The question concerning the recognition of the rights of same-sex couples has attracted a growing attention in the legal literature, especially in the light of significant developments in a number of domestic legal systems. In some national legal orders these developments have in particular led to the opening of the institution of civil marriage to same-sex couples whereas a significant number of States have introduced, also for same-sex couples, various forms of “registered partnerships” or “civil unions”. The legal regulation of same-sex couples has primarily been analyzed by scholars from the limited perspective of domestic law. As far as comparative, international and European law are concerned, a seminal book was published in 2001 – Wintemute and Andenas (eds.), Legal Recognition of Same-Sex Partnerships: A Study of National, European and International law, Oxford, 2002. Since then, however, we have witnessed important developments in subiecta materia, not only in domestic jurisdictions but also in the EU legislation – notably with the adoption and the national implementation of Directive 2004/38 regulating the right of EU citizens to move and reside freely within the territory of the member States – and in the case-law of international and European courts.

As a consequence, the volume edited by Daniele Gallo, Luca Paladini and Pietro Pustorino is very welcome, offering, as stated in the Foreword by Gráinne de Búrca, “a wonderfully timely and an impressive wide-ranging survey” of recent developments in the law concerning same-sex couples (p. v).

The volume is divided into two Parts, preceded by an introductory Chapter, written by the editors, in which the object and the purpose of the book are illustrated. In particular, the book intends to focus on the developments in the case-law of national, supranational and international courts in respect of the legal status of same-sex couples. That approach, centered on the analysis of the contribution deriving in subiecta materia from the decisions of judicial bodies, undoubtedly characterizes the volume and marks its success. Among other things, the book offers stimulating considerations as to the general issue of the relationship, in a given legal order, between the judiciary and the legislative bodies.

Part I of the volume deals with same-sex couples before national jurisdictions, and is divided into two Sections. The first Section (“Domestic Law Issues”) consists of twelve Chapters, covering the legal systems of a significant number of States. More particularly, the jurisprudence of the US and of the UK are analyzed in separate Chapters while other law systems are grouped according to geographical or “cultural” criteria and discussed together. As stated by the Editors, such a comparative analysis does not intend to be exhaustive. At any rate the volume offers an impressive amount of information on the legal developments in national laws in respect of same-sex couples, often enriched by interesting theoretical considerations. In this regard, the two Chapters devoted to the US case-law, written by Graziella
Romeo and Antonio D’Aloia, deserve a special mention. Another element of interest is the attention given in the book to legal orders that are not frequently discussed in the legal literature, and about which it is often difficult to find relevant information in the English or French languages, such as those of Central and South American States or of the Nordic Countries. On the other hand, the decision not to specifically discuss in the book the legal order of the Netherlands, the first State to open the institution of civil marriage to same-sex couples, may appear as rather surprising.

Section II of Part I of the book deals with the complex issues of private international law that may arise in respect of the formation of same-sex partnerships and marriages. More particularly, the Chapter by Roberto Virzo focuses on the law applicable to the formation of same-sex unions, whereas Giacomo Biagioni discusses the problems concerning the recognition by a State of same-sex marriages or civil unions established under a foreign legal order. This problem is particularly delicate in respect of States whose legal order does not envisage same-sex marriages or unions. The third Chapter in this Section (Matteo M. Winkler) discusses the impact of the growing transnational mobility of “same-sex families” upon the traditional rules of private international law at national level, arguing that same-sex families deserve recognition even outside their State of origin, notably in the light of human rights standards.

Part II of the book is dedicated to the case-law of regional (or supranational) and international jurisdictions concerning same-sex couples. Section I covers, in particular, “Human Rights Law Issues” and examines the practice that has developed on the question at hand in the framework of the European Convention on Human Rights (ECHR) and of the Inter-American System of Human Rights. As regards the case-law of the European Court on Human Rights, the Chapter by Pietro Pustorino analyzes the issue concerning the possible recognition of a right to marriage, for same-sex couples, under Article 12 of the ECHR. As is known, in its judgment in Schalk and Kopf v. Austria, issued in 2010, the Strasbourg Court, even if it acknowledged that in the 1950s marriage was understood in the traditional sense of a union between partners of different sex, stated that it is necessary to interpret the European Convention as a living instrument and in the light of present-day conditions. As a consequence, the Court excluded that under Article 12 the right to marriage must in all circumstances be limited to marriage between two persons of the opposite sex (para. 61). On the other hand, the Court did not go so far as stating that Article 12 of the Convention does impose an obligation on the contracting State to grant a same-sex couple access to marriage. In particular, noting that “there is no European consensus regarding same-sex marriage” (para. 58), the Court reached the conclusion that “the question whether or not to allow same-sex marriage is left to regulation by the national law” (para. 61). The judgment in Schalk and Kopf v. Austria has been subject to harsh criticisms in the legal literature; some scholars have even defined it as “underdeveloped” (JOHNSON, Homosexuality and the European Court of Human Rights, Abingdon, 2013, p. 149; see also HODSON,