to consider her plan, saying "[i]t comes to me that you belong to Rod [Holm]," a man who was twice her age and already married to Stubbs's sister.[11] Stubbs testified that Jeffs, the man she recognized as her prophet, had said that she would "lose [her] salvation if [she] didn't marry [Holm]."[12] Stubbs was subsequently "sealed" to Rodney Holm the very next day with her two sister-brides in attendance as bridesmaids.[13] Jeffs presided over this sealing ceremony. "No marriage certificate was issued. Ruth had no right to community property."[14] Three years after the marriage, Stubbs left home because of abusive conditions, taking her two children, and a legal whirlwind ensued. Holm initiated legal proceedings,

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6. *See* Catherine Blake, *The Sexual Victimization of Teenage Girls in Utah: Polygamous Marriages Versus Internet Sex Predators*, 7 J.L. & FAM. STUD. 289 (2005).

7. Adam Liptak, *Polygamist's Custody Fight Raises Many Issues*, N.Y. TIMES, June 16, 2002, at 14.

8. John Dougherty, *Bound by Fear: Polygamy in Arizona*, PHX. NEW TIMES (Mar. 13, 2003), http://www.phoenixnewtimes.com/2003-03-13/news/bound-by-fear-polygamy-in-arizona/.

9. *Id.*

10. *Id.*

11. Liptak, *supra* note 7. Her sister was agitating for the marriage to take place, according to reports.

> [Ruth] tried to postpone the wedding for several weeks, but her sister—who wanted Ruth to join the family to help her in a power struggle with the other wife—pressured Ruth to move forward. "Suzie told me I was an asshole" for wanting to delay the marriage, Ruth said. "Suzie told me that the town, the whole town, already knew I was supposed to marry Rod."

Dougherty, *supra* note 8.

12. Liptak, *supra* note 7. The same story is told in many news outlets, including David Kelly and Gary Cohn, *Insider Accounts Put Sect Leader on the Run*, SEATTLE TIMES, May 16, 2006; Mark Havnes, *'Wife' Testifies in Opening of Bigamy Trial*, SALT LAKE TRIB., Aug. 13, 2003, at B2.

13. Liptak, *supra* note 7, at 14.

14. Dougherty, *supra* note 8.

suing for custody of the children.[15] Very quickly, however, other legal issues came to the forefront, including "serious questions about religious freedom, the sexual exploitation of teenagers by religious institutions and a law enforcement official's obligations to obey the law in his personal life."[16] County prosecutors began an investigation and decided to pursue bigamy charges.[17]

When the case based on bigamy charges came to trial in August 2003, Stubbs was among the first to give testimony.[18] The questions directed at Stubbs related primarily to how she perceived the wedding ceremony and whether or not she understood her marriage to be legal. Stubbs's lawyer emphasized that Stubbs knew her marriage was not legal, saying "Stubbs, however young, knew what she was getting into, and that the union was not a marriage under Utah civil law but was the result of a religious ceremony."[19] Paul Graf, the Assistant Attorney General, stressed instead the essential marital nature of the relationship, telling the jury that Stubbs and Holm "lived as husband and wife . . . [a]nd did all the things normal, married couples do in a relationship."[20] Another Assistant Attorney General asked Stubbs, "Was the word 'marry' used?"[21] Stubbs said that it was not, specifying that the terminology used was that she "belong[ed]" to Holm.[22] Stubbs also "acknowledged the couple did use the words 'I do' but never received a certificate from the ceremony."[23] After a brief deliberation of under two hours, the jury found Holm guilty on all charges, "indicating on a special verdict form that Holm was guilty of bigamy both because he 'purported to marry Ruth Stubbs' and because he had 'cohabited with Ruth Stubbs,'"[24] the two determinative prongs of the Utah bigamy statute.[25]

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15. Liptak, *supra* note 7.

16. *Id.*

17. Sean Alfano, *Utah Court Upholds Anti-Polygamy Law*, CBS NEWS (May 16, 2006), http://www.cbsnews.com/stories/2006/05/16/national/main1622301.shtml.

18. Havnes, *supra* note 12.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. State v. Holm, 2006 UT 31, ¶ 8, 137 P.3d 726, 731-32.

> The trial court sentenced Holm to up to five years in state prison on each conviction, to be served concurrently, and imposed a $3,000 fine. Both the prison time and the fine were suspended in exchange for three years on probation, one year in the county jail with work release, and two hundred hours of community service.

Id. at ¶ 8, 137 P.3d at 732.

25. The Utah bigamy statute provides that "[a] person is guilty of bigamy when, knowing he has a husband or wife or knowing the other person has a husband or wife, the person purports to marry another person or cohabits with another person." UTAH CODE ANN. § 76-7-101 (2011).

On appeal to the Utah Supreme Court, the central question remained defining the term "marriage," as related to the "purports to marry" prong of the Utah bigamy statute. At the outset, and with great understatement, the court remarked that the "definition of 'marry,' . . . is disputed."[26] Holm argued that "the word 'marry' . . . refers only to a legally recognized marriage and that, therefore, there is no violation of the 'purports to marry' provision unless an individual purports to enter into a legally valid marriage."[27] Holm's contention was that he and Stubbs never considered their marriage to be a legal one. The couple never obtained a license and never "contemplated . . . their relationship would entitle them to any of the legal benefits attendant to state-sanctioned matrimony."[28] Holm also contended that Utah's statutes referred to legal relationships when they made use of the term marriage, and that consistency of meaning required "that the term 'marry' should be given the same breadth of meaning wherever it appears in the Utah Code."[29]

