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## Separate, Unequal How Civil Unions Fall Short Of Marriage

June 10, 2005 | By Ian Ayres Ian Ayres is a professor at Yale Law school and the author of Straightforward: How to Mobilize Heterosexual Support for Gay Rights.

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A lot of people think that the civil union statute confers all state marriage rights on same-sex couples who register in Connecticut. But this is not true. There are five classes of substantive rights that may still be denied same-sex couples under the civil union statute (when it takes effect on Oct. 1). Those rights would not be denied if the [lawsuit](#) on behalf of seven gay and lesbian couples succeeds in striking down the marriage exclusion.

You might have thought that Connecticut had created a separate-but-equal regime of civil union and marriage. Let's be clear. Civil union is a true advance. Being able to ride in the back of the bus is a lot [better](#) than not being able to ride at all. But the civil union statute is better characterized as separate but substantively unequal.

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Here are the top five reasons that Connecticut civil union [rights](#) are substantively different than equal marriage rights:

5.The civil union statute discriminates against young same-sex couples. Different-sex couples are allowed to marry at 16 or 17 in Connecticut with permission of a parent or probate judge. The Connecticut [House](#) of Representatives amended the original civil union bill by a whopping 126-22 margin to limit unions to same-sex couples who were at least 18.

Why is a 17-year-old fit to marry someone of the different sex, but not fit to enter into a civil union with someone of the same sex? I don't have a strong feeling that 17-year-olds should have the right to do either. But Connecticut cannot say it gives same-sex couples the same legal rights. You get the same rights only if you are old enough.

4.The new law has a provision giving public officials the explicit right not to officiate at a civil union. There is no such explicit exemption in the marriage laws. If the marriage exclusion were abolished, public officials would have the same duty to perform same-sex and different-sex weddings.

3.Same-sex marriages are more likely than civil unions to be recognized by some other states. All states have their own marriage systems and rich histories of respect for marriages validly licensed elsewhere. If the marriage exclusion were abolished, some states would be more likely to recognize a same-sex marriage than they would a same-sex civil union.

2.Employers may deny benefits to same-sex couples who are joined in civil union but unmarried. An employer who denies marriage benefits to civil union couples could argue that it was not discriminating on the basis of sexual orientation. But if the marriage exclusion were abolished, the employer would find it hard to deny marriage benefits to same-sex couples who were married.

1.And the No. 1 reason civil union is substantively different than marriage: The word "marriage" is the gateway to the 1,138 federal protections afforded married couples. Without that word, same-sex couples in civil unions have no claim for those legal protections. If the marriage exclusion were abolished, same-sex married couples would have a stronger standing -- both legal and political -- to challenge the federal discrimination.

The state argues, "We're not to blame for same-sex spouses not qualifying for Social Security, because the feds wouldn't give them to you even if we allowed you to marry." The feds argue, "We're not to blame for same-sex spouses not qualifying for Social Security, because even if we granted benefits to married spouses, Connecticut will not allow you to marry."

This is just like the classic problem in tort law: The mechanic can say, "My failure to fix your brakes did not cause the accident because you didn't push on the brake." The driver says, "My failure to push on the brakes did not cause the accident because the mechanic hadn't fixed them." Tort law knows how to deal with the problem -- by saying, in effect, a pox on both your houses -- and we should, too.

The Connecticut legislature did not really make same-sex couples equal to married couples with its separate-but-equal civil union law. The seats on the back of the bus are never quite as nice.

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