Civil Unions, *Civil Wars*: Exploring Vermont's Kulturkampf

In concise, elegant prose, David Moats’ *Civil Wars* tells the story of Vermont’s struggle to legalize same-sex marriage. He follows the lives of the attorneys, plaintiffs, judges and legislators through the court case, subsequent judicial decision and ultimate passage of a law granting civil unions to homosexual couples. Through the lives of the men and women Moats follows, the reader is exposed to the different family and lifestyles held by homosexuals in Vermont, and the common thread that ties them all together: a quest for equality under the law. Yet the greatest achievement of Moats’ work is that he allows his subjects’ voices to shine through with minimal interference from his own. He moves the narrative forward with his own transitions from subject to subject, and builds the suspense throughout the tale with such subtlety that the reader hardly realizes he has done it until the story reaches its climax. Ultimately, *Civil Wars* shows the excitement and education that comes with the political process at its best.

Moats opens the narrative with a chapter entitled “Our Common Humanity,” in which he introduces the people who played a major role in the battle for gay rights. His list of subjects includes Beth Robinson and Susan Murray, the attorneys who argued the case in the Vermont courts, the six plaintiffs in the case, Tom Little, the chairman of the House Judiciary Committee, Bill Lippert, the only openly gay member of the Vermont House, Nancy Sheltra, a republican House member, Howard Dean, then governor of Vermont, and Bob Kinsey, a republican representative to the House (25). He
also introduces Chief Justice Jeffrey Amestoy, who gave the opinion of the Court in the
case. These are the people whose stories form the narrative of Civil Wars. Moats makes
it very clear from the beginning that though they come from many different walks of life,
have different sexual orientations, they are bonded by a “common humanity.” After
making introductions, he backtracks in “Beginnings,” giving a brief history of the
evolution of gay rights in Vermont. Additionally, Moats shares some of his subjects’
early experiences with bigotry, be it sexually or racially based, in order to set the stage
for the upcoming battle and to foreshadow the roles these individuals will play. In
“Freedom,” Moats describes the legislation involving homosexuals up to the present
court case, including the hate crimes bill and the antidiscrimination law passed by the
Vermont legislature. It is in “Family,” Moats’ fourth chapter, where the present story
picks up. He describes for the reader the families homosexual couples have formed: Nina
Beck and Stacey Jolles, two of the plaintiffs in the case, have two sons (though one died
as a child) and Holly Puterbaugh and Lois Farnham, two other plaintiffs, have a teenage
daughter. Furthermore, Moats explains the Vermont case that permitted homosexual
adoption, a crucial point in the case for gay marriage. Finally, after this long yet
important introduction, Moats explains the case.

Beth Robinson argued the case before the Supreme Court. She claimed that the
right to marry was fundamental, and that because of its status as such, the Vermont
marriage statute should be regarded with strict scrutiny. Furthermore, stated Robinson,
“when you peel away all the justifications that don’t make sense, all you’re left with is a
bare preference for a part only of the community” (132). The Supreme Court justices
asked if the homosexual community would accept an institution comparable to marriage
but lacking the label. Robinson replied that full equality required marriage, yet, as Moats states, “[the court] was ready to side with [Robinson]. They just wanted to be clear about how they would do so” (134). In retrospect, it was clear that the justices were going to find for Robinson. It was not clear, however, whether the justices wanted to grant full marriage rights to homosexuals. Chief Justice Amestoy, in his majority opinion, stated that the denial of benefits to homosexual couples was unconstitutional, but that the court would leave it to the legislature how to best confer those benefits. Furthermore, in his decision, Amestoy chose not to use strict scrutiny, as Robinson had urged, but instead draws up a new test: that the law must have “a reasonable and just relation to the governmental objective in light of contemporary conditions” (143). This test has been called “rational basis with bite.” This decision was met with multiple reactions: a high-ranking judge “expressed admiration for what Amestoy had done,” but Robinson, Murray and the plaintiffs were “caught between the joy of victory and the despair of victory deferred” (143, 5).

