



How
'civil partnerships'
devalue the
currency of marriage

Counterfeit Marriage



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CHRISTIAN INFLUENCE IN A SECULAR WORLD

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Introduction

Lord Lester and the gay rights group, Stonewall, are proposing what would surely be the most radical change to family law in English legal history.

According to Government Statistics, same-sex couples make up only 0.2 per cent of all households.¹ Yet under the Bill virtually all the legal rights and privileges of married couples are handed to homosexual couples who have lived together for six months and registered their partnership. Heterosexuals in a temporary relationship will also be able to register.

The Bill makes civil partnership indistinguishable from marriage in virtually all respects. Government Ministers are also given draconian order-making powers to abolish any remaining privileges that apply only to married couples.

Gay adoption

On first sight, a right for homosexual couples to adopt children appears to have been omitted from the Bill. Homosexual adoption is a highly controversial issue. According to *British Social Attitudes* no other gay rights measure is more opposed by the public than homosexual adoption. Some 84 per cent oppose adoption by homosexual men.²

But Clause 30 opens the way to homosexual adoption by the back door. Clause 30 is a notorious ‘Henry VIII Clause’ enabling Ministers to amend primary legislation by ministerial order.

Heterosexual partnerships

The provisions of the Bill also extend to heterosexual cohabitants. Those who have freely chosen *not* to marry and are not publicly committed to stay together will be given all the rights and privileges that apply to married couples.

Three out of every five cohabitations lead to marriage. For the remainder, very few relationships endure. Most end after about 2 to 3 years.³

Because it effectively equates marriage and cohabitation, the Civil Partnerships Bill provides a substantial disincentive to marriage.

Counterfeit marriage

The Civil Partnerships Bill creates a counterfeit marriage in three ways :

- It creates a status equivalent to marriage for homosexual couples who have lived together for six months.
- It completely dismantles the Western legal tradition whereby marriage is accorded special respect and protection.
- It gives virtually all of the legal benefits of marriage to heterosexual couples in a temporary relationship.

Circulating fake money cheats those who receive it and can damage the economy. In the same way giving same-sex couples and temporary relationships the same status as marriage devalues the currency of marriage.

When people marry their intention at the point of marriage must be to stay together for life. No such intention is needed for those who register a partnership. In fact under Clause 32 of the Bill the partnership can be dissolved in one month where both parties consent, or nine months where one partner withholds their consent. The Bill strongly encourages partners to make financial agreements to provide for the ending of their partnership before it happens.

The prime movers behind the Civil Partnerships Bill are the gay rights group, Stonewall. There is no equivalent lobby group campaigning for change on behalf of heterosexual cohabitantes. To lump those different interests together is as patronising as it is disingenuous.

In 1999, the then Home Secretary, Jack Straw, stated in the House of Commons that the Government would not propose any legislation that suggested an acceptance of homosexual marriage or adoption.⁴ In 2000 Jack Straw repeated this assurance:

“[Marriage is]...about a union for the procreation of children, which by definition can only happen between a heterosexual couple. So I see no circumstances in which we would ever bring forward proposals for so-called gay marriages”.⁵

The Civil Partnerships Bill may not use the word ‘marriage’, but by arrogating the privileges that pertain to married couples, it creates gay marriage in all but name.

Marriage – the cornerstone of society

The State has an interest in marriage. Marriage involves a public undertaking to stay together for life and, as Jack Straw said, it is a union for the procreation of children.

All around the world, across all religions and cultures, the successful societies have been those based upon marriage.⁶

John Locke referred to marriage as mankind's 'first society'.

Marriage has enjoyed a privileged status in the Western legal tradition because of the unique social benefits it offers. Marriage is not an arbitrary construct; it is an 'honourable estate' based on the different, complementary nature of men and women – and how they refine, support, encourage, and complete one another.

Marriage is a public commitment, not a private liaison. The married family is profoundly important for a stable society.

It is still true that the vast majority of children are raised by married couples.⁷ Most cohabiting couples marry. It is only in a married family that the parents are publicly committed to stay together for life.

Marriage creates new relationships uniting the families of husband and wife. Stable married families are a primary carrier of values. It is in married families that values are most effectively passed down through the generations. It is where children learn right from wrong and where they learn to get along with others and control their own selfish impulses.

Re-defining marriage and the family

The Western legal tradition is explicitly based on Christian teaching. The Genesis account in the Bible states: “For this reason a man will leave his father and mother and be united to his wife, and they will become one flesh.”⁸ Christ himself quoted this passage.⁹ The Christian view is that marriage between one man and one woman for life is part of the natural moral order.

