

WHITHER MARRIAGE IN THE LAW?

*William C. Duncan**

I. INTRODUCTION

In the past few years, the field of family law has witnessed a series of attacks and counterattacks on the status of marriage. What had seemed to be settled issues have become grounds for lively debate and aggressive rethinking. In the near future, the legal understanding of marriage that existed only a short time ago may be almost unrecognizable.

This article will briefly survey recent trends regarding the legal nature of marriage. It will then discuss the implications of these trends for the future while proposing an analysis of debated changes in marriage law.

II. RECENT TRENDS IN THE LAW OF MARRIAGE

The most significant trends in the law related to marriage have involved questions addressing the very nature of marriage. Such questions include, for example, whether marriage should be redefined to include same-sex couples, whether marriage is a permanent union or a union that can be dissolved at will, and whether the benefits typically associated with marriage should be provided on other bases.

A. Same-sex Marriage

Beginning in the 1970's, the question of whether marriage should be redefined to include same-sex couples arose intermittently, but with little success.¹ This pattern changed dramatically in 1993 when the Hawaii Supreme Court, in a stunning move, held that the Hawaii marriage law discriminated on the basis of sex and ordered a trial to determine whether the State had a compelling interest in the law that would justify that discrimination.² After a trial, the lower court held that the law was unconstitutional because the State had not met its burden of proving that the law did not discriminate against partners in same-sex

* Assistant Director, Marriage Law Project, Columbus School of Law, The Catholic University of America. The author particularly thanks Brian Gedicks (J.D. candidate, 2002) for discussions which led to this article.

¹ See *Adams v. Howerton*, 673 F.2d 1036 (9th Cir. 1980); *Dean v. District of Columbia*, 653 A.2d 307 (D.C. 1995); *Jones v. Hallahan*, 501 S.W.2d 588 (Ky. 1973); *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1972); *Singer v. Hara*, 522 P.2d 1189 (Wash. Ct. App. 1974).

² *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993).

relationships on the basis of their sex.³ Marriage licenses did not issue to same-sex couples, though. While the State awaited a ruling on its appeal to the Hawaii Supreme Court, the Hawaii Legislature put forward, and the people of the state approved, an amendment to the state constitution that reserved for the legislature the right to define marriage as the union of a man and a woman.⁴

During this same period, an Alaska Superior Court purported to find, in the privacy provision of Alaska's Constitution, a "constitutional right to choose one's life partner" and ordered a trial to give the State the opportunity to prove that its interest in marriage outweighed the partners' right to choose one another.⁵ The Alaska Legislature then approved a constitutional amendment defining marriage as the union of a man and a woman. It was overwhelmingly ratified in November 1998.⁶

Most recently, in a case similar to those in Hawaii and Alaska, the Vermont Supreme Court heard a challenge to that State's marriage law. In this case, the Vermont Supreme Court did not find a right to same-sex "marriage." It held instead that, under the "Equal Benefits" Clause of the Vermont Constitution, same-sex couples should be allowed the same benefits as married couples.⁷ The court then ordered the Vermont Legislature to provide the benefits of marriage to same-sex couples, which the Legislature then did by creating a new status: "civil union." By entering into a civil union, same-sex couples could gain all of the benefits of marriage, though not the status.⁸

In response to these changes, between 1995 and 2001 thirty-three state legislatures enacted legislation that both defined marriage as the union of a man and a woman and provided that their states would not recognize a same-sex marriage contracted in another jurisdiction.⁹ In

³ Baehr v. Miiike, No. CIV. 91-1394, 1996 WL 694235 (Haw. Cir. Ct. Dec. 3, 1996).

⁴ HAW. CONST. art. I, § 23.

⁵ Brause v. Bureau of Vital Statistics, No. 3AN-95-6562CI, 1998 WL 88743 (Alaska Super. Ct. Feb. 27 1998).

⁶ ALASKA CONST. art. I, § 25.

⁷ Baker v. State, 744 A.2d 864 (Vt. 1999).

⁸ Act of Apr. 26, 2000, 2000 Vt. Acts & Resolves 91.

⁹ The current statutes are as follows: ALA. CODE § 30-1-19 (2002); ALASKA STAT. § 25.05.013 (Michie 2001); ARIZ. REV. STAT. § 25-101 (2001); ARK. CODE ANN. § 9-11-109 (Michie 2001); COLO. REV. STAT. § 14-2-104 (2001); DEL. CODE ANN. tit. 13, § 101 (2001); FLA. STAT. ch. 741.212 (2001); GA. CODE ANN. § 19-3-3.1 (2002); HAW. REV. STAT. § 572-3 (2001); IDAHO CODE § 32-209 (Michie 2002); 750 ILL. COMP. STAT. 5/212 (2001); IND. CODE § 31-11-1-1 (2002); IOWA CODE § 595.2 (2002); KAN. STAT. ANN. § 23-101 (2001); KY. REV. STAT. ANN. § 402.020 (Banks-Baldwin 2001); LA. CIV. CODE ANN. art. 89 (West 2002); ME. REV. STAT. ANN. tit. 19-a, § 701 (West 2001); MICH. COMP. LAWS §§ 551.1, 551.271 (2002); MINN. STAT. § 517.01 (2001); MISS. CODE ANN. § 93-1-1 (2001); N.C. GEN. STAT. § 51-1.2 (2001); OKLA. STAT. tit. 43, § 3.1 (2002); 23 PA. CONS. STAT. § 1704 (2002); S.C. CODE ANN. § 20-1-15 (Law. Co-op. 2001); S.D. CODIFIED LAWS § 25-1-1 (Michie 2002); TENN. CODE

three other states, ballot measures have been enacted to amend the state constitution to produce that same result.¹⁰ Additionally, in California, a ballot measure added a marriage definition and recognition law to the state's statutes.¹¹

In Massachusetts, a lawsuit by seven same-sex couples in the Suffolk County Superior Court failed to force the Department of Public Health to issue them marriage licenses, and thus redefine marriage in the Commonwealth.¹² While the case was pending, a successful petition drive was launched to put before the Massachusetts Legislature a proposed constitutional amendment that would define marriage as the union of a man and a woman.¹³ The amendment is now pending in the Massachusetts House of Representatives and must be approved by twenty-five percent of the legislature in two successive sessions before it is referred for a public vote in a general election (probably in 2004).¹⁴

B. Covenant Marriage

A more recent development related to the essential nature of marriage involves the question of the permanence of the marital relationship. In 1997, Louisiana adopted a law which provides that a man and woman can enter into a civil covenant in which they agree that their marriage is a "lifelong relationship" called a covenant marriage.¹⁵ Before marrying, the parties to a covenant marriage are required to have participated in pre-marital counseling with a professional counselor or member of clergy. The counseling must stress "the nature and purposes of marriage and the responsibilities thereto."¹⁶ Prospective parties to a covenant marriage also sign a "Declaration of Intent to Form a Covenant Marriage," which "effectively makes each spouse legally accountable for

ANN. § 36-3-113 (2001); UTAH CODE ANN. § 30-1-2 (2002); VA. CODE ANN. § 20-45.2 (Michie 2002); WASH. REV. CODE §§ 26.04.010-.020 (2002); W. VA. CODE § 48-2-603 (2001).

¹⁰ ALASKA CONST. art. I, § 25; HAW. CONST. art. I, § 23; NEB. CONST. art. I, § 29. In addition, a similar constitutional amendment was approved in Nevada in 2000, but it must be approved in the next general election in 2002 before it can take effect. Sean Whaley, *Numbers Finalized For Ballot Questions*, LAS VEGAS REV. J., July 27, 2002, at 5B.

¹¹ CAL. FAM. CODE § 308.5 (West 2001).

¹² *Goodridge v. Dep't of Pub. Health*, No. 2001-1647-A, 2002 Mass. Super. LEXIS 153 (Super. Ct. May 7, 2002).

¹³ Steve Marantz, *Gay Marriage Ban Clears Ballot Hurdle*, BOSTON HERALD, Sept. 6, 2001, at 1.

¹⁴ *Id.* The amendment, H.B. 4840, 182d Gen. Ct., 2002 Reg. Sess. (Mass. 2002), was unsuccessfully challenged in a separate action. See *Albano v. Reilly*, 769 N.E.2d 1242 (Mass. 2002).

¹⁵ Covenant Marriage Act, 1997 La. Acts 1380. See also Katherine Spaht, *Beyond Baehr: Strengthening the Definition of Marriage*, 12 BYU J. PUB. L. 277 (1998).

