

Judicial Pathways and Institutional Transformation: The Evolution of Marriage Law in California

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Abstract. This article considers the development of marriage law in California in terms of judicial decision-making, and shows how courts have been active agents of institutional change. The study employs the theory of legal culture and institutional adaptation to examine a series of significant cases such as *In re Marriage of Dawley*, *In re Marriage Cases* and *Hollingsworth v. Perry*. It outlines four judicial routes: private autonomy, recognizing diverse family forms, expanding equality in the constitution and procedural governance. The results indicate that California courts have incrementally transformed the concept of marriage from a morality-based system to one of contract and rights. Furthermore, the judiciary acts as a catalyst in times of legislative stagnation and enables legal change to be effected incrementally and indefinitely. The article helps clarify the relationship between law and social change, judicial practices as possible mediators between law and social change, and institutional change via precedent-based evolution.

Keywords: California marriage law, judicial activism, legal culture, institutional change, marriage equality

1. Introduction

For a long time, marriage law in the U.S. federal legal system has been regarded as the responsibility of the individual states, and as a result, there are considerable differences and conflicts in the institutions and values of marriage law among different states [1]. Lawyer Lawrence Friedman does not believe that the American legal system is an ideal and rational structure, but rather a "legal culture" that has been deeply rooted in society [1]. Therefore, the change in the system of marriage will be driven by all sorts of factors at the same time, including alterations in written laws and changes in people's thinking about family life and society. California is a relatively diverse, progressive, and socially liberal state in the United States that has achieved many successes in reforming marriage law and interpreting it over the years.

In 1969, California first introduced the no-fault divorce system and has since led many other states in the modernisation of U.S. marriage laws [2]. This institutional innovation has moved away from the traditional model of marriage based on "moral fault" and, at the same time, shifted the system of marriage law from a religious-moral order to a contractual-rights order. With the spread of social movements for gender equality and the rights of LGBTQ+ individuals, California courts have begun to employ judicial activism more frequently in interpreting and applying the marriage system

to drive structural changes in marriage law through landmark cases such as *In re Marriage of Dawley*, *In re Marriage Cases*, and *Hollingsworth v. Perry*. Based on judicial precedents, the courts have begun to take a more proactive approach of modifying the law rather than applying it. This paper investigates how California courts have revised both the institutional logic and the social meaning of marriage law in certain cases, and how it has shifted from a "law of the moral community" to an "equal and contractual legal order". Through the study of key precedents and the process of institutional development, this paper hopes to trace changes in marriage law throughout the 21st century of the American legal system—from a system based on traditional social norms to an institutional expression of individual rights and social diversity.

2. Theoretical framework

Adaptation for the theories of American legal scholar Friedman and his theory of 'legal culture,' law is not a system of norms in isolation but as an institutional practice situated in a specific configuration of social and cultural norms [3]. An altering legal system is the reflection and reproduction of changes to social culture, politics, and economics. It is for the reasons above, that for one to analyze the California marriage law as an institution, one must first examine the interplay of the legal culture and the socially adaptive mechanisms, as opposed to limiting the analysis to the legal reasoning or political reasoning. In this regard, marriage law is the legal encapsulation of family relations while simultaneously being the institutional reflection of the social construct of the relations of power between the sexes, the nature of intimacy, the individual, and the individual's rights. In this regard, the emergence of the feminist movement, the gay rights movement, and the emergence of individualism in the latter half of the 20th century, have placed an increasing interrogation of the traditional, and often, the conjugal conception of marriage. California court decisions are made in this context of social transformation; they concern the social values and are tasked with translating these values into actionable legal norms through judicial activism.

Additionally, considering the theory of institutional adaptation, the role of courts as agents of "adaptive activism" in the development of marriage law is notable. When social changes occur, either the legislative body is slow to respond, or social discord is heightened [4]. In such cases, the judiciary, through iterative case law, redefines the scope of law, thus creating a balance between the rigidity and responsiveness of the marriage system. The evolution of marriage law in California exemplifies the point that the judiciary's role goes beyond the equation of law and equity to include essays on the evolution of institutions. Courts, within a system of precedent, create a pathway of adaptation that connects law and society and helps to facilitate the shift from a traditional family system to a pluralistic and egalitarian one.

3. Four judicial pathways in the evolution of marriage law in California

3.1. The path of establishing private autonomy: from in remarriage of dawley to contractual marriage

Before the 1970s, the marriage laws of the United States were influenced by religious ethics and the social morality of the time. Until then, marriage was considered an institution of social order. In this context, the freedom of contract in marriage was taken in an objective sense, and was viewed as harmful to social order. A major change occurred after the landmark case *In re Marriage of Dawley* [5], where a major change was made by the judiciary of California in the legal definition of marriage. In this case, the court decided for the first time in California history, the case of a divorced

plaintiff who was able to defend a premarital agreement regarding the division of community property, and for the first time, the court recognized premarital agreements. The court then decided that as long as the agreement did not contravene public policy, spouses could contract and such agreements would fall under the protective umbrella of private autonomy [5].

