

Baptiste COULMONT

## Do the Rite Thing: Religious Civil Unions in Vermont

*Vermont, one of the smallest US states, implemented in 2000 a new form of recognized partnership for same-sex couples. A “civil union” gives the couple that contracts it the same benefits a marriage gives to a heterosexual couple. As with a marriage, ministers (pastors, priests, rabbis) are agents of the state when performing a civil union. Following an intense cultural conflict, the implementation of civil unions was simultaneous with a speedy accommodation on the part of the churches. The author provides two explanations for this phenomenon. First, civil unions of the religious type, understood as a religious consumption, provide incentives for an economic routinization. Second, the author focuses on the work of the ministers: through various appeals to the legal order, they try to find ways to perform same-sex wedding ceremonies.*

**Key words:** *civil union · homosexuality · marriage · religion · Vermont*

*En 2000, le petit État américain du Vermont créa les “unions civiles” qui donnent aux couples de même sexe les mêmes droits que ceux qui sont accordés par le mariage aux couples hétérosexuels. Pasteurs, prêtres et rabbins sont autorisés à célébrer ces unions au nom du pouvoir civil, de la même manière qu’un mariage hétérosexuel peut être célébré par un membre du clergé ou un juge de paix. A la suite d’un grave conflit, on a assisté à une adaptation rapide de la part des Églises à ces unions civiles. Deux explications peuvent être apportées à ce phénomène: tout d’abord, l’apport financier lié à la célébration religieuse de ces unions civiles conçues comme des objets de consommation n’est pas négligeable; ensuite, il est clair que, dans leurs pratiques pastorales, les ministres du culte s’appuient sur la légalité pour chercher à célébrer des unions civiles.*

**Mots-clés:** *homosexualité · mariage · religion · union civile · Vermont*

State and church in the USA are quite well separated, and ministers are not agents of the state. Except in the marriage business. Ministers are allowed to certify marriage licenses, and the law considers that they are “agents of the state”. The author of a legal handbook for the clergy wrote:

In performing marriages, clergy are considered to function as public officers for limited purposes. . . It seems to have been universally accepted and apparently never challenged as a violation of the Establishment Clause. In this particular area, a religious ceremony

results in a valid civil marriage that carries rights and responsibilities enforceable by the secular legal system. (Couser, 1993: 78–79)

In 2000, the Vermont legislature upheld this “tradition” when it created “civil unions”, which gave all state-related benefits of marriage to gay or lesbian couples (15 Vermont Statutes Annotated §1204).

Gay and lesbian organizations have struggled for more than ten years to gain access to marriage. The US Protestant Churches have been shaken by a parallel struggle for the right of gay and lesbian couples to be married in the church. Liberal pastors or rabbis have signed open letters and petitions to push for (civil) same-sex marriage. But nobody has ever asked the *state* to allow *ministers* to perform civilly sanctioned ceremonies. That is, nonetheless, what the Vermont legislature gave to Vermont churches. Same-sex weddings have been, in Vermont, “statified”: “holy unions”, “ceremonies of commitments”, “covenants in love” are now “civil unions”.

This “statification” followed a passionate mobilization in favor of or opposed to same-sex marriage. A continuing religious controversy was expected, but eighteen months after the first civil union, during fieldwork in Vermont, I found a widespread accommodation. This article is then focused on how mobilization and controversy (the first part of this article) gave birth to routine: through commodification and the entry of religious civil union into the economic realm (second part) and through an appeal to the legal order and/or the tradition.

## **The Path to Civil Union**

### *Gay and Lesbian Involvement*

The success of the same-sex marriage movement stems from a strongly organized network: “one thing that distinguishes Vermont is the remarkable amount of planning and coordination which preceded and accompanied the push for equal marriage rights” (Johnson, 2000: 26), a law professor wrote in the Vermont Law Review. Around 1983, with the first Lesbian and Gay Pride Parade in Burlington, the Vermont Coalition for Lesbian and Gay Rights (VCLGR) was founded and got access to the governor (Conroy, 1990; Bernstein, 2002). In 1990, a hate crime law was approved by the legislature. In 1992, an anti-discrimination law protecting gay and lesbian people at work was passed. In 1993, the Vermont Supreme Court decided that a woman could adopt the child conceived by her same-sex partner. After this date, the VCLGR focused its efforts on same-sex marriage. In 1995, the Vermont Freedom to Marry Task Force was created by two lawyers, Susan Murray and Beth Robinson. This Task Force was instrumental in the 1997 lawsuit that ended with the Supreme Court decision in *Baker v. State* (744 A2d 864 [Vt 1999]) according to which Vermont will give same-sex couples the benefits of marriage.

This movement described homosexuality as mild, tamed, civilized: the couples involved in the lawsuit against the state of Vermont were older couples, they were Vermonters and not “flatlanders” (Baker, who gave his

name to the lawsuit, is the descendant of a local revolutionary hero), one of them had a child . . . Sociologist Mary Bernstein spoke of “a discrete and insular minority” (Bernstein, 2002) that followed “strategies that emphasized similarities to the straight public and the incremental nature of policy reform” (Bernstein, 1997: 552).

### *The Involvement of Churches*

Vermont churches were involved in the civil union debate. The Vermont Freedom to Marry Task Force relied on liberal-leaning congregations to inform Vermonters: from 1995 on, all over the state, meetings were organized, in church buildings, to explain the claims of the Task Force.

At the onset of the lawsuit, between 1997 and 1999, several churches submitted “Friends of the Court” Briefs to the Supreme Court. An organization called VOWS, Vermont Organization for the Wedding of the Same gender, filed a brief with seven liberal congregations: two Unitarian churches, one Presbyterian congregation, two Quaker meetings, one United Church of Christ, and one Jewish synagogue. Opposed to this brief, the Roman Catholic Diocese of Vermont *and* the Latter-Day Saints Church of Vermont submitted a common brief, in which both churches struggled to find a unified marriage theology to counter same-sex marriage.

This involvement was mild compared to what followed the Supreme Court decision (in December 1999). From January to May 2000, the legislature drafted and voted the civil union law, and a statewide debate took place. Newspapers were filled with letters to the editor (some days, letters to the *Brattleboro Reformer*—a small newspaper in Southern Vermont—were so numerous that they took up to four times the usual space). Religious themes were heavily present. Newspaper articles and letters to the editors revealed an opposition to same-sex marriage based on religious arguments. The Catholic diocese, with the help of evangelical pastors, organized several demonstrations in Montpelier, the state capital, to voice their anger at same-sex marriage.

In May 2000, the Vermont legislature chose to create a middle way between non-recognition and full marriage: civil unions. This compromise was accepted by the couples and the Vermont Freedom to Marry Task Force. Less obviously, the *churches* seemed to accept this compromise. I will outline here two different explanations: the first one contends that religious “civil unions” are to be understood as a religious consumption, the second one argues that various contextual elements and strategic steps were used by ministers to perform civil unions.

### **Civil Unions as a New Business?**

One way to end a controversy of this type is through a “pragmatic” or “market-oriented” move: because civil unions were a source of income for some ministers, they had an incentive to perform them. This explanation is insufficient, but is a first analytical step. In fact, this is a two-step reasoning:

