Civil Unions in the United States

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The expansion of the right to civil union and marriage has been a key social and political issue within the United States in recent times. The purpose of the present sample essay provided by Ultius is to explore this issue in greater depth. The essay will begin with a delineation of the concept of civil union itself. Then, the second part will consider a key recent Supreme Court case that revolutionized civil unions within the United States by expanding it to include unions between homosexuals. After this, the essay will proceed to discuss challenges to this decision that have emerged around the United States. Finally, the fourth part will consist of a critical reflection on the merits of both the original legal decision and the legal challenges that have emerged in response to that decision.

**Concept of Civil Union**

To start with, then, one way to define a civil union would be to think of it as the legal dimension of marriage: a civil union is a legally recognized union between one person and another person that parallels and is to a large extent similar to marriage. The concept was primarily created in order to afford legal protections to same-sex couples within jurisdictions in which marriage between same-sex couples was not recognized as legitimate. The concept of marriage, of course, has numerous spiritual connotations that transcend the merely legal domain. The civil union has historically been a way for same-sex couples to obtain access to the legal rights associated with the status of marriage without jurisdictions thereby having to enter into messy questions regarding the spiritual side of marriage, or whether a union between same-sex partners can in fact legitimately be called a marriage.

From the perspective of advocates for the rights of homosexuals, however, the concept of civil union is inferior to the concept of marriage in several important respects. As the advocacy organization GLAD has written, for instance: "A civil union is a legal status created by the state of Vermont in 2000 and subsequently by the states of Connecticut, New Hampshire, New Jersey, Rhode Island, Illinois, Delaware and Hawaii. It provides legal protection to couples at the state level, but omits federal protections as well as the dignity, clarity, security and power of the word 'marriage'" (para. 5). The concept of civil union can thus be said to be inferior to the concept of marriage in two main ways. Firstly, the very existence of the concept implies that it is kind of a second-class version of marriage, based on the assumption that same-sex couples cannot have access to the real thing; this is symbolically significant. And secondly, the concept of civil union has always been a state-level statute, which meant that same-sex couples could not access the full legal rights and protections afforded to marriage at the federal level.

**The Supreme Court Decision**

The concept of civil union has been largely overshadowed as of June 2015, when the Supreme Court reached a landmark civil rights decision. As Liptak reported at that time: "In a long-sought victory for the gay rights movement, the Supreme Court ruled by a 5-to-4 vote on Friday that the Constitution guarantees a right to same-sex marriage" (para. 1). That is, the Court decided, at the federal level, that same-sex couples have the right to access the full legal concept of marriage, and not just the state-level concept of civil union. The Court's ruling would imply that if any individual states have laws that prohibit same-sex couples from getting married, then those laws are unconstitutional and thus invalid. Given that the concept of civil union was invented at the state level as an alternative to marriage for same-sex couples, and given that marriage to same-sex couples has now been guaranteed as a constitutional right at the federal level, it follows that the concept of civil union has now become more or less obsolete, since same-sex couples can now go ahead and just get married like all other couples.

In discussing this issue, people in support of the Court's decision have generally made analogies to anti-miscegenation laws that were on the books in the past within the United States—that is, laws preventing a person from marrying someone from a different racial group. As Millman has outlined, this argument generally suggests that just as prohibited marriage across racial lines now clearly seems immoral and backwards, preventing marriage across gender lines will eventually come to see the same way. The idea that (say) an Indian man and a White woman could only get "civil unioned" and not actually married would of course seem outrageous within the United States today. Advocates of gay marriage have suggested that the concept of civil union likewise carries an implicit insult against the gay population as a whole by its basic suggestion that gay people cannot access marriage in its fullness. If the recent Supreme Court decision holds, then this will be a thing of the past, and people will probably no longer talk very much about the concept of civil union over the coming years.

From the perspective of the gay rights movement, then, the concept of civil union could only be a first step toward a fuller form of legal recognition for unions between same-sex couples. Again, the concept was created specifically with same-sex couples in mind; and the concept has been a progressive one, insofar as it implies the basic recognition that same-sex couples are in fact entitled to legal rights. However, if the process were to stop right there, then the concept would become a regressive one, insofar as it is premised on the notion that gay couples cannot get married in the same way that straight couples can. From the perspective of the gay rights movement, then, the obsolescence and supersession of the concept of civil union would thus be something very much to be desired.