English law defines marriage as “the voluntary union for life of one man and one woman, to the exclusion of all others”.¹⁰ This definition was given in the leading case *Hyde v Hyde and Woodmansee* [1866].¹¹ Lord Penzance, the Judge in the case, sought to give a definition recognised throughout ‘Christendom’.

Some cultures legally endorse polygamy. In the West, with its Christian tradition, polygamy has been made a criminal offence, the offence of bigamy.

Until comparatively recently the word ‘family’ has meant the married family. In the last few decades the definition has embraced lone parent households. It is still true to say that a large number of lone parent households (around half) are created through divorce, separation or the death of a spouse.¹² Those families were created through marriage, although the spouses are no longer together.

Now gay rights advocates want to use the idea of civil partnerships to re-define the family. Angela Mason, the Director of Stonewall, is very clear that the real battle is about fighting for the legal acceptance of homosexual families:

“In the media the issue is always hyped up as the gay marriage debate, but I don’t think that that is the right starting point. I think the central issue is the family. I want to see lesbians and gay men reclaiming the idea of the family. We all come from families, and I believe the vast majority of us aspire to create our own families. We are family and we know that families do indeed come in all shapes and sizes.”¹³

Marriage is the proven best for children

Leaving aside all the other very great benefits for society, the fact that marriage is the proven best for the raising of children is sufficient reason to maintain the special status it has in law. In 1998, the Government Green Paper on the Family, *Supporting Families*, said, “Marriage is the surest foundation for raising children and remains the choice of the majority of people in Britain.”¹⁴ It is still true that most people marry and most marriages (60 per cent) last for life.¹⁵

Children are conceived through heterosexual intercourse. The most basic unit of society - the family - is based on biology not ideology. Children need a father and a mother to nurture them. We are made that way. Children need parents who love them and whose parents love each other just as much. That love must be a permanent and not a temporary commitment. As Professor Hadley Arkes, of Amherst College USA argues:

“Is it better for children to be spawned in random relations, or is it better for them to be begotten in arrangements in which their parents are bound to their offspring by the ties of law as well as nature...that parents would be as committed to nurturance of their children as they are committed to each other as husband and wife?”¹⁶

The best environment for raising children is marriage because the spouses have committed themselves to each other, and thus their children, for life. No other kind of relationship provides this environment of stability and permanence for children. Social science confirms that lifelong and loving marriage is the ideal context in which to raise children. Professor A H Halsey (Professor of Social Policy at Nuffield College, Oxford) states:

“... what should be universally acknowledged is that the children of parents who do not follow the traditional norm (i.e. taking on personal, active and long-term responsibility for the social upbringing of the children they generate) are thereby disadvantaged in many major aspects of their chances of living a successful life. On the evidence available such children tend to die earlier, to have more illness, to do less well at school, to exist at a lower level of nutrition, comfort and conviviality, to suffer more unemployment, to be more prone to deviance and crime, and finally to repeat the cycle of unstable parenting from which they themselves have suffered... The evidence all points in the same direction, is formidable, and tallies with common sense.”¹⁷

Cohabitation – choosing not to marry

Choosing not to marry

The option to marry is always open to heterosexual cohabitants, but by definition they have freely chosen not to marry. As Ruth Deech, Principal of St Anne’s College, Oxford has said:

“A unique commitment is made by those who marry and not, as they are well aware, by those who refrain from marrying, and no amount of emphasis on the similarities between spouses and cohabitants can obscure the difference, one of the most fundamental in human existence.”¹⁸

Cohabiting couples want to retain their freedom to leave the relationship they are in.

Cohabitation is a transitory arrangement

The study *Seven years in the lives of British Families* was based on data from the British Household Panel Survey. It concluded that cohabitation is essentially a transitory arrangement: “Cohabiting unions last only a short time before being converted into marriage or dissolving: their median length is about two years.”¹⁹

The study found that “About 3 in five cohabitations turn into marriage.”²⁰ Cohabiting couples often marry once they have a child.

The study found that very few cohabitations endured. Only 17 per cent of cohabitations survive 5 years or more and only 7 per cent last 10 years or more.²¹ But 60 per cent of marriages last for life.

The General Household Survey has found that those who cohabit before marriage are “60 per cent more likely to have divorced after eight years of marriage.”²²

The largest and most detailed study to date on sexual behaviour in the UK concluded that: “... it is striking that cohabitation does not appear to exert any strong influence on monogamy”.²³

Lessons from history

There are no precedents in recorded history where advanced civilisations have endured based on temporary relationships. Neither are there any advanced civilisations which have endured where marriage has been equated with temporary relationships.

Attempts have certainly been made to give cohabitation the same status as marriage, and provide for easy divorce, but either these moves had to be reversed within a few years, as in Revolutionary Russia and France, or the civilisation itself collapsed.

Aldous Huxley in his book *Ends and Means* examined the massive anthropological comparative study *Sex and Culture* by J D Unwin. Huxley found Unwin's evidence compelling.²⁴ Unwin concluded after studying eighty primitive and sixteen advanced societies that cultural achievement and sexual licence were incompatible for more than one generation. Societies flourished where absolute monogamy had been practised.²⁵

The Bolshevik Experiment

Early communist Russia aggressively promoted cohabitation and equated it with marriage. The 1918 *Family Code* "...severed the concept of marriage from that of the family...".²⁶ Then the 1926 *Family Code* recognised couples living together without any form of registration.²⁷ Only three days were needed to get a divorce. Between 1926 and 1927 an already high divorce rate rose by nearly 70 per cent.²⁸ At the time it was written "...we have in Russia if not a condition certainly a spirit of free love..."²⁹

The modern day feminist Wendy Z Goldman is clearly sympathetic with what the Bolsheviks were trying to achieve. She writes that the Bolsheviks believed that under their economic and social reforms:

"...marriage would become superfluous. Men and women would come together and separate as they wished, apart from the deforming pressures of economic dependency and need. Free union would gradually replace marriage as the state ceased to interfere in the union between the sexes. Parents, regardless of their marital status, would care for their children with the help of the state; the very

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concept of illegitimacy would become obsolete. The family, stripped of its previous social functions, would gradually wither away, leaving in its place fully autonomous, equal individuals free to choose their partners on the basis of love and mutual respect.”³⁰

In 1929 the pro-Soviet author Maurice Hindus wrote that:

“Marriage certainly is ceasing to have any sanctity or even any vital significance. In a legal sense it hardly exists at all, and this condition would not change appreciably even if registration of unions were made compulsory again. It could not change so long as mating and separation are unbound by any hindrances.”³¹

He describes the story of a 30-year-old man in revolutionary Russia who had been ‘married’ and ‘divorced’ twelve times.³²

However, the destruction of family life began to destroy Russian society itself. Hindus wrote that the “social bonds of family life [were in the] process of dissolution”.³³ Immense problems were posed by divorce, alimony, family instability and homeless waifs wandering the streets (‘besprizornost’).³⁴

Even Lenin was appalled at the consequences of the policy which he himself had instigated. In 1929 Hindus wrote of the people’s response to the law’s retreat from morality: “Sex was to be as free and simple as drinking a glass of water. The older revolutionaries were outraged...Lenine [sic] himself was frantic with indignation. ‘The theory of a glass of water (in sex life),’ said he, ‘has made our youth mad...and this is anti-Marxian and anti-social’.”³⁵

Russia’s leaders eventually had to do something about it. The deputy chairman of the Supreme Court said in 1936: “It is necessary to put an end to the anarchist view of marriage and childbirth as an exclusively private affair”.³⁶ “In 1936, jurists repudiated many of their earlier ideas, and in a clear ideological shift, demanded the strengthening and stabilisation of the family.”³⁷ By 1944 Stalin’s *Family Edict* had returned divorce proceedings to the courts and ‘de facto marriage’ was abolished.³⁸ In 1959 ‘solemn ceremonies’ had been created to establish secular marriage ceremonies.³⁹

Russian revolutionary practice in creating ‘new families’ had to be completely reversed.

The French Revolution

An earlier revolution also adopted similar policies to equate marriage and cohabitation. In the first years after the French revolution cohabitation – free union – was widely accepted and commonly practised.⁴⁰ In 1792 France passed a law establishing divorce by mutual consent.⁴¹

But social disorder followed rapidly. There is evidence that the casual ‘free unions’ caused significant numbers of women and children to be abandoned.⁴² Women demanded a law to punish the men who had abandoned them.⁴³ Also, in one part of France “...the number of first-born children conceived before marriage escalated from 19.1 per cent in 1781-90 to no fewer than 34.4 per cent in 1791-1800...”⁴⁴

As early as 1793 the National Convention began to rein in divorce and in 1794 the leaders of France set out “...to reaffirm the family as the bedrock of society”.⁴⁵ Napoleon’s *Civil Code* of 1804 completed the reversal and made divorce much harder to obtain.⁴⁶ The restoration of the monarchy in 1816 saw divorce outlawed altogether.⁴⁷

Do homosexuals want monogamy?