The court rejected this argument and held that the term *marriage* "includes both legally recognized marriages and those that are not state-sanctioned."[30] This expansive definition, the court observed, was supported "by the plain meaning of the term, the language of the bigamy statute and the Utah Code, and the legislative history and purpose of the bigamy statute."[31] According to the court, either law or custom could define the plain meaning of marriage. With respect to legislative intent, the court remarked that, "[b]y expressly recognizing unsolemnized marriages and allowing for a judicial determination to establish a legal marriage . . . the Legislature has acknowledged that the attainment of a marriage license from the State is not determinative of whether a marriage exists."[32] Marriage was not confined to a legal relationship; it was bounded neither by civil licensing nor by the intent of the couple. The court allowed *marriage* to be simultaneously religious, and civil, private and public, finding that the "language contained in the bigamy statute [was] not confined to legal marriage and [was], in fact, broad enough to cover the type of religious solemnization engaged in by Holm and Stubbs."[33]

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26. *Holm*, 2006 UT 31, ¶ 8, 137 P.3d at 733.
27. *Id.* at ¶ 7, 137 P.3d at 733.
28. *Id.* at ¶ 13, 137 P.3d at 732.
29. *Id.* at ¶ 24, 137 P.3d at 735.
30. *Id.* at ¶ 18, 137 P.3d at 733.
31. *Id.*
32. *Id.* at ¶ 23, 137 P.3d at 735.
33. *Id.* at ¶ 14, 137 P.3d at 732.

B. The Failed Work of Dictionaries

The *Holm* opinion communicates the vast confusion around the definition of *marriage*, and illustrates the difficulty of drawing bright lines of difference between legal marriage and other, private permutations of an intimate relationship. In Tom Green's bigamy case, the same court, puzzling over the cohabit prong of the bigamy statute, had stated that "[w]ords are symbols of communication and as such are not invested with the quality of a scientific formula."[34] Because of the instability attached to language, the *Holm* court articulated its interpretive strategy before analyzing the terms: "our primary goal in interpreting statutes is to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve."[35] The court presumed that the legislature used each term, every time, "according to its ordinary and accepted meaning,"[36] and therefore intended to read "the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters."[37]

The concept of plain language—the pursuit and discovery of "ordinary and accepted meaning"—required the court to turn to the dictionary. The court found that the *Merriam-Webster Dictionary* entry defined the common usage of the term "marriage" very broadly, encompassing relationships sanctioned by either "law or custom."[38] Holm relied instead on *Black's Law Dictionary*, which provided a definition of marriage as "[t]he legal union of a man and woman as husband and wife."[39] The court countered this argument by observing that:

> *Black's Law Dictionary* contains several definitions of different types of marriage that are, by definition, not legally recognized. For example, "putative marriage" is "*marriage* in which husband and wife believe in good faith that they are married, but for some technical reason are not formally married (as when the ceremonial official was not authorized to perform a marriage)"; "clandestine marriage" is "*marriage* that rests merely on the agreement of the parties" or "*marriage* entered into in a secret way, as one solemnized by an unauthorized person or without all required formalities"; and "void marriage" is "*marriage* that is invalid from its inception, that cannot be made valid, and that can be terminated by either party without obtaining a divorce or annulment."[40]

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34. State v. Green, 2004 UT 76, ¶ 49, 99 P.3d 820, 832 (Utah 2004).

35. *Holm*, 2006 UT 31, ¶ 16, 137 P.3d at 733 (citing Foutz v. City of S. Jordan, 2004 UT 75, ¶ 11, 100 P.3d 1171 (Utah 2004) (internal quotation marks omitted)).

36. *Id.* (citing C.T. v. Johnson, 1999 UT 35, ¶ 9, 977 P.2d 479 (Utah 1999) (internal quotation marks omitted)).

37. *Id.* (citing Miller v. Weaver, 2003 UT 12, ¶ 17, 66 P.3d 592 (Utah 2003)).

38. *Id.* at ¶ 19, 137 P.3d at 733.

39. *Id.*

40. *Id.* at ¶ 20, 137 P.3d at 734.

Looking at the Utah code, the court suggested that related statutes made clear the legislature used the term *marriage* in a similarly fluid way and did not intend the term *marriage* to refer uniquely to legal relationships. The court's interpretation relied on the "unsolemnized marriage" statute,[41] and the Utah "Solemnization of prohibited marriage" statute.[42] Taking into account these examples, the court concluded that consistency existed: "[I]t is clear that the Legislature did not intend to limit 'marriage,' as it is used throughout the Utah Code, to legally recognized marriages."[43] The court added that "the Legislature has acknowledged that the attainment of a marriage license from the State is not determinative of whether a marriage exists."[44] The court, therefore, untethered marriage from state licensing, considered to be the prototypical state intervention into marriage. The outcome of this analysis was the court's surprising statement that "the license itself is typically of secondary importance to the participants in a wedding ceremony. The crux of marriage . . . [is] the steps, whether ritualistic or not, by which two individuals commit themselves to undertake a marital relationship."[45] In defining marriage as an unbounded relationship and refusing to limit the marital relationship to its state sanctioned form, the court explicitly opened new possibilities for finding, recognizing, and defining marriage.

In her dissent, the Chief Justice of the court disagreed with the majority's interpretation of the term *marriage*, suggesting that this definition conflated legal and "idiosyncratic meaning."[46] She characterized the majority analysis and its resulting "expansive definition"[47] of marriage as deeply flawed, saying:

> I do not believe it is appropriate to interpret the term "marry" when it appears in a state statute as providing what is essentially an anthropological description of human relationships. To do so is to ignore the fact that the law of our state and our

41. UTAH CODE ANN. § 30-1-4.5 (2003). The court also relies on Whyte v. Blair, 885 P.2d 791, 793 (Utah 1994) ("[The judicial decree] merely recognizes that a woman and a man have by their prior consent and conduct entered into a marital relationship, although it was not theretofore formally solemnized or otherwise legally recognized.").