¹⁶ 1997 La. Acts 1380 § 272(A).

the promise he or she made.”¹⁷ Most importantly, the parties to a covenant marriage agree that they cannot dissolve the marriage without a showing of one of a number of fault grounds, including adultery, felony conviction, abandonment, abuse, two-year separation, or passage of a specified period following a judgment of separation from bed and board.¹⁸ Couples who have already been married may designate their marriage as a covenant marriage by signing a declaration of intent.¹⁹ Since the Louisiana law has gone into effect, the legislature has enacted a requirement that issuers of marriage licenses must provide applicants information on the covenant marriage law.²⁰

Since the Louisiana law was enacted, two additional state legislatures have followed Louisiana’s example. In 1998, the Arizona Legislature enacted a covenant marriage law.²¹ In 2001, Arkansas approved a “Covenant Marriage Act of 2001.”²² Although relatively few states have created the covenant-marriage status in their laws, it certainly could be a growing trend. For instance, in the current legislative session, at least seven states have bills pending that would create covenant marriage.²³

C. Domestic Partnerships and Quasi-marital Statuses

Three states, Hawaii, California, and Vermont, have created new legal statuses whereby benefits traditionally provided to married couples can be extended to unmarried couples. In addition, many local municipalities have enacted laws providing recognition to non-married couples.

Hawaii’s law creates a new legal status of “reciprocal beneficiaries.”²⁴ Reciprocal beneficiaries must be eighteen years old, not eligible to marry, and unmarried. Applicants must sign a declaration of intent, which is filed with the director of the state health department.²⁵ The Hawaii law provides a number of benefits to state employees and citizens, although its effect on private employers is limited. Its provisions include the following: funeral leave for state employees,

¹⁷ Spaht, *supra* note 15, at 291.

¹⁸ LA. REV. STAT. ANN. §§ 9:307-:309 (West 2002).

¹⁹ *Id.* § 9:275.

²⁰ *Id.* § 9:237.

²¹ Covenant Marriage Act, 1998 Ariz. Sess. Laws 135.

²² Covenant Marriage Act of 2001, 2001 Ark. Acts 1486.

²³ H.B. 17, 146th Gen. Assem., Reg. Sess. (Ga. 2001); S.B. 384, 112th Gen. Assem., 2d Reg. Sess. (Ind. 2002); S.B. 2106, 79th Gen. Assem., 2d Sess. (Iowa 2002); S.B. 1012, 82d Reg. Sess. (Minn. 2001); H.B. 901, 2002 Reg. Sess. (Miss. 2002); H.B. 1878, 91st Gen. Assem., 2d Reg. Sess. (Mo. 2002); H.B. 2641, 48th Legis. Sess., 1st Sess. (Okla. 2001).

²⁴ Act of July 8, 1997, 1997 Haw. Sess. Laws 383.

²⁵ HAW. REV. STAT. § 572C-5 (2001).

hospital visitation rights, health insurance coverage for partners of state employees, and the ability to claim an elective share of a partner's estate.²⁶ Reciprocal beneficiary status can be ended either by filing a declaration with the state health department or by marriage.²⁷

The California law, enacted in 1999, created a registry whereby same-sex couples and unmarried opposite-sex couples over sixty-two can register for the right to hospital visitation and the right to appoint their partner a beneficiary on their insurance.²⁸ Then, in 2001, the California Legislature approved Assembly Bill 25 which was signed by Governor Gray Davis on October 14.²⁹ This new law extends the benefits offered to domestic partners in California. Specifically, it allows benefits including the following: "stepparent" adoption for domestic partners, death and survivorship benefits, certain health insurance benefits, family leave, the right to file for disability benefits, and the right to sue for wrongful death.³⁰

Vermont's law is the most expansive. As noted above, it was enacted in response to a court order. It creates a new status of "civil unions."³¹ It provides that town and county clerks may issue "certificates of civil union" to same-sex couples who are not married or in another civil union provided that they are not related to each other within the degrees prohibited by the marriage laws.³² It also gives jurisdiction to the family court over all cases based on the civil union law.³³ The law provides that parties to a civil union will "have the same benefits, protections and responsibilities under law . . . as are granted to spouses in a marriage."³⁴ It also provides that the terms "spouse," "family," and similar terms in the law will be construed to include couples in civil unions and outlines a list of twenty-four nonexclusive kinds of law that will now be applied to same-sex couples on the same terms as married spouses.³⁵ The Vermont law also contains a requirement for all employers that

insurers shall provide dependent coverage to parties to a civil union that is equivalent to that provided to married insureds. An individual or group health insurance policy that provides coverage for a spouse or family member of the insured shall also provide the equivalent coverage for a party to a civil union.³⁶

²⁶ 1997 Haw. Sess. Laws 383.