Despite the pressure from some gay rights campaigners, the debate over the legalisation of homosexual ‘marriage’ and partnerships is perhaps at its most heated amongst homosexuals themselves. The central issue at stake is that of monogamy. Many lesbians and gay men do not want to be ‘restricted’ by having to conform to what they see as traditional heterosexual standards. Terry Sanderson, writer for the *Gay Times*, argues strongly against the introduction of homosexual ‘marriage’:

“The fundamental advantage gay relationships have over marriage is that we can tailor them precisely to our requirements. We can make it up as we go along, change with the circumstances and go with the flow. We don’t have to promise sexual exclusivity or to share our worldly goods if we don’t want to”.⁴⁸

The SIGMA project, the leading research project into gay lifestyles in the UK, was conducted by researchers sympathetic to gay rights. Their main study was funded by the Department of Health and published by HMSO. This study found that most homosexual men had casual partners, on average seven per year,⁴⁹ and claimed that:

“There is a widespread expectation among gay men that relationships will not be monogamous since this is widely seen as a means of combining the security of a long term commitment with the excitement of new encounters.”⁵⁰

The SIGMA researchers used the term “closed” to describe “monogamy”. Their definition would strike many as extremely weak: “A relationship was considered closed if the respondent had not had sex with a third party in the preceding month.”⁵¹ National statistics show that just 0.2 per cent of households are headed by a cohabiting same-sex couple⁵², and figures from gay academics already referred to would suggest that many of these relationships are not sexually exclusive.

Even those at the forefront of the campaign for ‘gay marriage’ admit that, although ‘marriage’ may lessen the extent of gay promiscuity, we cannot expect it to disappear altogether. Evan Davis states: “Even if you regard an open relationship as imperfect, it is surely still not worthless.”⁵³ Andrew Sullivan is one of the leading gay intellectuals in the West. His book *Virtually Normal* is probably the most articulate case for gay marriage. Yet he argues that homosexual partnerships are superior to heterosexual monogamous marriages since:

“... there is more likely to be greater understanding of the need for extramarital outlets between two men than between a man and a woman... Their failures entail fewer consequences for others.”⁵⁴

The Civil Partnerships Bill

There is certainly no major campaign calling for heterosexual civil partnerships, but Stonewall, the largest UK gay rights group, has backed civil partnerships as “in many ways the greatest prize” that they could win.⁵⁵

In an article published in *The Times* on 10th January 2002 Lord Lester of Herne Hill argued that cohabiting couples, and especially gay and lesbian couples, do not enjoy the same rights as married couples. He believes this leads to cases of injustice and hardship.

Under his Civil Partnerships Bill, any couple who live together for six months can register their partnership.

Registered partners would then be entitled to claim virtually all the benefits of marriage. This includes adoption if Ministers so exercise the powers given to them in Clause 30.

Lord Lester argues that :

“Civil partnership is not a threat to marriage; it is an alternative which allows couples who cannot, or would not, marry to base their common life on a firm legal foundation. The Bill enables men and women to come together to form a caring relationship of mutual support protected by law.”⁵⁶

The law should follow changes in family life and public opinion, which, he says, is becoming less strongly in favour of marriage.⁵⁷

Couples who register under the Bill can easily dissolve their partnership, either by mutual consent after one month or by court order after nine months (where one party withholds consent). He emphasises that ‘couples will be able to make their own arrangements for separation before entering the partnership’.⁵⁸ The Bill does not require that these relationships will be permanent or even long-lasting.

The scope of the Bill

The scope of this Bill is huge. Lord Lester and Stonewall have drawn up a list of all the ways in which the legal system recognises and privileges marriage and systematically sought to mirror them in this bill. Marriage currently has a special status in law. Spouses are given privileges and benefits in recognition of the lifelong and exclusive commitment which they make to one another. These privileges will now be open to anyone who has lived with anyone else for six months and registered their partnership.

Under present law individuals are, in general, free to leave their property to whom they will, with a default to their spouses or blood relatives on intestacy. Under Lord Lester's Bill this is set to change because, for the first time, there is presented the opportunity to acquire the property of a non-spouse, non-blood related third party, simply by moving in with them and registering a relationship after 6 months.

New rights for homosexuals and heterosexual cohabitantes

- 'Communal property' is automatically considered to be shared equally *unless a property agreement has been made*. If the partnership is ended, then the communal property is shared equally between the parties and there can also be other financial provision made if one party was wholly or partly maintained by the other. [Clauses 9, 33 to 39]
- Partners can make their own property agreement at any time which binds the court. [Clause 10]
- Under existing law, spouses can transfer assets to each other free of Capital Gains Tax. This benefit will be extended to civil partners. [Clause 12]
- Under existing law, a spouse is recognised as next of kin. The Civil Partnerships Bill gives this right to a registered partner. For an unmarried person, the children or parents of the person concerned would normally be recognised as next of kin. The bill means they will be excluded in favour of the signatory to a temporary partnership agreement. [Clauses 13 – 14]
- A registered partner can exercise a continuing power of attorney which, in the event of his partner becoming incapacitated, includes the ability to

decide what medical treatment, if any, he should receive. [Clause 13]