42. UTAH CODE ANN. § 30-1-15 (2011). This original bill was passed in 2001 and was "a response to increasing reports of coerced marriages of underage girls in Utah, primarily among polygamist communities." *See Recent Developments in Utah Law: Family Law*, 2001 UTAH L. REV. 1132, 1132 (2001). The article mentions that Senator Allen had "received an e-mail listing 116 child marriages, with names and dates, and cited one particularly egregious instance where a girl was traded by her parents for a Winnebago." *Id.* at 1135.

43. *Holm*, 2006 UT 31, ¶ 23, 137 P.3d at 735.

44. *Id.*

45. *Id.* at ¶ 32, 137 P.3d at 737.

46. *Id.* at ¶135, 137 P.3d at 759 (Durham, J., concurring in part and dissenting in part).

47. *Id.* at ¶ 139, 137 P.3d at 761.

> nation has traditionally viewed marriage as denoting a legal status as well as a private bond.[48]

Her dissent emphasized the need to draw and maintain strong boundaries between private, religious, commitments and the civil marriage: "Any two people can make private pledges to each other, with or without the assistance of a religious official, but these private commitments are not equivalent to marriage absent a license or an adjudication of marriage."[49] Legal marriage, she argued, changed a relationship not just through "gravity of . . . commitment[]," but also through the "1,138 federal statutory provisions 'in which benefits, rights, and privileges are contingent on marital status.'"[50] Although a couple might consider themselves *married*, and might even be *married* in the eyes of a particular church, subjecting that couple to criminal penalty for this mis-identification of the relationship would be akin to

> disciplining an individual who goes by the name of "Doctor W," but who is not, in fact, a licensed physician, for violation of state licensing requirements even though he has never professed to be a legally licensed doctor or to have the medical expertise which that status is designed to ensure.[51]

Chief Justice Durham attempted to craft a more narrow definition of marriage, one that would neither equalize all forms of personal commitment by conflating community, religious, and state forms of marriage, nor conflate all sources of authority and legitimation.[52]

C. A White Dress and a Wedding Photographer

Despite the court's manifest lack of ability to settle on a narrowly tailored and precise verbal definition of *marriage*, an implicit definition of marriage does emerge. Unable to reach consensus on quite how to make plain what constitutes a marriage through verbal definition, the qualities that come to bear on the question are those of visuality and materiality. What makes a marriage legitimate in this framework is not a particular definitional standard or description so much as a set of material circumstances and a moment of social performance. Marriage exists when the bride wears a white dress, when there is a religious personage officiating, when there is cake and photographers.

In *Holm*, this visual definition of marriage becomes apparent in the repeated references to the traditional-looking wedding ceremony in which

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48. *Id.* at ¶ 137, 137 P.3d at 760.

49. *Id.* at ¶ 145, 137 P.3d at 763.

50. *Id.* at ¶ 145 & n.7, 137 P.3d 763 & n.7 (quoting U.S. GEN. ACCOUNTING OFFICE, GAO-04-353R, DEFENSE OF MARRIAGE ACT: UPDATE TO PRIOR REPORT 1 (2004), *available at* http://www.gao.gov/new.items/d04353r.pdf).

51. *Id.* at ¶ 146, 137 P.3d at 763.

52. *Id.* at ¶ 131, 137 P.3d at 758.

Holm and Stubbs take part. The court describes the "religious marriage ceremony" that Rodney Holm participated in with the then-sixteen-year-old Ruth Stubbs:

> Stubbs testified that she had worn a white dress, which she considered a wedding dress; that she and Holm exchanged vows; that Warren Jeffs, a religious leader in the FLDS religion, conducted the ceremony; that other church members and members of Holm's family attended the ceremony; and that photographs were taken of Holm, Stubbs, and their guests who attended the ceremony.[53]

Ruth Stubbs testified that she and Holm had regular sexual relations, that she had "conceived two children with Holm" before she turned eighteen,[54] and that they "regarded each other as husband and wife."[55] What reappears in the decision, however, are not the facts regarding the nature of the couple's intimate relationship, but rather the details of the ceremony, most especially the white dress. The white wedding dress, mentioned twice in the majority opinion and twice in the dissent, is a striking detail. The majority's intent may be guessed—to conjure in the reader's mind an image of a traditional wedding dress and ceremony that is broadly recognizable, thereby tapping into a collective cultural imagination. Responding to the majority's invocation of the white wedding dress, the Chief Justice reiterated the trope, somewhat facetiously, saying that "a minister officiating in a commitment ceremony involving a same-sex couple may now be held in violation . . . (though perhaps only if at least one partner is wearing a white dress)."[56]

The court returns to a description of the wedding ceremony at multiple points in the opinion, repeating that, "[a]t the ceremony, Stubbs wore a white dress, which she considered a wedding dress."[57] Also repeated is the fact that there was a religious leader officiating, that the couple repeated vows "typical of a traditional ceremony,"[58] and that Ruth Stubbs referred to the ceremony as a marriage.[59] Reinforcing the authority of visual markers, the court also adverts to the fact guests were present to witness the ceremony and photographers captured images of the ceremony. A vocabulary of viewing and spectatorship is woven throughout the opinion as well, embroidering it with words like "appeared," "regarded," "seems," and "material."[60]

The court's conclusion is that "the ceremony in which Holm and Stubbs participated appeared, in every material respect, indistinguishable

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53. *Id.* at ¶ 4, 137 P.3d at 731 (majority opinion).
54. *Id.* at ¶ 2, 137 P.3d at 730.
55. *Id.* at ¶ 5, 137 P.3d at 731.
56. *Id.* at ¶ 144, 137 P.3d at 762-63 (Durham, J., concurring in part and dissenting in part).
57. *Id.* at ¶ 30, 137 P.3d at 736 (majority opinion).
58. *Id.* at ¶ 30, 137 P.3d at 737.
59. *Id.* at ¶ 31, 137 P.3d at 737.
60. *Id.* at ¶¶ 5, 21, 30, 137 P.3d at 731, 734, 737.

