
THE ROLE OF CIVIL UNIONS IN THE JOURNEY TOWARD MARRIAGE EQUALITY

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ABSTRACT

Civil unions were a legal framework pioneered in Denmark in 1989 to grant same-sex couples many of the rights and responsibilities of marriage, though not full marriage equality. The concept spread to several European countries and U.S. states like Vermont, which became the first to legally recognize civil unions in 2000. Civil unions represented an important milestone by providing legal protections previously only afforded to married heterosexual couples.

However, civil unions stopped short of conferring full federal marriage rights. They served as a "separate but equal" policy compromise, granting some relationship recognition but sustaining discriminatory unequal status. Key court cases like *Baker v. State of Vermont*¹ and *Lewis v. Harris*² helped drive civil union laws but also exposed their limitations compared to marriage.

Within the LGBTQ rights movement, civil unions sparked debate over whether to embrace incremental progress or insist on fighting for unconditional marriage equality. While providing tangible benefits, civil unions' systemic inequalities fueled urgency that only identical marital rights could achieve true equality. Their consequences of partial protections yet sustained discrimination laid groundwork for later overturning marriage bans.

Ultimately, civil unions proved an imperfect stepping stone, valuable for granting initial legal recognitions but illuminating marriage as the final objective. Their unequal compromises mobilized advocates, revealed ethical failures of discriminatory institutions, and compelled achieving full nationwide marital equality.

¹ 744 A.2d 864 (Vt. 1999)

² 908 A.2d 196 (N.J. 2006)

Introduction

The concept of civil unions was pioneered in Denmark in 1989 as the first legal framework for registering same-sex partnerships and granting them comparable rights. During the 1990s and 2000s, many other European countries followed by enacting civil partnership or union laws.

A civil union refers to a legally recognized relationship between two partners that confers many of the same rights and responsibilities of marriage, but is available to same-sex couples. Civil unions were created in order to provide same-sex partners with legal and financial protections that had typically only been available to heterosexual married couples.

In the United States, Vermont became the first state to legally recognize civil unions in 2000. The legislation granted same-sex couples the state-level benefits and protections afforded to married partners in areas like inheritance, medical decisions, state tax benefits, and insurance coverage. By 2010, several other states including California, New Jersey, Illinois, Hawaii, and Oregon had authorized civil unions or broad domestic partnership rights for same-sex couples.

Civil unions represented an important milestone in granting same-sex couples legal recognition of their relationships and access to rights previously only granted to heterosexual married partners. However, they stopped short of providing federal protections and full marriage equality. The civil union movement helped pave the way for the later establishment of same-sex marriage rights across the United States, culminating with the Supreme Court's 2015 decision legalizing same-sex marriage nationwide.

1. Legal Protection

Despite same-sex marriage now being legalized, civil unions still offer important legal protections when LGBTQ couples travel or relocate to states or countries that don't recognize their marriage. Having a civil union provides proof of the relationship for hospital visitation, medical decisions, inheritance rights, etc.

2. Alternative for Some Couples

While many same-sex couples now get legally married, others may personally prefer getting a civil union instead for personal or ideological reasons. Civil unions allow flexibility for those couples.

3. Social Symbolism

The reality is prejudice and discrimination still exist against LGBTQ relationships. Legal civil

unions help validate these relationships and normalize them in society. The more civil unions exist and are recognized, the more mainstream social acceptance may improve.

4. Incremental Policy Approach

Social change often happens gradually. Continuing to allow and recognize civil unions provides an intermediate step of legal rights and protections in locales where full marriage equality faces substantial political or religious opposition.

5. Legal Back-Up Plan

If federal same-sex marriage rights were ever repealed, civil unions may help mitigate the loss of rights in states that still recognize them. They offer an important legal back-up.

The **Baker v. State of Vermont**³ ruling and its impact on civil unions:

In July 1997, three same-sex couples sued the state of Vermont on grounds that denying them marriage licenses violated "common benefits" protections under the state constitution. The constitution was written to make clear that government and civic privileges should not be contingent on religious beliefs or affiliations.