- The registered partner is designated as a relative and next of kin for decisions taken for their partner under the Mental Health Act 1983. [Clause 14]
- Partners are treated in the same way as married couples for the purposes of income-based benefits. [Clauses 15 and 16]
- The bill also extends to homosexual couples the domestic violence remedies (occupation orders and non-molestation orders) which already apply to heterosexual cohabiters and married couples. [Clauses 17 – 18]
- A registered partner becomes entitled to register the death of their partner. [Clause 20]
- Registered partners have the right to inherit the tenancy of their partner. [Clause 21]
- Under the law of intestacy, which operates where someone dies without making a will, a spouse automatically inherits. Under the bill, a registered partner would be given the same privilege. [Clause 22]
- Registered partners have the right to take legal action to dispute a will. [Clause 23]
- Currently only spouses can inherit from one another free of any possible inheritance tax liability. Under this bill, a couple who register a civil partnership will be given the same exemption. [Clause 24]
- Registered partners become entitled to contributory benefits payable on death. [Clause 25]
- Registered partners become entitled to the same pensions benefits that a spouse would be. [Clauses 26 – 28]
- Where a partner has died in a fatal accident a registered partner who was maintained by the deceased is entitled to take legal action to sue for damages. [Clause 29]

The scope of the existing law

It is easy to gain the impression from the proponents of civil partnerships legislation that there is no legal provision at all for same-sex or cohabiting couples. This is quite untrue.

- **Property:** Any two people can jointly own property and go to a court to settle disputes.
- **Wills:** Anyone can make a will and leave their possessions to whomever they want. Cohabitees, whether homosexual or heterosexual, who want their cohabiting partners to receive all their worldly goods on their death, just have to make a will. It costs about £50 at a solicitor's office to have mirror wills drawn up, so that both partners have identical wills and their property is distributed according to their wishes on their death.
- **Inheritance tax:** This is only payable on amounts above £242,000. Everyone except the surviving spouse of a marriage has to pay inheritance tax on inheritances above this level. This includes a son who must pay inheritance tax when he inherits from his father. The son may have nursed his father for ten years - he still has to pay inheritance tax. In the same way a member of a cohabiting or homosexual couple must pay inheritance tax when they inherit.
- **The law on intestacy** (where the deceased has made no will) is the same for all unrelated adults. This means that people who have lived together for many years as close friends or in a sexual relationship are in precisely the same position. Two elderly spinsters who had spent their lives caring for one another but had not made a will would be subject to the same complications as a cohabiting couple where one partner died intestate. The solution to the problems of intestacy is simply to make a will.
- **Tenancy:** Since 1988, Heterosexual cohabitees have been entitled to succeed to a tenancy where their cohabiting partner dies⁵⁹. Following the case of *Fitzpatrick v Sterling Housing Association*,⁶⁰ the surviving partner of a homosexual who has died can be entitled to succeed to the tenancy on a property in which they both lived.

- **Personal Pensions:** Anyone taking out a personal pension can name a beneficiary of the pension should they die. This could include a same-sex partner.
- **Occupational Pensions:** A homosexual or heterosexual partner can be a ‘dependant’ and therefore receive payments, or, at the discretion of the trustees, benefit from a death in service lump sum.
- **Immigration rights:** Following a Home Office ruling a person has the right to bring his heterosexual or homosexual partner into the country. This is probably why it does not feature in Lord Lester’s Bill.

Anomalies and injustices created by the Bill

The Bill is concerned with relationships outside of marriage.

Supporters of the Bill claim to be concerned with remedying injustices in the current law. But if that is really the intention of the Bill then, on its own terms, it fails miserably.

It is perfectly legitimate to debate the defects in inheritance law, landlord and tenant law, tax law and so on. But the Bill only remedies problems with these laws for the select group of people who are able to register under the Bill.

Yes there is a difference of treatment for married couples in the present law. This is because they make a public commitment to be together to the exclusion of all others for life and because marriage is a union for raising children. The issue at stake is whether the State should promote a permanent union for adults and children.

Of course, everyone knows examples of two people choosing to live together on a long term basis because of care needs, friendship or companionship. They are not in a sexual relationship. They are simply friends or relatives. They could never sign a partnership declaration under the Bill because it has the obvious connotation of being a sexual affair.

For every single example given by Lord Lester of a gay couple facing hardship under the present law, there are many other domestic arrangements that labour

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under the same handicap, but without recourse, since they are merely individuals in the eyes of the law.