from a marriage ceremony to which this State grants legal recognition on a daily basis."[61] The suggestion that Stubbs and Holm "engaged in a relationship that mirrored that of a traditional marriage"[62] is powerful because it elevates the religious ceremony to the level of legal procedure. The suggestion also becomes purposeful when the court references the aim of the bigamy statute, namely to prevent "all the indicia of marriage repeated more than once."[63] The plural marriage "sealing" ceremony is simultaneously worthy of legal status because it looks like a conventional wedding and subject to penalty because it mimics the "marriage ceremony to which [the] State grants legal recognition on a daily basis."[64] The use of these formal, visual cues does not go unnoticed in the dissent opinion. In her dissent, Chief Justice Durham observed that the "majority upholds Holm's criminal bigamy conviction based solely on his participation is a private religious ceremony because the form of that ceremony—though not its intent—resembled what we think of as a wedding."[65]

II. PUBLICITY REQUIREMENTS AND LOCAL MEANING

A visual definition of marriage is not necessarily an unusual or unexpected standard or criteria for the Utah court, or any court, to adopt. Marriages, both formal and informal, have traditionally been defined by some visual component, performed in conjunction with the exchange of vows, religious contracting, and state licensing. The visual components correlate with ceremony, spectacle, and publicity. Unlike a private exchange of vows or private contract, a visual ceremony communicates the form and force of the act to a wider swath of individuals and invites community participation. This dissemination of information is the essence of publicity for a theorist like Jeremy Bentham, who observed that:

> Publicity and privacy have for their measure the number of the persons to whom knowledge of the matters of fact in question is considered as communicated, or capable of being communicated. The degree of actual publicity will be great or high, in the direct ratio of the number of persons to whose minds the knowledge of the matter or matters of fact in question has been communicated.[66]

The publicity principle, as defined by Bentham, assumes that a society derives benefit from exposure to information—the more people in possession

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61. *Id.* at ¶ 30, 137 P.3d at 737.

62. *Id.* at ¶ 81, 137 P.3d at 747.

63. State v. Green, 2004 UT 76, ¶ 47, 99 P.3d 820. 832 (Utah 2004).

64. *Holm*, 2006 UT 31, ¶ 30, 137 P.3d at 737.

65. *Id.* at ¶ 132, 137 P.3d at 758 (Durham, J., concurring in part and dissenting in part).

66. Jeremy Bentham, *Of Publicity and Privacy, As Applied to Judicature In General, and to the Collection of the Evidence In Particular*, *in* RATIONALE OF JUDICIAL EVIDENCE, SPECIALLY APPLIED TO ENGLISH PRACTICE 511, 512 (1827).

of knowledge, the better. For Bentham, however, the publicity principle did not just involve public knowledge but public judgment. His *Public Opinion Tribunal* represented the embodiment of public judgment and imagined a vehicle through which public opinion would carry socio-political as well as moral weight. The *Public Opinion Tribunal* was a "fictitious tribunal . . . reigned under the pressure of inevitable necessity for the purpose of discourse to designate the imaginary tribunal or judiciary by which the punishments and rewards of which the popular or moral sanction is composed are applied."[67] This fictional tribunal had four core functions: to provide and review evidence, to express "approbation or disapprobation" (the "censorial function"), the "executive function" of granting or withholding reward, and the "melioration-suggestive function" of proposing improvements.[68] In the marital context, the public and publicity components to the marriage ceremony tracked several of Bentham's functions by not only endowing a marrying couple with the reward of status and legitimacy, but also by providing visual recordation that doubled as evidentiary proof and expressing collective approbation as appropriate.

A. Publicity as Evidence: Endowment at the Church Door

Early marriage traditions, developed in late medieval times and continued into the early-modern period, strategically deployed publicity requirements. In order to be legally married, a couple could exchange vows and be married *per verba de praesenti.* A "spiritual contract expressed with present intent (*per verba de praesenti*), once made, would not admit further hesitation or bargaining, for in the eyes of the church it constituted a binding marriage."[69] Canon law was satisfied by this exchange of present-tense vows that signaled present intent, consent, and capability.[70] A couple was not, however, entitled the full range of marital benefits or protection from third-party disruption without a public solemnization ceremony.

One problem with the private exchange of vows was that this exchange provided no proof of marriage and therefore no protection against other, future claimants to the same husband or wife. A man could easily exchange private vows with one woman and subsequently marry another,

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67. JEREMY BENTHAM, *Constitutional Code Rationale, in* FIRST PRINCIPLES PREPARATORY TO CONSITUTIONAL CODE 283, 283 (Philip Schofield ed., 1989).

68. JEREMY BENTHAM, *The Constitutional Code, in* THE WORKS OF JEREMY BENTHAM 158, 158 (John Bowring ed., 1856); *see also* Fred Cutler, *Jeremy Bentham and the Public Opinion Tribunal*, 63 PUB. OPINION Q. 321, 328 (1999).

69. R.H. Helmholz, *Marriage Contracts in Medieval England, in* TO HAVE AND TO HOLD: MARRYING AND ITS DOCUMENTATION IN WESTERN CHRISTENDOM, 400-1600, at 260, 264 (Philip L. Reynolds & John Witte Jr. eds., 2007).

70. Frederick Pederson, *Marriage Contracts and the Church Courts of Fourteenth-Century England, in* TO HAVE AND TO HOLD, *supra* note 69, at 287, 289.

either in private or in a public ceremony. In this type of situation, "public ceremony or the witnessed contract would prevail over the private exchange of vows."[71] "[C]anon law explicitly stated that the sole confession of the parties themselves was not sufficient."[72] Public ceremony and public participation through witnessing provided proof of a marriage and created a legal right for each spouse that was subsequently enforceable in the spiritual court, were dispute to arise.