²⁷ HAW. REV. STAT. § 572C-7 (2001).

²⁸ Act of Oct. 2, 1999, 1999 Cal. Stat. 588.

²⁹ A.B. 25, 2001 Gen. Assem., Reg. Sess. (Cal. 2001).

³⁰ Act of Oct. 14, 2001, 2001 Cal. Stat. 893.

³¹ VT. STAT. ANN. tit. 15, § 1201 (2001).

³² *Id.* § 1203.

³³ *Id.* § 1206.

³⁴ *Id.* § 1204(a).

³⁵ *Id.* § 1204(e).

³⁶ VT. STAT. ANN. tit. 18, § 4063(a) (2001).

The bill also creates a new status of "reciprocal beneficiaries," which is defined as two people related by blood or adoption who want to have some benefits of marriage.³⁷ Reciprocal beneficiaries are given rights related to (1) "[d]urable power of attorney for health care,"³⁸ (2) abuse prevention,³⁹ (3) "[p]atient's bill of rights,"⁴⁰ (4) "[h]ospital visitation and medical decision-making,"⁴¹ (5) "[d]ecision-making relating to disposition of remains,"⁴² (6) "[d]ecision-making relating to anatomical gifts,"⁴³ and (7) "[n]ursing home patient's bill of rights."⁴⁴

In addition to these statewide policies, many municipalities in other states have adopted laws that provide legal recognition to unmarried couples.⁴⁵ These laws vary, but contain a number of common elements, including the following: provisions for registering the partnership,⁴⁶ requirements for participating couples (such as a minimum age and sharing of expenses),⁴⁷ provisions making benefits available to partners ranging from merely symbolic to more substantive (i.e., allowing the partners to be treated as the equivalent of spouses),⁴⁸ and processes for termination of the partnership.⁴⁹

III. IMPLICATIONS FOR THE FUTURE OF LEGAL MARRIAGE

It is likely that the full implications of these trends in the law of marriage may not be known for some time. They do, however, suggest some important questions, which will be raised in this section. Although these questions will not be answered fully, some possible responses will be suggested in the hope that others may take up the questions in more detail.

First, an analogy may help to give context for understanding the implications of the changes in the law related to marriage.⁵⁰ The core question is which elements of the legal understanding of marriage are so important that, if they are removed from that understanding, the

³⁷ VT. STAT. ANN. tit. 15, § 1303 (2001).

³⁸ VT. STAT. ANN. tit. 14, § 3456 (2001).

³⁹ VT. STAT. ANN. tit. 15, § 1101 (2001).

⁴⁰ VT. STAT. ANN. tit. 18, § 1852 (2001).

⁴¹ *Id.* § 1853.

⁴² *Id.* § 5220.

⁴³ *Id.* § 5240.

⁴⁴ VT. STAT. ANN. tit. 33, § 7301 (2001).

⁴⁵ See William C. Duncan, *Domestic Partnership Laws in the United States: A Review and Critique*, 2001 BYU L. REV. 961, 965 (2001).

⁴⁶ *Id.* at 968.

⁴⁷ *Id.* at 969-72.

⁴⁸ *Id.* at 974-75.

⁴⁹ *Id.* at 975-76.

⁵⁰ This experiment was originally suggested to me by Brian Gedicks, a student at the Columbus School of Law, at the Catholic University of America.

resulting status would no longer really be "marriage." This can be understood by an analogy to a stack of blocks representing "marriage." The question becomes which blocks of the legal nature of marriage can be removed without upsetting the whole stack.

In the past, legal changes in the law of marriage have largely been in aspects of the relationship that are extrinsic to its core meaning.⁵¹ For instance, the property ownership opportunities of wives has greatly expanded in the last century. Likewise, the expected roles of husbands and wives have changed. These changes are not central to the legal meaning of marriage, though. They deal instead with the respective rights and responsibilities of the parties within an already legal marriage. In the analogy, these are blocks that can easily be removed without upsetting the stack.