Non-sexual relationships where there is a great degree of mutual care and commitment are in fact much more common than the 0.2 per cent of households which comprise a same-sex couple.⁶¹

Examples of such households include two sisters, a daughter living with her elderly mother, two close friends of the same sex who share a house, a nephew living with his auntie, or a grandson living with his grandfather. 3,420,000 people live in such households.⁶² These households will face some or all of the hardships complained of by homosexual couples.

This makes it all the more surprising that there should be such a focus on less than 100,000 people living in homosexual households.⁶³

The Bill creates an incentive for people to pretend they are homosexuals or live-in lovers in order to gain partnership rights or tax breaks. This is precisely what has already happened in the French Civil Pact of Solidarity (PaCS) scheme.⁶⁴

Since many emotive examples have been cited in support of the Bill, it is important to consider the many emotive cases where people will not benefit from the Bill. If the Bill becomes an Act the following anomalies will be created:

- Two spinsters live together for 40 years but are excluded from benefit, on account of their unwillingness to register as a lesbian couple.
- A gay couple register their partnership after six months. One dies after only a year and the other inherits a large property, tax-free.
- The drug-taking heir of a wealthy industrialist is picked up at a gay nightclub by a man 20 years his senior, who takes him back to his flat. After 6 months the older man threatens to kick him out unless they register. They do so. The young man dies of AIDS. His partner inherits the whole estate.
- A daughter gives up her well-paid job to care for her elderly and infirm mother for 15 years. She moves into her mother's London home where the

family has lived for generations. Her mother dies and the daughter inherits. She is then faced with a large bill for inheritance tax, which forces her to sell the family home and move out of London.

- Two women, Jane and Julie, live together for 5 years as a lesbian couple and register their partnership. Jane develops a terminal illness and is cared for by Julie until her death. Julie inherits Jane's property tax-free. This could not have happened if Jane and Julie were sisters.
- Two elderly gentlemen, one of them disabled, live together for 15 years in a rented property, the one caring for the other. They do not register as partners, not wishing to be seen as lovers. The disabled man dies. His friend is forcibly evicted from the rented property, having no status as 'partner' or 'family member'.
- Two homosexuals sign a partnership after six months of living together. They have other sexual partners. One is killed when his car collides with a bus. The surviving partner uses his rights under the new Act to sue the bus company.
- An elderly uncle moves into his niece's house. He is dependent on her for everything. The niece has a routine operation, but dies owing to the negligence of the anaesthetist. The uncle is unable to sue the Health Authority, because they were not in a registered partnership.
- Two sisters live together throughout their lives in a rented house. They share their possessions. One has a Public Sector Pension. She dies, but her surviving sister can gain nothing from the pension.
- Two lesbians register their partnership under the Act. One has a Public Sector Pension. On her death the other receives a full widow's pension.
- A divorced Army wife is wholly dependent on the share of her ex-husband's pension received under a pension earmarking order. He dies leaving a registered partner, who inherits the full widow's pension leaving the first wife with nothing.

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- A lonely divorcee with two dependent children decides to register a partnership with her boyfriend of 6 months' standing, even though the relationship is rocky. As it happens, she is a member of a well-heeled occupational pension scheme. Under the scheme rules, the children can receive a dependant's pension, but only if there is no-one to take the spouse's pension. The boyfriend walks out on her, and in her distress she commits suicide. The boyfriend takes the pension; the children get nothing. They cannot make a claim under the Inheritance (Provision for Family and Dependents) Act 1975 because the pension does not form part of the deceased's estate.
- James, a retired man living off his life savings, executes a continuing power of attorney in favour of his partner, Stephen. James becomes mentally ill and Stephen has him admitted to hospital.

Four scenarios for James and Stephen

1. While in hospital, Stephen arranges for the transfer of all James's savings to himself and decamps to Spain.
2. While in hospital, James realises dimly what was going on and wants to revoke the power of attorney, but cannot do so because he lacks the mental capacity.
3. James knows that the power of attorney would be revoked with immediate effect on the making of a cessation order, but cannot file for a cessation because 12 months have not elapsed since the partnership was registered.
4. The manager of the hospital realises James is in need of help and writes to the Public Trustee. But the office of the Public Trustee takes a month to reply, during which time Stephen makes off with the money.

Loopholes and tax dodges

Ministerial orders

The Bill contains a provision in Clause 30 allowing a Minister of the Crown to amend primary legislation by Ministerial order so as to apply civil partnerships to any other legal provision.

The following scenarios are perfectly possible under the Bill:

- The Minister having power to do so under s 30 gives way to lobbying from a pressure group and makes a statutory instrument providing that, from now on, the Marriage Act 1949 shall apply equally to same-sex couples.
- The Minister passes legislation altering the Church Canons by allowing same-sex couples to celebrate their ‘marriage’ in church.
- Similar legislation is passed allowing all same-sex couples to adopt. None of these measures is properly debated.