Common law courts similarly required public performance of the marriage before recognizing marital property rights. A significant right created through solemnized marriage was a wife's endowment. Through a process known as *endowment at the church door*, a wife gained her dower right the moment that the marriage was acknowledged at the church doorway in a public ceremony.[73] The custom was for "the bridegroom to endow his bride . . . at the time of the marriage ceremony performed at the church door. There, using words of present gift, he named the lands which she should have for her dower after his death."[74] Because of the property interests at stake "royal courts were anxious for the acts which gave rights in land to be open and notorious, and they refused to recognize an endowment which had not been made publicly in this way."[75] Pollock and Maitland called this "Bracton's rule" and confirmed that "[n]o woman can claim dower unless she has been endowed at the church door."[76] Pollock and Maitland also confirmed that the ritual of endowment at the church door was, at its core, a publicity requirement: "what our justices are demanding is, not a religious rite, nor 'the presence of an ordained clergyman,' but publicity."[77] Like the public ceremony of solemnization that proved a private exchange of vows, the endowment ceremony also provided necessary evidence in cases of dispute. "As a result, it became less obvious that the churchdoor ceremony

71. REBECCA PROBERT, MARRIAGE LAW AND PRACTICE IN THE LONG EIGHTEENTH CENTURY: A REASSESSMENT 29 (2009).

72. *Id.*

73. 2 SIR FREDERICK POLLOCK & FREDERIC WILLIAM MAITLAND, THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I 372-74 (1895).

74. George L. Haskins, *The Development of Common Law Dower*, 62 HARV. L. REV. 42, 45-46 (1949).

75. *Id.* at 46; *see also* POLLOCK & MAITLAND, *supra* note 73, at 373 ("The justices who demanded an endowment at the church door were the justices who set their faces against testamentary gifts of land, and strenuously endeavoured to make livery of seisin mean a real change of possession. The acts which give rights in land should be public, notorious acts.").

76. POLLOCK & MAITLAND, *supra* note 73, at 372.

77. *Id.* Pollock and Maitland come to this conclusion because "Bracton tells us that the endowment can and must be made at the church door even during an interdict when the bridal mass can not be celebrated." *Id.* at 372-73.

actually created property rights than that it provided public proof that a marriage existed from which property rights derived."[78]

B. Publicity as Accountability: Marriage Banns

Publicity requirements embodied in the practice of proclaiming marriage banns represented an attempt to foster transparency by creating collective accountability for the validity of the marriage. Marriage banns dated back to a 1200 council of Lambeth constitution and a 1215 Lateran council proclamation by Pope Innocent III,[79] but their use most likely predated those proclamations by a great number of years as customary use.[80] Pollack and Maitland noted that banns were intended as a "calling upon all and singular to declare any cause or just impediment that could be urged against the proposed union."[81] Ecclesiastical authorities designed banns to elicit community knowledge of and reporting on any existing impediments to a marriage. The impediments in question were, legally speaking, much then what they are today—age, consent, existing marriage, and consanguinity.[82] A preexisting marriage was a difficult impediment to discover and was, "by far the most important impediment legally and socially."[83]

Banns were designed to uncover precontracts by subjecting a betrothed couple to public scrutiny.[84] The parish priest announced the wedding plans on three separate occasions in the local church, advertising the couple's intention and allowing time for witnesses to come forward.[85] In answer to the question of when, or at which religious service, the priest would read the banns, one religious commentator remarked, "it is not the place that matters most, but the presence of the people, . . . therefore the banns might be published in chapels, or even any place in which Mass would be celebrated with a large concourse of people."[86] Banns were an integral part of marriage reform under the 1563 Council of Trent, whose

78. Christine Peters, *Gender, Sacrament and Ritual: The Making and Meaning* of *Marriage in Late Medieval and Early Modern England*, 169 PAST & PRESENT 63, 81 (2000).

79. POLLOCK & MAITLAND, *supra* note 73, at 368.

80. LYNN D. WARDLE & LAURENCE C. NOLAN, FUNDAMENTAL PRINCIPLES OF FAMILY LAW 158 (2d ed. 2006).

81. POLLOCK & MAITLAND, *supra* note 73, at 368.

82. Michael M. Sheehan, *Choice of Marriage Partner in the Middle Ages: Development and mode of application of a theory of marriage*, *in* MEDIEVAL FAMILIES: PERSPECTIVES ON MARRIAGE, HOUSEHOLD, AND CHILDREN 157, 167-70 (Carol Neel ed., 2004).

83. Shannon McSheffrey, *Place, Space, and Situation: Public and Private in the Making of Marriage in Late-Medieval London*, 79 SPECULUM 960, 966 (2004).

84. *Id.* at 965.

85. *Id.*

86. H.A. AYRINHAC, MARRIAGE LEGISLATION IN THE NEW CODE OF CANON LAW 57 (1918).

goal was to stem clandestine marriage and "protect against the sin of illegal second marriages by instituting formal and public marriage requirements."[87] The reforms that arose from the Council of Trent confirmed the Lambeth principles and those of the Lateran council and added to the banns requirement by "making the validity of marriage dependent on its being performed before a priest and in the presence of two or three witnesses."[88]

When the English Parliament passed Lord Hardwicke's Marriage Act in 1753, clandestine marriages were similarly a target. (The bill was named An Act for the better preventing of Clandestine Marriages.)[89] Also targets, however, were the quick "Fleet Street"[90] marriages and crimes of mobility, such as polygamy "in its eighteenth-century version, where men married several times, abandoning wives and children as they went along."[91] According to the government, the Act was "designed to prevent rich heirs and heiresses of good family from being seduced into clandestine or runaway marriages with their social or economic inferiors."[92] The Act therefore stipulated new residency requirements and stated that marriage banns "were to be called in the parishes where the parties had resided for a month beforehand."[93] A couple was required to give a week's notice to the minister or priest, and if the couple did not follow the rules set out by the Marriage Act the individuals were subject to felony prosecution and transportation.[94] Publicity in the context of marriage banns consequently operated to ensure transparency by requiring the betrothed couple to engage in public performance, community affiliation, and broad advertising.