**Emerging Challenges**

Overriding the concept of civil union with the concept of marriage, though, has created a huge tension to emerge between civil liberties on the one hand and religious freedom on the other. As Phillips has reported: "In the wake of the June Supreme Court ruling legalizing same-sex marriage, dozens of states have considered or are considering legislation to give Christians and other people protections from doing something that violates their religious belief" (para. 2). And this calls attention to the problem that is inherent in the concept of marriage that is not inherent in the concept of civil union. Essentially, it boils down to this: whereas civil union can pass as a strictly legal concept, marriage clearly has spiritual and legal connotations, to the point that no honest person could really suggest that this is not the case. This means that the Court's ruling on the legalization of gay marriage across the nation (and the supersession of civil union) could potentially conflict with the deeply held religious beliefs of many people.

The Bible (New Revised Standard Version), for example, makes it quite clear over and over again that marriage is a union between a man and a woman, and that same-sex couples can thus by definition not get legitimately married. Of course, the Bible says nothing about civil unions, since civil union is a strictly legal concept that was invented for strictly legal purposes. Again, though, marriage contains an inherently religious dimension; and by making a sweeping decision regarding the nature of marriage itself, the Supreme Court has essentially made a declaration on a subject that is at least partly religious in its essence. This complicates matters to a considerable extent. For example, a person who has nothing against civil unions for same-sex couples (since this concept is just about legal rights) may balk at the proposition that same-sex couples can actually get married, since this has connotations that go beyond the merely legal domain and reaches into metaphysical issues of what man is and what woman is.

Here's one example of the kind of conflict that has emerged between civil liberties and religious freedom. As the ACLU of Colorado has reported, there was a case where the owner of a bakery refused to sell a wedding cake to a same-sex couple on the grounds of his own religious beliefs; and the relevant court found that this was a case of unacceptable discrimination on the basis of sexual orientation, legally no different from refusing to sell goods to a person of color. From the perspective of the bakery's owner, he was facilitating a practice (i.e. same-sex marriage) that felt to be deeply wrong; from the perspective of the law, however, he was engaged in blatant discrimination against a selected population (i.e. homosexuals). This perhaps illustrates one of the ways in which same-sex marriage goes beyond same-sex civil union: whereas civil union is strictly legal in nature, marriage demands a kind of social and cultural recognition of its legitimacy—a recognition that can and will be backed up by the force of law, if necessary. In short, the supersession of civil union by marriage has significantly raised the stakes regarding the issue of civil liberties for the gay population.

**Critical Reflection**

This essay has focused heavily on conceptual issues. And this has been based on Wittgenstein's fundamental maxim that if one is not clear about one's concepts, then it is almost impossible to glean meaningful insight into any given issue. In order to understand the significance of civil unions in the United States, it has been necessary to delve into the very concept of civil union, especially relative to the concept of marriage. And a key conclusion that has been reached here is that the concept of civil union has more or less been rendered obsolete by the recent Supreme Court decision that legalized gay marriage all across the nation. In principle, civil union was designed as a legal alternative to marriage; and with the Court's decision, that alternative would quite simply no longer be necessary.

While advocates for gay rights have focused on how the concept of marriage is superior to the concept of civil union, though, they have tended to neglect the ways in which legally redefining the concept of marriage can and does produce huge conflicts and tensions at the cultural level. The primary issue here is that whereas civil union was in fact a strictly legal concept, marriage is a concept that has a religious and spiritual dimension—which, indeed, is part of why same-sex couples have so badly wanted access to it in the first place. For many Americans, their religious faith clearly stipulates that marriage must refer to a union between a man and a woman; and this means that the Supreme Court has unilaterally made a decision that flies in the face of their religious faith. This means that serious challenges at the state level against the legitimacy of gay marriage can be expected to continue, if as it has been granted technical de jure legitimacy at the federal level. This conflict could perhaps have been greatly minimized if the Supreme Court had continued using the language of civil union and refrained from making comments on the nature of marriage itself.

As a closing note, a question that can be asked is: did the Supreme Court overstep its prerogative in superseding the concept of civil union and redefining the concept of marriage itself? If it is granted that marriage is an inherently religious concept (in a way that civil union is not), and if it is acknowledged that the United States is premised on a separation of church and state, then the conclusion that would seem to follow is that the Supreme Court has in fact violated this separation by making a legal decision regarding a religious matter. This problem could have been prevented had the Court simply maintained the concept of civil union and expanded that to the federal level, as opposed to making a sweeping decision about the nature of marriage itself. If marriage is in fact to be redefined, then this could only happen through a process of cultural transformation, and not by the mandate of any court or law.

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