This case created a precedent for determining the case under contract law, and for the first time, the court based contract law on religion and morality as case law that would underpin the emerging field of the law of autonomous individuals: private law of contract. This new spirit of the law reflects the changes in society and modernisation that had occurred all over the country during this period, as well as changes in the institution of marriage. Freedman believed that the changes in society were relatively extensive. When the institution of marriage transitioned from being the purpose of religion to a contract, both religion and social coercion decreased. The California Family Code has continued to change, and non-marital arrangements such as prenuptial and postnuptial agreements, and cohabitation agreements, have been recognized by it. As a result, people have gained more power over the matters of property and family life in recent years. The Dawley decision is a typical case in family law showing the shift away from a moral or religious basis for marriage towards one based on law or contract. Thus, the Dawley decision has provided a foundation for reform of family law. With the support of judicial precedent, the focus of the first two cases in California has been on the self-will of parties in family disputes and changes in the application of the law of marriage.

3.2. Path of family diversification: the emergence of domestic partnership

By the end of the 20th century, there had been considerable changes in the ideas of society about gender and family in California. With the spread of same-sex relationships, cohabitation and children born out of wedlock have also occurred; therefore, amendments to the marriage laws need to be made to cover non-heterosexual couples. As far back as 1990, same-sex couples in California had begun filing lawsuits against the state to obtain the rights enjoyed by married couples, such as joint property ownership, hospital visitation rights, and the right to make medical decisions for their partners. In light of the above lawsuits, the judicial system in California began to officially recognize what was known as the "functional family". This term referred to families that formed outside the legal institution of marriage and were based on de facto relationships involving caregiving and economic interdependence [5, 6].

These precedents provided the necessary legal basis for the development of the Domestic Partnership Act. As a result of social movements and changes in the judiciary, lawmakers have introduced a system that allows same-sex couples to enjoy some rights and privileges of marriage, such as medical decision-making and inheritance, tax benefits, etc. Eskridge does not believe that family law changes due to legislative alterations; rather, it is the result of judicial efforts to safeguard the rights of the people in individual cases [7]. Therefore, the domestic partnership served as an antecedent to judicially creative acts that permitted for the first time a reconfiguration of California law to define family relationships outside the scope of marriage. From this time, the law in California has moved away from a "firmly heterosexual marriage-centered model" and has adopted a "pluralistic family recognition system"; thus, it has advanced in recognising equality and inclusion across society through legal reform.

3.3. Path of normative breakthrough in equality: in re marriage cases

In 2008, a significant ruling was made by the California Supreme Court in *In re Marriage Cases*. In this case, the Court declared that laws that limited marriage to opposite-sex couples were a violation of the California Constitution's Equal Protection Clause. Furthermore, the Court ruled that sexual orientation discrimination, in this case, qualifies for 'strict scrutiny'. This case also, for the first time, provided a judicial case of the US constitutional discrimination and protection of sexual orientation, and equal protection discrimination, which served as a theoretical and judicial precursor to the unparalleled and unprecedented constitutional protections afforded to same-sex marriage [8].

There are two main impacts of this ruling. First, this Court decision eliminated the gender discrimination in the traditional definitions of marriage by determining that marriage is a 'fundamental right,' which therefore makes any discrimination based on sexual orientation a violation of the Constitution. Secondly, this decision redefined the position of the Court in relation to the institution of marriage from being a mere interpreter to being a proactive implementer of legal reforms. As Sunstein said, the judicial activism in this case can be described as 'incremental constitutionalism' – it is a case that improves and expands the scope of democracy while also expanding/increasing the range of rights [9]. This case influenced the thinking of the Court in the U.S. Supreme Court case of *Obergefell v. Hodges*, and it also placed California's judiciary in the front of the race to equality. By the interpretation of the Constitution, the Court(s) moved from 'formal equality' to 'substantive equality,' which was the vein that provided a pathway for the newly liberalized American marriage law [10].

3.4. Path of procedural governance: *Hollingsworth v. Perry*

In 2013 an important historic decision was made by the United States Supreme Court for same-sex marriage case *Hollingsworth v. Perry*. The case involved an attorney general and an appealed standing of the case [11]. The other side of the case was the same as the side of the case. The Supreme Court had to make its decision based on the standing of the case and decided to dismiss the side of the case. The Supreme Court did not make a historic decision by deciding that same-sex marriage was constitutional. They did cause procedural adjudication to bring marriage equality back to the states. To gain marriage equality by not making a decision on the same-sex marriage case was a creative example of judicial activism.