It is important to acknowledge Amestoy’s unconventional approach to settling this case. He seems to avoid judicial activism by placing the ultimate decision within in the hands of the legislature. This action puts gay marriage at the mercy of the political process: while Amestoy knew that the legislature would have to allow some sort of civil union in order to avoid a constitutional controversy with the Supreme Court, there was no guarantee that gay marriage would be the result of the legislature’s deliberation. The plaintiffs in particular were not rewarded with an easy victory; in fact, there were no immediate repercussions from Amestoy’s decision. Amestoy seems to remove the court
from the political process, instead thrusting the responsibility for the ultimate decision onto the legislature.

Moats’ account of the struggle in the House of Representatives in Vermont is the most compelling portion of his narrative. The struggle in the House Judiciary Committee is both painful and educational. The house members themselves went through personal transformations, displaying enormous courage as they listened to testimony from advocates for and opponents of same-sex marriage and grappled with their own personal biases and opinions. It is when Moats is describing the representatives biases and opinions that his own biases appear: Moats is clearly supportive or same-sex marriage, to the point that he seems unwilling to consider arguments against. For example, when introducing Nancy Sheltra, a republican representative, he describes her as a woman “whose politics were shaped by “God’s word, not the ideals of liberal democracy,”” (25). Moats seems to trivialize religious arguments against gay marriage, and does not make a sincere effort to introduce and explain the secular arguments against gay marriage.

The House committee ultimately decided to draft a bill calling for civil unions, believing it represented the path of least resistance toward accomplishing Judge Amestoy’s directive. The efforts to persuade house members to vote for the bill are moving, as Bill Lippert gives an impassioned speech that certainly influenced many representatives. In fact, it is not only the reader who is moved, as Moats recounts that Bob Kinsey, the republican House member, jumped to his feet, stating “I’ve just heard the greatest speech I’ve heard in thirty years… and that’s why I’m glad to be a friend of the member from Hinesburg, and that’s why I’m glad to be on his side” (218). The bill
passed in the House, and it is at that moment that the reader releases the breath he or she had been holding, all the while not knowing he had been holding it.

Though the struggle in the Senate to get the bill passed is difficult, the reader feels as if the House decision was enormous enough, and is exhausted after the suspense and hope felt while reading about it. Moats is successful at bringing the reader into the world of the legislature, and makes one feel as if he or she is living in the midst of the controversy. The bill does ultimately pass in the Senate, and though Moats devotes ample time to explaining this decision, the reader’s emotional connection is to the members of the House. This connection is probably due in part to the fact that Moats’ emotional connection is to members of the House; his narrative is somewhat less compelling when describing the debate in the Senate. Furthermore, while Moats certainly appreciates the courage and desire to compromise shown by the House Judiciary Committee, he shows his disappointment that the full status of marriage was not granted to homosexuals. The joy of the plaintiffs, and in fact that of the whole homosexual community, is somewhat muted by what many, including Moats, saw as a “separate but equal” status. Yet Moats makes sure that this disappointment does not become the focal point of his story, rather, he recognizes those who, despite fear of losing their seat in the legislature, voted to extend rights to homosexuals.

One of the most poignant moments occurs when republican John Edwards, a member of the House Judiciary Committee, makes his decision about the vote on gay marriage. He had hoped to avoid a vote by delaying the bill, but when it became apparent that he would not be able to, he was forced to make a choice. Ultimately, against the will of his constituency and despite the fact that his decision could cost him
his seat, he chose to vote for civil unions because “Sometimes in life, you’ve got to stand up and do what’s right” (184). Ultimately, this courage is what Moats’ narrative is really about: the courage of the plaintiffs and attorneys who brought their case to court, the courage of the legislature in crafting and passing a bill extending rights to gays, the courage of Governor Howard Dean in signing a bill instituting civil unions. In fact, Moats states that Dean sacrificed the presidency by signing this bill. This point seems a bit hyperbolic, but understandable because of Moats’ sympathies. Moats wants his book to be about equality under the law, about “the way that democracy must grow with the understanding of the people, allowing wider scope for the expanding claims of human compassion” (276). David Moats contributes to this expansion of democracy in Civil Wars by demonstrating the vitality of the political process and showing the courage and compassion displayed by Vermonters in what can be called the greatest debate of our time.

Works Cited