C. Publicity as Legitimacy: Wedding Announcements

The ceremonial and publication traditions associated with marriage "underscore the idea that spousal accountability extends to the community as well as to the partner. . . . [W]edding announcements, and the participa-

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87. Ellen Kandoian, *Cohabitation, Common Law Marriage, and the Possibility of a Shared Moral Life*, 75 GEO. L. J. 1829, 1853 (1987).

88. *Id.*

89. An Act for the Better Preventing of Clandestine Marriages, (1753) 21 THE STATUTES AT LARGE, FROM THE 26TH TO THE 30TH YEAR OF KING GEORGE II 124, 124 (Eng.).

90. Fleet Street Marriages "were held in the area round the Fleet Prison known as the Rules. Such marriages required no publication of banns, no parental consent nor any other formal interference from outsiders. . . . Nearly everything to do with such marriages had a sordid and semi-criminal reputation . . . ." PETER EARLE, THE MAKING OF THE ENGLISH MIDDLE CLASS: BUSINESS, SOCIETY, AND FAMILY LIFE IN LONDON, 1660-1730, at 178 (1989).

91. Eve Tavor Bannet, *The Marriage Act of 1753: "A Most Cruel Law for the Fair Sex,"* 30 EIGHTEENTH-CENTURY STUDIES 233, 239 (1997).

92. *Id.* at 233.

93. R.B. OUTHWAITE, CLANDESTINE MARRIAGE IN ENGLAND, 1500-1850, at 79 (1995).

94. *Id.*

tion of family and friends in the wedding ceremony all suggest the importance of community witness to the mutual expression of commitment."[95] While public performance of the wedding confirms the legal status of the couple by creating evidence and accountability, the same public performance also confers social status. Marriage, as a "passage of status"[96] calls for publicity not only to expose information but also to "sanction[] a new social position."[97] Bentham envisioned this same function for his *Public Opinion Tribunal* exercising its censorial and executive functions, dispensing or withholding the status good of reputation. A modern iteration of the marriage banns—the wedding announcement—reflects this use of publicity in the service of status.

After the passage of Lord Hardwicke's Act allowed a marriage license to substitute for the calling of banns (as long as a solemnization ceremony took place),[98] banns evolved into vehicles for status proclamations in the form of wedding announcements, sent by card or published in a newspaper. In this modern marriage practice, announcements are sent by card or published in a newspaper.[99] Papers like the *New York Times* began regularly publishing wedding announcements by end of the nineteenth century, and a published notice in the *Times* or another large-circulation paper quickly became a status standard. "[T]here is nothing more prestigious than being featured in The *New York Times* wedding announcements in the Sunday Styles section,"[100] because the "*New York Times* wedding announcements . . . are, after all, an ultimate sign of societal status."[101] Operating on the theory that a "wedding, with all the attendant festivities, is an important manifestation of the social position of the families involved,"[102] news media created specific space to publicize upscale unions and society mergers, just as royal and aristocratic weddings had been announced and publicized in previous centuries.[103]

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95. Elizabeth S. Scott, *Social Norms and the Legal Regulation of Marriage*, 86 VA. L. REV. 1901, 1917 (2000).

96. EDWARD MUIR, RITUAL IN EARLY MODERN EUROPE 33 (2005).

97. *Id.*

98. OUTHWAITE, *supra* note 93, at 82.

99. PEGGY POST, EMILY POST'S WEDDING ETIQUETTE 6 (5th ed. 2006).

100. Sebastian, *The New York Times Newspaper Wedding Announcements: The Gold Standard of Wedding Announcements*, http://hubpages.com/hub/The-New-York-Times-Newspaper-Wedding-Announcements (last visited April 4, 2011).

101. Brenda Cossman, *Betwixt and Between Recognition: Migrating Same-Sex Marriages and the Turn Toward the Private*, 71 L. & CONTEMP. PROBS. 153, 155 (2008).

102. David L. Hatch & Mary A. Hatch, *Criteria of Social Status as Derived from Marriage Announcements in the New York Times*, 12 AM. SOC. REV. 396, 396 (1947).

103. For an example of the use of royal weddings to create and use publicity, see David Cannadine, *The Context, Performance, and Meaning of Ritual: The British Monarchy and the 'Invention of Tradition', c. 1820-1977*, *in* THE INVENTION OF TRADITION 101, 101-64 (Eric Hobsbawm & Terence Ranger eds.,1983).

This type of publicity, and the promise of social status that it offered, confirmed the position of leading families, but it also opened the door to new families who were trying to establish their social legitimacy. In a study from 1947, two sociologists found that the majority of couples listed in the *Times* wedding announcements, while hailing from the upper social echelons as defined by profession and education, were not listed in New York's Social Register. Their research found that the "emphasis upon achievement in professions and business by relatives and parents contributes to mobility in this social system."[104]

Wedding announcements have also mirrored recent shifts in the demographics of upper classes. Wedding announcements, from this perspective, have contributed to validating new forms of social and marital ordering. As Emily Post's granddaughter wrote in 2005, updating her grandmother's classic wedding etiquette book: "The *New York Times* made journalism history in 2002 when the newspaper began including commitment ceremonies among its traditional wedding write-ups. A number of large city newspapers have followed suit."[105] The move to include commitment ceremonies demonstrated a progressive sense of social values. Class and status concerns remained prominent, leading one commentator to note that "[t]he gays on the wedding pages of today's *New York Times* are remarkable for their elite status, not for their sexuality."[106] The point of inclusion, however, may not have been to underscore the need for marriage equality, but rather to demonstrate that same-sex couples shared prestige markers with their opposite-sex counterparts.