Tax dodges

The Bill does not require a sexual relationship as such, but merely six months of living together under the same roof, by two individuals who are not closely related.

While registration will probably be perceived as a statement of sexuality, and therefore avoided by routine house-sharers, there is a significant minority for whom the Bill will present unique opportunities for tax evasion. This can hardly fail to be noticed by tax lawyers and independent financial advisers.

Examples:

- Edward, a farmer, learns of a plan to route a new trunk road through part of his farmland. He is advised the land is now worth £3m. He approaches Charles, a property developer, and offers him the land at a discount if Charles will ‘go into partnership’. Charles agrees and transfers some of

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his belongings to the farmhouse. Six months later they register and Charles pays £2m in return for the deeds. The money is tax free in Edward's hands. Charles pays Capital Gains Tax (CGT) on the full gain, but not until three years later when he sells the land at a profit.

- Philip, a banker in the City, develops cancer and is given 12 months to live. He wants to pass on his life savings to his son George but realises there is a tax problem. A family friend, Emily, agrees to move in and look after him. Six months later they register a partnership and Philip transfers all his property to Emily under a secret trust. The transfer is exempt from Inheritance Tax under Clause 24. After Philip's death, Emily forms a fresh partnership with George to whom she transfers the property. By virtue of Clause 12, the second transfer defers all liability to CGT until George himself later disposes of the property.

Conclusion

Marriage has always needed structural support

Marriage is a voluntary union, but private choices to marry have public consequences. Society has an interest in promoting stable married families.

In the past the Church, education, the media, social conventions and customs all contributed to a prevailing ethos in society which supported marriage.

In addition marriage has always needed structural support through the law and public policy. This was so even when marriage rates were at their highest and divorce was strongly stigmatised. Some of the structural supports for marriage are no longer there. Social conventions and public attitudes have also changed. There is now very little stigma attached to living together before marriage.

But stigma or no stigma those who cohabit before marriage are 60% more likely to divorce within 8 years of marriage.⁶⁵ Lord Lester in his article in *The Times* quotes *British Social Attitudes* as reporting that only a quarter of people believe that married couples make better parents than unmarried ones.⁶⁶

But whatever studies of public opinion may say, the facts beg to differ. Study after study finds that marriage is the best relationship for children and adults. It is ironic that just as many people are becoming embarrassed to ‘come out’ in support of marriage, robust research is now proving that marriage is indeed the best.

The Government’s *Health Statistics Quarterly*, recently reported an analysis of thirty years of data on men’s health. The study concluded that “Marriage was associated with good health”.⁶⁷

But whilst the facts show that marriage is the best for adults and children, the legal distinctions between marriage and cohabitation have already been blurred in certain areas.

For many years legal academics have pressed for the distinctions to be blurred yet further if not removed entirely. Famously, family lawyer, Brenda Hoggett (now Lady Justice Hale) said in 1980:

“Logically, we have already reached a point at which, rather than discussing which remedies should now be extended to the unmarried, we should be considering whether the legal institution of marriage continues to serve any useful purposes.”⁶⁸

Whatever Lady Justice Hale may have thought in 1980, marriage has remained extremely popular. Most people marry and most marriages last for life. A Government study found that 80% of young people expect to marry.⁶⁹

But the institution of marriage is under pressure. The UK has one of the highest divorce rates in Europe. Now is not the time to kick away what structural props remain for marriage.

Eroding marriage, not extending a privilege

The Civil Partnerships Bill effectively dismantles the Western legal tradition whereby marriage is accorded special respect and protection.

The Bill radically undermines the position of marriage in our legal system in a way that no other single measure has ever done.

It is argued that “Civil partnership is not a threat to marriage”⁷⁰ merely an alternative for those who want it.

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But if the legal benefits of marriage are given away to any other type of relationship, the status of marriage is eroded. This can be illustrated by some simple analogies.

Disabled parking spaces are a necessary privilege for disabled people who have a disabled parking permit. If you extend the privilege of free parking in disabled parking spaces to able-bodied people, then you have taken away the privilege from those it belongs to. There is no longer any special recognition for disabled people. Allowing anyone to park in disabled parking spaces does not extend a benefit, it erodes a status. The disabled parking permit would become worthless.

If all barristers were allowed to be QC's as soon as they were called to the bar, then the status of what it means to be a QC would be drastically diminished.

In the same way if virtually all the benefits of marriage are given to those who are in a civil partnership, then the currency of marriage is devalued.

