The Legal Status of Same-Sex Marriage and Unions in the World and in the USA
Lynn D. Wardle
7 March 2015

A. Legal Allowance of Same-Sex Unions Globally (of 193 Nations / UN):

Same-Sex Marriage Generally Legal in Seventeen (17) -- of 193 Nations (Less Than 10%)*:
The Netherlands (2001), Belgium (2003), Canada* (2005), Spain (2005), South Africa* (2006), Norway (2009), Sweden (2009), Portugal (2010), Iceland (2010), Argentina (2010), Denmark (2012), Uruguay (2013), New Zealand (2013), France (2013), Brazil* (2013?), UK (England, Wales, and Scotland, not Northern Ireland) (2014); and Luxembourg (2015).¹ (Also SSM is legal in some sub-jurisdictions or states in, e.g., Mexico and the USA.) (Legislation has passed in Slovenia and Finland to allow same-sex marriage; could take effect in 2016 and 2017, but a voter referendum overturned similar Slovenian legislation in 2012.) (* = following judicial or administrative ruling), Some may allow SSCUs also.

Same-Sex Non-Marital Unions Mostly Equivalent to Marriage Allowed in Thirteen* (13) Additional Nations (of 193 nations) plus some SSM nations and some sub-units of some nations:
Andorra, Australia, Austria, Croatia, Czech Republic, Ecuador, Finland, Germany, Hungary, Ireland, Liechtenstein, Slovenia, Switzerland. Also: Gibraltar, Isle of Man, & Jersey. Some may allow SSM also.

Same-Sex Partnerships (Formal but Not Equal to Marriage) Allowed in at least Four (4) More Nations: See, e.g., Andorra, Austria, Colombia, Croatia, Czech Republic, Ecuador, Finland, Germany, Hungary, Ireland, Israel, Lichtenstein, Malta, Slovenia, Switzerland.

B. Legal Rejection of Same-Sex Marriage Globally:

At Least Forty-seven (47) of 193 Sovereign Nations (24%) Have Constitutional Provisions Explicitly or Implicitly Defining Marriage as Union of Man and Woman:
Constitutions of: Armenia (art. 32), Azerbaijan (art. 34), Belarus (art. 32), Brazil (art. 226), Bulgaria (art. 46), Burkina Faso (art. 23), Burundi (art. 29), Cambodia (art. 45), China (art. 49), Colombia (art. 42), Croatia (art. 61??, Dec. 2013) Cuba (art. 43), Democratic Republic of Congo (art. 40), Ecuador (art. 38), Eritrea (art. 22), Ethiopia (art. 34), Gambia (art. 27), Honduras (art. 112), Hungary (art. M, Constitution/Basic Law of Hungary (25 April 2011) (effective Jan. 2012); Japan (art. 24), Latvia (art. 110 - Dec. 2005), Lithuania (art. 31), Malawi (art. 22), Moldova (art. 48), Mongolia (art. 16), Montenegro (art. 71), Namibia (art. 14), Nicaragua (art. 72), (Panama (art. 58), Paraguay (arts. 49, 51, 52), Peru (art. 5), Poland (art. 18), Romania (art. 44), Rwanda (art. 26), Serbia (art. 62), Seychelles (art. 32), Somalia (art. 2.7, draft Constitution 2012); Sudan (art. 15), Suriname (art. 35), Swaziland Constitution (art. 27), Tajikistan (art. 33), Turkmenistan (art. 25), Uganda (art. 31), Ukraine (ark. 51), Venezuela (art. 77), Vietnam (art. 64). (At least 12 of these imply dual-gender (“men and women have/may”).) See also Hong Kong Bill of Rights of 1991 (art. 19); Spain (art. 32, but 2005 SSM law upheld Nov 2012). Examples:
Article 24, Constitution of Japan: “Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis....” Article 110, Constitution of Latvia: “The State shall protect and support marriage—a union between a man and a woman,...” Article 42, Constitution of Columbia: the family “is formed ... by the free decision of a man and woman to contract matrimony ....” Uganda Constitution, Art. 31: “Marriage between persons of the same sex is prohibited.”
C. Legal Allowance of Same-Sex Unions in the USA:

Same-Sex Marriage Legal in Thirty-eight (38) USA States\(^{III}\) (+ DC + 8 of 566 Indian Tribes):
AL, AK, AR, CA, CO, CN, DE, FL, HI, ID, IL, IN, IA, KS, ME, MD, MA, MN, MO, MT, NV, NH, NJ, NM, NY, NC, OK, OR, PA, RI, SC, UT, VT, VI, WA, WV, WI, WY + DC.