III. WHICH PUBLIC? DEFINING COMMUNITIES

Publicity requirements highlight the fact of a viewing audience, insist on the act of witnessing (sometimes legally), and implicate a particular community. Bentham's principle that the degree of publicity corresponds to the number of people who are informed understands community as a broad

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104. Hatch & Hatch, *supra* note 102, at 403. The study found that the important criteria were, outstanding occupational achievements by all the male members. *Id.*

> The social status of parents, which appears to be associated with occupational achievement, is strongly influential in setting standards of personal achievement for the children. Among the attributes valued by this group are graduation from private school, graduation from college and professional school for men, a debut and marriage for a woman, and acceptance by certain formalized social groups.

Id.

105. POST, *supra* note 99, at 9.

106. Marguerite Moritz, *Say I Do, Gay Weddings in Mainstream Media*, *in* MEDIA QUEERED: VISIBILITY AND ITS DISCONTENTS 180, 182 (Kevin G. Barnhurst ed., 2007).

and undifferentiated group, perhaps best defined as a nation's citizenry.[107] Because transparency and accountability are two of Bentham's paramount virtues, the lack of a differentiated citizenry is both purposeful and acceptable. Optimal publicity requires that as many people as possible have access to the utmost information possible, disseminated through media and other channels.[108] This notion of publicity posits a large public, associated with a certain type of community—also large, perhaps national, and connected loosely by shared interest in improved governance. This type of publicity trades in nation-state rules and norms that shape the legal backdrop against which communities form and marriages take place.

Traditional marriage practices requiring publicity reveal another concept of public, however, that places importance on the local community. Traditional marriage practices assume equivalence between public and community because the audience for a wedding ceremony is a highly specific one, created through geographic proximity and familial connection. The traditional ceremonies are grounded in place and given status by the collective of people in that place. Legal rules about marriage, in the American context, are firmly entrenched in state-level regulation that varies distinctly according to national geography. The demands for publicity particular to marriage may depend in some ways on a thinly sliced and highly differentiated public. Changes to marriage law and regulation, however, may create new ways to think about local affiliation and draw local borders.

A. Traditional Borders: Village, State, and Nation-State

The importance of the local community is evident from the marriage banns requirement, insisting as it does on a couple's attachment to a specific parish and actively soliciting the input of parish members.[109] The natural boundedness of the parish as a unit of community, sociability, and governance simplified, historically, the job of defining a community. Friends and neighbors in the parish brought information, opinion, approval, and status to

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107. *See* Mark Fenster, *The Opacity of Transparency*, 91 IOWA L. REV. 885, 896 (2006) ("Bentham, for example, argued that publicity enables closer relations between the state and its public by securing the confidence of the governed in the legislature, by facilitating communication between the state and the public, and by creating a more informed electorate.").

108. Dilip Parameshwar Gaonkar & Robert J. McCarthy Jr., *Panopticism and Publicity: Bentham's Quest for Transparency*, 6 PUB. CULTURE 547, 554 (1994) ("Publicity, understood as an institutional arrangement representing both a juridical condition (the freedom of speech and press) and a technology (print), facilitates the transformation of opinion into public opinion through rational-critical discussion.").

109. *See* McSheffrey, *supra* note 83, at 966; *see also* discussion *supra* Section II.B.

the marriage, just as the banns obliged a couple to authorize and advertise reciprocal recognition of community belonging.[110]

Moving past the parish, a traditional site of the American localism and marriage regulation is the state. Domestic relations regulation has traditionally been an exception to federal diversity jurisdiction and a source for federal court abstention.[111] Individual states have been the source of the majority of law regulating marriage, divorce, and child custody. Each state cares for its own *household matters* and defines marriage according to the preferences of the population. The reverse—that marriages define the state—may also, however, be true. New York's argument for ownership of Ellis Island in a 1998 Supreme Court case rested in part on the fact that marriages licensed in New York were performed on the island.[112] New York presented evidence of some half-dozen marriage certificates registered on the island, augmenting the evidence with interviews of Island employees and historians "who recalled 'numberless' weddings on the Island (said to have been solemnized under New York law) until the policy of marrying immigrants on the Island was dropped and the immigrants were brought to City Hall in New York instead."[113] In the absence of greater number and any recordation, this argument failed; however, the fact that the state attempted to define its territory through the marriages performed remains telling.

State regulation also has a pivotal position in current American conversations about marriage because of the fraught division between state and federal law on the recognition of same-sex marriage. Although a growing number of states recognize same-sex marriage, the federal prohibition on the recognition of these same-sex marriages for federal purposes creates tension.[114] The Defense of Marriage Act (DOMA) underscores that tension, stating that "[n]o State . . . 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."[115] DOMA puts

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110. *See supra* Part II.B.

111. *See* Ankenbrandt v. Richards, 504 U.S. 689, 693 (1992) ("The domestic relations exception upon which the courts below relied to decline jurisdiction has been invoked often by the lower federal courts. The seeming authority for doing so originally stemmed from the announcement in *Barber v. Barber*, 62 U.S. (21 How.) 582 (1859), that the federal courts have no jurisdiction over suits for divorce or the allowance of alimony.").

112. New Jersey v. New York, 523 U.S. 767, 795-96 (1998).

113. *Id.* at 795 n.16.

114. Given the recent decision of President Obama and his direction to the DOJ to stop defending DOMA, this is in flux. *See* Charlie Savage & Sheryl Gay Stolberg, *In Turnabout, U.S. Says Marriage Act Blocks Gay Rights*, N.Y. TIMES, Feb. 24, 2011, at A1.