The case, *Baker v. State of Vermont*, was first decided in December 1999 by the Vermont Supreme Court. In their ruling, the Court stopped short of recognizing a fundamental right to same-sex marriage. However, they did agree that by denying same-sex couples' access to the benefits and protections afforded to opposite couples by legal marriage, the state violated their equitable rights.

The court referenced the "Common Benefits Clause" in the Vermont constitution which stated government should serve the citizens of Vermont equally, regardless of their personal affiliations or beliefs. The denial of marital rights to committed same-sex couples failed to provide equitable access to this system of common benefits.

While not an outright win for marriage equality, the decision declared that the state needed to find a way to confer all marital rights, protections, and responsibilities to same-sex couples in a manner equivalent to those of married couples. This landmark ruling led directly to Vermont becoming the first state to enact civil union legislation in 2000 - establishing a separate but intended-to-be-equal legal framework for same-sex partnerships to enjoy the same benefits as

³ 744 A.2d 864 (Vt. 1999)

marriage.

The **Lewis v. Harris (2005)** New Jersey Supreme Court case and its role in the civil union movement:

In 2002, seven same-sex couples legally married in Ontario, Canada filed suit against New Jersey arguing that the state's failure to recognize their marriages violated equal protection rights. At that time, New Jersey had banned same-sex marriage through legislative statutes and had no domestic partnership laws.

The case made its way to the New Jersey Supreme Court, where in 2005 the Court issued a split decision in *Lewis v. Harris*. The 4-3 ruling determined that although the New Jersey constitution did not establish a fundamental right to same-sex marriage, denying same-sex couples all the rights and benefits enjoyed by heterosexual married couples violated principles of equal protection.

Importantly, the court gave the legislature 180 days to "amend the marriage statutes to include same-sex couples or create a separate statutory structure such as civil union" with truly equivalent rights. They intentionally put the responsibility on lawmakers to enact equal treatment through policy.

In December 2006 the legislature issued the New Jersey Civil Union Act allowing same-sex couples to enter state-recognized civil unions. These civil unions granted couples the same legal rights, benefits, and responsibilities under state law as married partners. However, the ruling and civil union law stopped short of full marriage equality at that time.

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Public and Political Attitudes

No nationwide legal recognition: India does not currently legally recognize civil unions or same-sex marriages at the national level. Homosexual relationships were decriminalized in 2018.

Regional acceptance: Some progressive states and cities in India are more accepting of same-sex relationships. For example, the state of Tamil Nadu has allowed for same-sex marriages on rare occasions.

Generational differences: Younger Indian generations tend to be more supportive of rights for same-sex couples compared to older generations. But overall acceptance still remains low.

Political parties mixed: No major national party has outright endorsed civil unions or same-sex marriage. However, the Congress party and few other regional parties have voiced some support for decriminalizing homosexuality in recent years.

Religious opposition: Most of India's major religions - including Hindu, Islam, and Christianity - vocally oppose legalizing civil unions or gay marriage. Conservatives cite religious morals for restricting LGBTQ rights.

Legal challenges: Some LGBT activists have filed lawsuits challenging the ban on same-sex marriage, but cases have had little success so far in court. The Supreme Court is currently reviewing some petitions.

Civil Unions and the Gay Rights Movement

While the gay rights movement in the United States can trace its origins to the 1969 Stonewall

riots, the fight for nationwide marriage rights crystallized in the 1990s and 2000s. Groups like the Lambda Legal Defense Fund and American Civil Liberties Union began coordinating strategic legal challenges to state same-sex marriage bans.

Civil unions emerged during this period as potential policy compromises - they provided at least some relationship recognition and associated rights for same-sex couples but stopped short of "marriage." When Vermont pioneered civil unions in 2000 after the *Baker v State* ruling, many gay rights activists saw it as an encouraging start but not the final objective.

The creation of systemized legal civil unions spurred debate within the LGBTQ community between those believing they should gladly accept any progress versus advocates insisting on continuing to fight for unconditional full marriage rights. But over time, practical experience exposed the limitations of civil unions.