Advocates of redefining marriage to include same-sex couples would argue that the sex of the parties is another extrinsic requirement to the legal meaning of marriage.⁵² Proponents of covenant marriage would propose that permanence is crucial to the nature of marriage.⁵³ Those interested in expanding the legal recognition of nonmarital relationships might argue that the privileged status of marriage is extrinsic and could be removed and shared with other relationships without harming marriage. Are they correct? Can the blocks of gender, permanence and uniqueness be removed and the marriage tower still stand?

If the requirement that marriage exist between a man and woman is removed, there will be consequences. While many aspects of marriage are affected by cultural context (e.g., spousal roles), the nature of marriage as a relationship between a man and a woman is common across all cultures throughout time. This principle is true even when there has been societal tolerance of homosexual behavior.⁵⁴ The effort to remove the element of gender from marriage would automatically remove the link between marriage and procreation. Once this link is cut, there would be no principled objection to the recognition of other relationships. For example, this argument opens the door for the recognition of relationships involving more than two people.⁵⁵

⁵¹ A more central legal question relating to the nature of marriage involved polygamy and was briefly of some concern in the 19th Century. *Reynolds v. United States*, 98 U.S. 145 (1878). There does seem to be a possibility of this question reemerging in the near future as the questioning of the legal nature of marriage becomes more insistent. See, e.g., Ajay Singh, *When 3 (Or More) Is Not a Crowd*, L.A. TIMES, May 17, 2001, at E1.

⁵² See generally E.J. GRAFF, WHAT IS MARRIAGE FOR? (1999).

⁵³ See, e.g., Spaht, *supra*, note 15.

⁵⁴ Peter Lubin & Dwight Duncan, *Follow the Footnote or the Advocate as Historian of Same-sex Marriage*, 47 CATH. U. L. REV. 1271 (1998).

⁵⁵ See David L. Chambers, *What If? The Legal Consequences of Marriage and the Legal Needs of Lesbian and Gay Male Couples*, 95 MICH. L. REV. 447, 490-91 (1996).

There is also the question of permanence within marriage: whether that element can be removed from marriage without fundamentally altering its nature. It would be very difficult to rob marriage of permanence. The availability of divorce, even with very little effort, is not the same as making marriage a temporary arrangement. Most, if not all, divorced persons expected their marriage to last. The possibility that it will not endure does not make failure inevitable, even if it might make one spouse less committed to the marriage when it fails to meet that spouse's expectations. Non-permanent marriages may be a possibility at some point, though, as a recent discussion of so-called "starter marriages" has indicated.⁵⁶ If certain marriages were given a set expiration date, this might actually create a very different arrangement. Certainly, it would decrease the level of trust and intimacy in the marriage. Consequently, it would also likely discourage investment in family-building behaviors because of the high level of insecurity in the relationship. The spouses would fear contributing in a way that would not be reciprocated by the other spouse who might just be waiting for the clock to run out on the marriage. Taken to its extreme, a "starter marriage" might look like a sophisticated form of prostitution.

Yet another question is whether marriage is just one of many legal relationships. This question opens up the door to a myriad of other questions that all stem from a disintegration in the legal definition of marriage – questions, for example, regarding the determining factor in qualifying for marital benefits and how a sexual relationship or financial interdependence would affect that qualification. If financial interdependence was a qualifying factor for marital benefits, it would appear to make sense to just spread benefits more widely and not do so based on marriage. The benefits, therefore, would not be a way of strengthening marriage but rather would be an excuse to give away benefits. This, of course, raises the deeper question of why states privilege marriage as a unique legal status.

In all three of the instances discussed above, there is a serious challenge from the belief that the only crucial elements of a marriage are choice and commitment. Thus, if two people of the same-sex are committed and want to marry, they are qualified under such a limited definition. If the commitment to marriage falters, there would be no reason the marriage should not be allowed to end. Likewise, if a couple chooses to live together, there would be no reason that they should not get the same benefits as those who choose to marry. The choice model of marriage, though, is inherently weakening to the status of marriage as a social institution with stature and strength. Completely private ordering

⁵⁶ See Joyce Senz Harris, *Spouses in Training*, DALLAS MORNING NEWS, Feb. 23, 2002, at 1C.

of marriage raises the inevitable question "why." If marriage is merely a private contract, there is no need to have any state involvement at all. If legal recognition is merely symbolic, it would make just as much sense to leave recognition to religious groups or other institutions. There would be no point to such legal recognition.