115. Pub. L. 104-199, §2(a), 100 Stat. 2419 (Sep. 21, 1996) (codified at 28 U.S.C. § 1738C (1997)).

states at the forefront of defining their own boundaries and values when marriage recognition is at stake, while also creating new affinities between states.[116] Somewhat ironically, because of the state-centric values promoted by DOMA, DOMA also provides a federal point of affiliation for opponents of same-sex marriage and a "nation-state" perspective on the marriage debate. In other countries, citizens may also affiliate strongly with national marriage regulation. Whether in a more liberal country like the Netherlands,[117] Sweden, or Canada, or in more conservative, Catholic countries in Latin America, citizens may view the form of marriage regulation that is particular to their country as an expression of substantive national values. Even at the national level, then, communities can affiliate around marriage law and, in so doing, reinforce traditional articulations of political sovereignty by respecting the traditional borders of jurisdiction that define state or nation-state.

B. Believable Boundaries

While individuals and couples define their communities according to geographic and political boundaries, significant self-identification occurs outside of and across those borders as well. Belief in a community does strong work in creating that very community. In *New Jersey v. New York*, the Court observed "that the belief of the inhabitants of disputed territory that they are citizens of one of the competing States is 'of no inconsiderable importance.'"[118] Making the same point, from a somewhat different angle, Benedict Anderson remarked that "[c]ommunities are to be distinguished . . . by the style in which they are imagined."[119] From this perspective, a community forms when individuals imagine themselves to share not just a set of neighborhood blocks, but also a set of historical understandings, sociocultural values, and political mythologies. These communities are "imagined because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion."[120]

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116. DOMA and the focus on state recognition of same-sex marriage has sparked great debate about federalism and ways in which individuals can reward certain states for a progressive stance of same-sex marriage. *See* IAN AYRES & JENNIFER GERARDA BROWN, STRAIGHTFORWARD: HOW TO MOBILIZE HETEROSEXUAL SUPPORT FOR GAY RIGHTS 60-78 (2005).

117. M.V. LEE BADGETT, WHEN GAY PEOPLE GET MARRIED 25 (2009).

118. *New Jersey*, 523 U.S. at 798 (citing Handly's Lessee v. Anthony, 18 U.S. (5 Wheat.) 374, 384 (1820)).

119. BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM 6 (1983).

120. *Id.*

These imagined communities sometimes map on to geographically defined communities; however, instances occur in which citizens of traditionally defined communities prefer to seek membership in an imagined community that transcends state or national borders, coalescing around an idea or a cause. "Dominant practices inevitably create a baseline against which other behaviors are assessed as properly a public (here meaning seen by others) display or as deviant."[121] Social configurations resulting from dominant norms can subsequently "be extremely oppressive, either to their members or to outsiders."[122] An attractive option is to affiliate with an imagined and imaginative community, one that is responsive to and accepting of differences that might not be tolerated by traditional communities, whether large or small. In a modern, cosmopolitan context, with easily accessible technological resources, connecting with communities outside the territorially local is eminently possible.

The debate over same-sex marriage—and the continued prohibition on same-sex marriage in many states and at the federal level—has spurred marriage-minded individuals to create these advocacy and issue-based communities. Local gay rights organizations, progressive media outlets, and political advocacy groups organize members across state and even national boundaries and offer couples, both same- and opposite-sex, the chance to collaborate and socialize with like-minded individuals in the name of creating marriage equality. Various proposals offer ways for individuals to show their support for states with certain marriage policies, even if they are not a resident of the state in question.[123] The same holds true for those opposed to same-sex marriage (or in favor of alternate conservative forms of marriage, like the covenant marriage). That is, multiple outlets exist to facilitate dialogue, collaboration, and resource sharing around the issue. On both sides of the political debate surrounding same-sex marriage, these imagined communities are practicing "law as affiliation"[124] and both "mak[ing] connections with a particular legal regime as facets of themselves"[125] and "[e]nacting those obligations through organized, routine activities builds social solidarity, as required behaviors inscribe shared values and beliefs."[126]

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121. Judith Resnik, *Living Their Legal Commitments: Paideic Communities, Courts and Robert Cover*, 17 YALE J.L. & HUMAN. 17, 19 (2005).

122. Judith Resnik, *Law as Affiliation: "Foreign" Law, Democratic Federalism, and the Sovereigntism of the Nation-State*, 6 INT'L J. CONST. L. 33, 36 (2008).

123. AYERS & BROWN, *supra* note 116.

124. Resnik, *supra* note 122, at 35.

125. *Id.*

126. *Id.*

CONCLUSION

Thinking about the new possibilities for marriage that technology and mobility enable presents the opportunity to think about the role of the visual, the public, and the local in marriage practice and law. Traditional marriage practices have a strong visual component, embodied in the wedding ceremony and requirements for public performance of that ritual. These visual components signal deep publicity values that the announcement and advertising of the marriage enact. The visual and the performative nature of the marriage ceremony also generate questions about the most relevant as well as the most desirable audience. Local audiences, defined territorially, compose the conventional audience because the marriage ceremony is site-specific, marriage law is state-bound, and status endowment comes from the social network in which the couple's daily lives are embedded. Because definitions of marriage are being contested and alternative sources of authority are emerging—generated in large part by the marriage equality movement—publicity may have a new role and what defines local may be transforming. Within the landscape of same-sex marriage, the definition of the *public* is in play and has become political; likewise, the local has been energized as a vibrant, energy-rich network of dedicated individuals and advocate organizations. As marriage practice and law continue to evolve and encompass new forms, these new, networked communities will want to be both strategic about using publicity for a range of specific purposes and sensitive to the alignment between the purpose being served by publicity and the chosen audience. Not all audiences can serve as legal witness; not all audiences can grant status; not all audiences can create political momentum. A key for bringing success to new marriage practices is therefore to match the public and the place.