Rights and benefits were found to be quite unequal between civil union and married couples - problems compounded by the patchwork of different state laws. The denial from the federal government to recognize any same-sex unions for purposes like filing joint tax returns or securing spousal benefits also persisted.

By the mid-2000s, the consensus argument emerged that separate institutions like civil unions could likely never be truly equal. Civil unions came to be viewed as "second-class" or inferior, lending energy to accelerate lawsuits and campaigns focused singularly on lesbian and gay marriage without compromise.

Incremental Progress Argument:

Civil unions still grant important legal rights and protections previously unavailable to same-sex couples. They serve as a "stepping stone" along the path to equality.

Partial gains can build momentum, increased public awareness and empathy that leads to greater acceptance down the road.

Change often happens gradually - civil unions are progress given current barriers to outright marriage equality. Should accept and build on these gains.

Fighting for Full Equality Counter-Argument

Separate is inherently unequal. Civil unions sustain unacceptable "second-class citizen" status for same-sex couples.

There is no certainty partial gains lead to fuller equality - could stall progress short of true

parity by allowing lawmakers to declare "issue solved."

Momentum lies in bold, principled stands - accepting civil unions signals willingness to compromise on basic equality rights.

Must keep maximum pressure through protests, lawsuits, civil disobedience to achieve unconditional change.

Consequences

There is a clear pathway in these early civil union states moving from the initial separate quasi-marriage institution for same-sex couples on to full equal marital rights.

The bridge of extending relationship recognition and benefits under civil unions cultivated public acceptance and awareness that discrimination persisted without equal access to actual legal marriage. It revealed that "separate but equal" could not be truly equitable.

Court cases referencing the shortfalls of civil unions paved the legal grounds to rule existing marriage bans failed tests of equal protection and due process rights under state constitutions.

So, by demonstrating their limitations, civil unions laid social and political groundwork that brought several states to later permit same-sex marriage and dismantle the unequal two-tiered system civil unions had instantiated.

Positive Consequences

- Extended legal protections and rights to same-sex couples where no previous relationship recognition existed.
- Provided formal documentation of relationships which had practical benefits for issues like medical visitation, inheritance, insurance claims.
- Set positive legal precedents and built public awareness that laid groundwork for later marriage equality laws.
- Granted partial relationship equality in some states well before national marriage equality was achieved.

Negative Consequences

- Resulted in a two-tiered system for relationship recognition, sustaining inequality between civil unions and marriages.
- Legal differences and gaps in rights/benefits remained between civil unions and marriages,

exposing that "separate" could not be "equal".

- Piecemeal system of different state civil union laws created confusion, complications for couples relocating/traveling.
- Federal government provided no protections or recognition to partners in civil unions for purposes of taxes, social security, etc.

Conclusion

When civil unions emerged in the early 2000s, they were hailed by some as a milestone - even if incremental - toward relationship recognition for same-sex couples. Indeed, civil unions did tangibly extend many legal rights and protections where none had existed before across a growing number of states.

However, in practice civil unions instantiated a "separate but equal" system that subjected same-sex couples to an inferior two-tiered legal status. Discriminatory social attitudes became etched into unequal institutions like civil unions, sustaining stigma and second-class citizenry for LGBTQ Americans.

Yet the shortcomings of civil unions as a policy solution mobilized many advocates to mount urgent legal challenges and campaigns singularly fighting for full and unconditional marital rights. So civil unions proved an inconsistent stepping stone on the path toward nationwide marriage equality.

Looking back, civil unions represented imperfect progress born of political compromise. But the increment was valuable in illuminating the final distance to equality under the law. By granting then denying equitable treatment to same-sex couples, civil unions fueled the case that only identical rights could pass ethical muster. Their limitations spurred the push ensures equal dignity and treatment henceforth for all Americans seeking legal partnerships.

While equal marriage rights are now won, it remains vital we internalize the lessons of past compromises that sustained unequal tiers of access and benefits. True equality means lifting basic rights and protections above the political fray - ensuring their guarantee to all citizens irrespective of identity or background. With continued civic participation, we can work to realize that vision of equality as the cornerstone for all Americans to cherish and uphold.