Some would claim that marriage without inherent meaning benefits society because society benefits when citizens are happy. Consequently, we should promote the happiness of citizens by recognizing the choices that will make citizens happy. But many things bring happiness to people. Pets may help people who are lonely; friends undoubtedly contribute to individual happiness; music and art can be deeply satisfying. However, none of these require government regulation and intervention in the same way that marriage does.

The differences between marriage and other kinds of relationships that contribute to individual happiness strongly indicate why the legal nature of marriage cannot really be totally malleable. The differences suggest why the blocks of gender, permanence, and uniqueness cannot be removed without making the tower of marriage totter or fall.

One obvious difference between marriage and other relationships is the link between marriage, procreation, and child-rearing. Our law and culture have always understood marriage as the primary vehicle for the creation of a family.⁵⁷ In order for that to be true, however, marriage must involve both men and women because procreation requires a man and a woman. Only the sexual relationship of a man and a woman can lead to the conception of a child. Other relationships, even if sexual in nature, cannot result in the begetting of children. Assisted reproductive technology has allowed procreation to take place without a sexual relationship, but it has not made sexual relationships, otherwise sterile, able to produce children.

Another obvious difference is that marriage is the key relationship in which a man and woman are united on equal terms. As Justice Ginsburg noted in the Virginia Military Institute case, "Physical differences between men and women, however, are enduring: '[T]he two sexes are not fungible; a community made up exclusively of one [sex] is different from a community composed of both.'"⁵⁸ Similarly, a marriage that does not have the potential to be permanent would not be ideal for the rearing of children. Children benefit from interaction with both

⁵⁷ See John Witte, Jr., Propter Honoris Respectum: *The Goods and Goals of Marriage*, 76 NOTRE DAME L. REV. 1019, 1024-25 (2001).

⁵⁸ *United States v. Virginia*, 518 U.S. 515, 533 (1996) (quoting *Ballard v. United States*, 329 U.S. 187, 193 (1946)).

parents and the stability of having parents who are committed to one another.⁵⁹

Another way in which marriage differs from other relationships is that it creates a single economic unit.⁶⁰ This is not necessarily true of cohabiting couples.⁶¹ The permanence of marriage makes the sharing of resources in marriage more secure. Recognizing marriage as a unique relationship makes sense because it creates a unit different from other relationships to which the state might offer similar benefits.

These observations, however, are only three very preliminary answers to the questions raised by potential changes in marriage law. Many more could be and ought to be addressed prior to throwing out elements of marriage that are currently central to its nature. It is hoped that the questions raised in this section will contribute to that process.

IV. CONCLUSION

The host of important questions raised by proposals for changing the legal nature of marriage should instill caution in those who are actively pursuing such changes. We do not yet fully know what the results of these changes will be, but we do know that there are unintended consequences from even the most nobly intended reforms. We are also rightly concerned about making children and society guinea pigs in a great social experiment.⁶² Once marriage is toppled, restoring the former structure may prove to be beyond our ability.

⁵⁹ See Barbara Dafoe Whitehead, *Dan Quayle Was Right*, ATLANTIC MONTHLY, Apr. 1993, at 47.

⁶⁰ DAVID POPENOE & BARBARA DAFOE WHITEHEAD, *SHOULD WE LIVE TOGETHER? A COMPREHENSIVE REVIEW OF RECENT RESEARCH* 7 (2d ed. 2002), available at <http://marriage.Rutgers.edu/swlt2.pdf>.

⁶¹ *Id.*

⁶² As Edmund Burke noted in a different context in a much different age:

We must always see with a pity not unmingled with respect, the errors of those who are timid and doubtful of themselves with regard to points wherein the happiness of mankind is concerned. But in these gentlemen [French revolutionaries] there is nothing of the tender, parental solicitude, which fears to cut up the infant for the sake of an experiment. In the vastness of their promises, and the confidence of their predictions, they far outdo all the boasting of empirics.

EDMUND BURKE, *REFLECTIONS ON THE REVOLUTION IN FRANCE* 299 (L.G. Mitchell ed., Oxford Univ. Press 1999) (1790).