Hard cases make bad law

Already, under the existing law, there are some provisions for people in other types of households. It may well be that the law can be amended to remedy some simple injustices which the law creates for people in non-marital households. But if this is done it must be done fairly and it must be done without undermining marriage.

Fairness is the last thing created by the Civil Partnerships Bill. For every case cited by Stonewall of hardship endured by a gay couple, there are thousands of other cases of people not in a sexual relationship who experience the same problems.

According to Government statistics there are 100,000 homosexual people in same-sex households, but 3.4 million people who live with a friend, a brother or sister, with elderly relatives, in an extended family or with another family. The Bill makes provision for the 100,000 but no provision for the 3.4 million.

The Civil Partnerships Bill does not extend to siblings and relatives. Similarly friends could not benefit from it without pretending to be in a partnership with clear connotations of a sexual relationship. This means that sexual relationships are privileged over those which are not sexual.

An incentive is created for people to pretend to be a couple in order to claim the benefits. This is precisely what has happened in France. Young teachers have

discovered they can transfer to jobs in sunnier climes if they register a partnership with someone in the destination of their choice. Out of 14,000 partnerships signed since November 2000, a statistically surprising 2,000 involve teachers.⁷¹

Under the Bill, elderly spinsters living together as friends will have to claim they are lesbians in order to get the benefits held out by the Bill.

Hard cases have been cited with regard to the laws on intestacy, inheritance and tenancies. It is unjust to solve these hard cases for gay couples and not at the same time also solve them for those in non-sexual relationships.

Parliament is left with two choices if it does not want to undermine marriage:

1. Leave the law as it is
2. Provide a new but limited benefit status so that everyone can nominate someone else in their household for certain purposes, whilst letting marriage retain its privileged status.

The cost of the second option would, of course, be considerable.

The pressure for partnership rights

This bill is unlikely to succeed. In this sense it is not a serious bill, but it is a serious attempt to change public opinion. The symbolic nature of the bill is huge and the campaign for civil partnerships to equate with marriage is an issue that is not going to go away. Marriage is already in danger of death by a thousand cuts, already losing privilege after privilege, and in turn holding fewer and fewer incentives. This bill would effectively be the death-blow to the special status of marriage in law and society.

The movement towards full legal recognition is taking place around the country as well as at Parliament, with cities such as London and Manchester⁷² establishing their own civil partnership schemes for both homosexual and heterosexual couples.

Yet it is noteworthy that the uptake for these has been minimal. So far there have been only 100 registered partnerships made in London despite the high profile publicity campaign and claims that homosexual couples were enthusiastic to demonstrate a public commitment and an receive official recognition of their relationship. If there was a backlog of couples waiting for 5th September 2001 when the register started, then the backlog cannot have been very great. The Mayor has allocated £100,000 from his budget to help finance the scheme.⁷³

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Denmark has had a civil partnership register since 1989. There have only been 4,337 partners registered under the scheme. According to a leading advocate of the scheme, Professor Ingrid Lund-Andersen, this represents only 1.7% of all homosexuals in Denmark.⁷⁴

The Northern Ireland Human Rights Commission is currently consulting on the formation of a Bill of Rights for the province. It is suggesting that a clause “to recognise and guarantee equality of rights and responsibilities of a private law character for persons living together in marriage and in long-term domestic partnerships” be included in the Bill.

This would “provide for the formal recognition of the relationship and the rights and responsibilities of the partners during the relationship and in the event of its dissolution”. The Commission admits that this would “legitimise partnerships between gay men or between lesbian women” and believes that this could “only be of assistance to the individuals concerned”.⁷⁵

True love promises permanence

It is difficult to think how Shakespeare would write a sonnet about a civil partnership. Even Keats would struggle to make such easy-in-easy-out relationships sound romantic. For thousands of years our poetry, our songs, our literature have been fuelled by the deep desire for true love and its ultimate expression in life-long commitment. It is one of the richest of human emotions.

That true love can be found in the permanence of marriage is attested by the fact that most people want to marry and most marriages last for life. But what is true for the majority has been called a ‘myth’ by a minority. They say marriage is no better than any other type of relationship, and could in fact be worse. And so they wish to reclassify it. Civil Partnerships will equate gay liaisons with Christian marriage and the hop-on-hop-off merry-go-round of cohabitation with the honourable estate of matrimony.

And once marriage has been equated with such unions, where will it end? If two men can ‘marry’ or ‘partner’, why stop there? If all relationships are equal surely the bi-sexual will need to ‘marry’ two people.

This shows the folly of creating counterfeit marriage.

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How
'civil partnerships'
devalue the
currency of marriage

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CHRISTIAN INFLUENCE IN A SECULAR WORLD