Marriage equality and the case of *Hollingsworth* is a clear example of a case on the flexibility of judicial activism committed to judicial impartiality and the use of procedures to avoid politically contentious issues [12]. The *Hollingsworth* case exemplifies the flexible governance capability of the case. The *Hollingsworth* case exemplifies flexible governance of the California judiciary in institutional evolution, gaining adjustment of substantive outcomes through procedural, not substantive, politically contentious issues. The case of *Hollingsworth* is important to American and California marriage equality. The case shows the limited substantive outcome that the courts, through the use of judicial procedures, lost the right to control to politically contentious issues. *Hollingsworth* case also shows that the courts lost the ability to control politically contentious issues and the use of judicial procedures. The case of *Hollingsworth* shows a positive outcome of judicial procedures. The case of *Hollingsworth* exemplifies the transition of the courts of marriage equality to judicial activism during a period of social change and the positive refinement of the ruling in the period of social change. The case of *Hollingsworth* exemplifies the transition of the courts of marriage equality to social change.

4. The function and impact of judicial power in the transformation of California marriage law

The development of California marriage law shows that the judiciary is not just a "passive observer" but an "active builder" who can restructure the marriage order. By the way of step-by-step case-by-case decisions, the California judiciary gradually rearranged the marriage order from traditional marriage to modern marriage, contractual marriage and equality marriage.

First, judicial decisions play the key role of "catalyst". Due to the political obstacles or social consensus failures, legislations behind the new social movements like same-sex right and family diversification are often stuck in the legislative deadlocks. The courts can set up the precedent to open up a new institutional window of innovation. As Rosenberg puts it, even if the courts do not have the direct power to enforce policies, they have the interpretive power and the legitimacy resources to become the "symbolic mobilization center" of social change [13].

The role of judiciary is not to give birth to new rights, but to balance the institutions and correct structural injustice. California courts, applying the strict scrutiny and procedural discretion, are capable of protecting the rights enhancement and maintaining the basic stability of the marriage law system. The judgments of judiciary interact with legislations to build up the "precise loop" of "precedent–legislation–reinterpretation", so that the marriage law can adjust to the social change. The innovation of judiciary also builds up the "demonstration effect". The California precedents can be quoted by other states and even the federal courts, building up the benchmark of U. S. marriage law reform. From *Dawley* to *In re Marriage Cases* to *Hollingsworth*, the judiciary keeps innovating the modern marriage paradigm, building up the modern marriage law which promotes the freedom of individuals, equality between men and women and contract autonomy. The "external effect" strengthens the belief that California courts build up a "laboratory effect" of U. S. marriage law.

5. Discussion

The transformation of California marriage law is not a sudden "rights revolution," but a process of long-term institutional reorganization led by the judiciary. Through successive rulings, courts gradually shifted the internal structure of marriage from a "moral order" to a "legal order," achieving both rights expansion and institutional rationalization. The essence of modern rule of law lies in procedural rational communication to achieve social integration. California courts, through judicial interpretation and procedural governance, have enabled the legal system to self-regulate and update amidst social conflict.

These cases show that the judiciary is not merely a right advocate, but can promote the overall development of the legal system. The reorganization of California marriage law shows us a deeper meaning: in the plural social values and technological innovation era, the meaning of legal change is less about radical revolutionary breakthrough, but more about gradual reengineering of institutions achieved by way of the normative interpretation and procedural innovation. When new issues like AI marriage contract, surrogacy and transnational family emerge, the judiciary's institutional regulatory function will still be the important force in the modernization of marriage law.

6. Conclusion

This paper has explored how the California marriage law has been transformed in the light of judicial decision making and has shown that the judiciary has been at the forefront in transforming the institutional framework as well as normative underpinnings of marriage. The results indicate that the California courts have contributed to a slow yet radical shift of a conservative and moralistic

understanding of marriage to a contemporary legal system based on contractual freedom, equality, and pluralism. More to the point, the research discovers that judicial power does not only act as a reactionary entity but rather as an adaptive and constructive process in the larger legal framework. Courts serve as a driver in times of legislative stasis, and also serve the functions of institutional balance by interpreting doctrines and restraint in the process. The interplay of judicial precedents with legislative reaction constitutes a dynamic process through which marriage law is able to adapt itself to the changing social values. California in this sense is a kind of laboratory of legal innovation, as judicial practices produce more wide-ranging normative impact throughout the United States.

However, this research is constrained by use of doctrinal analysis of landmark cases which might not capture larger empirical and comparative views. This limitation can be addressed in future research through the inclusion of cross-jurisdictional comparisons and empirical data to further examine the relationship between judicial decisions and social practices and new issues like new family forms and new technology.

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