+8 (of 566) U.S. Indian tribes - the Coquille, Suquamish, Odawa Tribes, Santa Ysabel, and Pokagon Band of Potawatomi Tribe, Colville, Cheyenne and Arapaho Tribes of Oklahoma, and Leech Lake Tribal Council.\(^{IV}\)

Same-sex marriage legalized by judicial decree (27 states), legislation (8 states + DC) and Voter OK (3 states). In only eleven (11) of the American states has same-sex marriage been legalized by legitimate (voter or legislative) law-making; in all of the other states with SSM courts have judicially mandated legalization of same-sex marriage.

Same-Sex Civil Unions Equivalent to Marriage Legal in Three (3) Additional US States:
Oregon (2008), Nevada (2009), & Colorado (2013) (+ some states with SSM).\(^{V}\)

Same-Sex Unions Registry & Specific, Limited Benefits in At Least One (1) Additional US Jurisdiction Wisconsin. Some States with SSM or CU also allows limited benefit relations – HI (1997).

D. Legal Rejection of Same-Sex Unions in the USA:

Same-Sex Marriage Prohibited by State Constitutional Amendment (SMA) in Thirty-one (31) States (62%):
Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Hawaii,\(^#\) Idaho, Kentucky, Kansas, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin.\(^{VI}\) (Appeals pending in many states) (#ssm approved by legislation or voters)

Same-Sex Civil Unions Equivalent to Marriage Prohibited by State Constitutional Amendment in Twenty (20) USA States (40%): Alabama, Arkansas, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Michigan, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and Wisconsin.

The total vote rejecting same-sex marriage in votes on the 31 state marriage amendments combined was over 61% (as of November 2012).

\(^{I}\) Categorization of some nations is difficult. For example, South Africa legalized “Civil Unions” which can be can be created by way of “marriage” and can be called “marriages,” but the Marriage Act was not amended and still only allows male-female marriage. See Civil Union Act 17 of 2006(s. Afr.) (available at: http://www.info.gov.za/view/DownloadFileAction?id=67843). Likewise, same-sex marriage is permitted in Brazil in 10 of 26 states, and since May 2013 civil registrars were directed to perform same-sex marriages, but the legal status of that directive of the National Judicial Council is debatable. SSM is allowed in sub-jurisdictions of some other nations (e.g., thirteen states in the USA, Mexico (City). (# = law passed but not yet in effect). See luxembourg approves same sex marriage, Yahoo! News (18 June 2014), available at http://news.yahoo.com/luxembourg-approves-same-sex-marriage-203510157.html (seen 18 June 2014). See Same-Sex Marriage, Encyclopedia Britannica at www.britannica.com/EBchecked/topic/753687/same-sexmarriage (seen 7 March 2015) (lists UK under Civil Unions).
See note re: SSM/CUs in South Africa and Brazil. Some nations with SSM also allow SSCUs. Some local jurisdictions as Greenland & in some states or provinces in Mexico, the USA, & Venezuela allow SSCUs.


Voters approved SSM in 3 states in 2012 (ME, MD, & WA). In at least 6 of the states where SSM now is legal it was the result of judicial decree or initiative (MA, IA, CA, CN, NJ, NM & poss VT). Some states – including HI, IL, NV & DC – also allow heterosexual couples to enter CUs also. Washington offers both SSM and SSCU until June 2014 when it will be available only to persons over 62. Several states that had civil unions now have SSMs instead. VT, CN, NH, RI & DE; some have both. See NCSL, *Defining Marriage: Defense of Marriage Acts and Same-Sex Marriage Laws*, July 26, 2013, at http://www.ncsl.org/issues-research/human-services/same-sex-marriage-overview.aspx (seen 130802).

V Voters have constitutionally banned SSM in 31 states. (In AZ voters first rejected SMA in 2006 then approved SMA in 2008; in ME voters first rejected SSM in 2009 then approved in 2012). In 17 of the 26 “blue states” that voted for Obama in 2012 only male-female marriage was then legal: Hawaii, California, Oregon, Nevada, Colorado, New Mexico, Minnesota, Wisconsin, Illinois, Michigan, Ohio, Pennsylvania, Rhode Island, New Jersey, Delaware, Virginia, and Florida. Bill to legalize SSM in IL fails 130530. In 2008 voters in California passed Prop 8 a constitutional amendment barring SSM but it was ruled unconstitutional in a dubious by a federal district court opinion. State officials refused to appeal and the Supreme Court of the United States ruled that the sponsors of Prop 8 lacked standing to appeal. *Hollingsworth v. Perry*, 5700 U.S. __ (2013).