

'Gay marriage' in all but name

How 'civil partnerships' equate holy matrimony with homosexual liaisons





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Introduction

The lifelong, exclusive commitment of one man and one woman is not the same as a temporary, non-exclusive commitment between two men.

Yet the two are to be treated by the law as virtually identical.

This is the result of the Government's plans for 'civil partnerships' – a scheme for the legal recognition of homosexual relationships. It is 'gay marriage' in all but name. Those who register their relationship under the scheme will be entitled to the same recognition in law as married couples – in the tax and benefit system and far beyond. The Government has been rigorous and systematic about creating a scheme which mirrors marriage in almost every respect. Yet it denies that this constitutes gay marriage.

But the evidence is there for all to see. It is equating the genuine with the counterfeit. To the man in the street, the difference between real marriage and gay marriage will be virtually imperceptible. *The Guardian* newspaper, which supports the proposals, has said civil partnerships are “**legal marriage in all but name**”.¹

Unfairness

The civil partnership proposals are unfair. The scheme will only apply to gays and lesbians, whilst other house-sharers are excluded. Two elderly ladies who have lived together as friends for 40 years will have to pretend to be lesbians in order to get the legal benefits. Two sisters who share a house for 20 years incur inheritance tax when one dies. But under the plans, if a homosexual couple registered their partnership after a few months, one would inherit tax-free if his 'partner' died.

The only hard cases that the Government appears to be concerned about are those involving homosexuals. It relies heavily on emotive scenarios such as “grieving partners... unable to stay in their shared home or to inherit the possessions they have shared for years when one partner dies suddenly...”²

But for every case it can cite, there will be **almost 60 times** as many cases which apply to people in ordinary families – a daughter living with her elderly mother, a

grandson living with his infirm grandfather, a friend who looks after a disabled person on a long-term basis or two friends sharing on a long-term basis.³ None of these will be helped by civil partnerships. **There are many people in much greater need who are completely ignored by the Government's proposals.**

Government mistake

Latest figures from the 2001 Census show the Government's White Paper grossly overestimated the number of gay households by more than 850%. The figures show there are fewer than 40,000 same-sex households in England and Wales, which is less than 0.2% of all households.⁴ Which then begs the question, why for this tiny number of people, is the Government proposing a wholesale rewriting of family law?

Creating civil partnerships would surely be the most radical change to family law in English legal history. And yet all the international precedents show that very few homosexuals will want to become registered partners. Indeed, as the Government has now admitted, its "high take-up scenario" is only 3.3%. In other words the Government is confident that 96.7% of all homosexuals in the UK *will not* register a civil partnership.⁵

Since the take-up of the scheme will be incredibly low and there are many more deserving types of relationship, it is questionable whether civil partnerships are really about helping people at all.

The Civil Partnership Bill applies to England, Scotland, Wales and Northern Ireland.⁶ (At the time the Bill was published in March 2004, responses to the consultation in Northern Ireland were still being considered – the consultation had only closed on 5 March.⁷) Under the proposals all the legal rights and privileges of married couples are handed to homosexual couples who register their relationship. Cohabiting heterosexual couples will not be allowed to take advantage of the scheme. In this at least the Government's argument is correct since such couples can get married at any time.

The Government argues that same-sex couples are denied the legal recognition available to heterosexual couples through marriage.⁸ Yet everyone has access

to marriage so long as he or she meets the legal requirements. Someone in a homosexual couple has rejected the possibility of marriage by choosing a ‘partner’ of the same sex. Civil partnerships are not about access to marriage and the legal recognition it provides. They are about redefining marriage to something it has never been. They create counterfeit marriage.

Injustice for millions of house-sharers

The major argument advanced in favour of civil partnerships is that there are “hard cases” which need to be remedied – individual cases of disadvantage suffered by homosexual couples in comparison to married couples. The Government issues impassioned pleas about “grieving partners...unable to stay in their shared home or to inherit the possessions they shared for years when one partner dies suddenly...”⁹

But for every case it can cite, there will be **almost 60 times** as many cases which apply to people in ordinary families – a daughter living with her elderly mother, a grandson living with his infirm grandfather, a friend who looks after a disabled person on a long-term basis or two friends sharing on a long-term basis.¹⁰ According to the 2001 Census, over 4.6 million people live in such households, whereas there are less than 80,000 people living in a same-sex couple.

This is how the Office for National Statistics, which compiled these figures, defines a ‘household’:

“A household comprises one person living alone, or a group of people (not necessarily related) living at the same address with common housekeeping – that is, sharing either a living room or sitting room or at least one meal a day.”¹¹

Two elderly sisters who have lived together all their lives will not be helped by civil partnerships. Neither will a disabled person who has been cared for by a friend for 15 years. They are being cruelly ignored. The Government simply says they are a “separate issue” and that it has “no plans for changes to the law in that area.”¹²

It is perfectly legitimate to debate the defects in inheritance law, landlord and tenant law, tax law and so on. But the proposed civil partnership scheme only remedies problems with these laws for the select group of people who are able to become ‘civil partners’.

Marriage

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.

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 register a civil partnership because it has the obvious connotation of being a sexual affair.

However, the proposals create an incentive for people to pretend they are homosexuals 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.¹³

Since many emotive examples have been cited in support of civil partnerships, it is important to compare such examples with many emotive cases where people will not benefit from the proposals.

- 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. 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 one month 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 weeks of living together. They have other sexual partners. One is killed when his car collides with a bus. The surviving partner uses his rights as the registered partner 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 civil partnership. One has a public sector pension. On her death the other receives a full widow's pension.

Do homosexuals want civil partnerships?

The Government now admits that very few homosexuals (3.3%) will wish to enter into a civil partnership. According to this “high take-up scenario”, 96.7% of all homosexuals in the UK will not register a civil partnership.¹⁴

In the 2003 White Paper the Government predicted that the take-up rate for civil partnerships could be as high as 100% of the marriage rate.¹⁵ It suggested that there could be as many as 425,000 civil partnerships by 2050.¹⁶ Now it has slashed the figure to only 42,500 – **fewer than 1,000 per year**. This compares to over 290,000 marriages a year (at present historically low levels).¹⁷

The White Paper’s ‘high take-up’ predictions always seemed extremely unlikely given the Danish experience (where a full civil partnership scheme was introduced in 1989). Between 1 January 1990 and 1 January 1998 a cumulative total of 2168 partnerships had been registered. Using the estimate of one of the leading pro-gay academics, this encompasses just 1.7% of all homosexual people in Denmark.¹⁸

Evidence from England proves the same point. A survey by the *Independent on Sunday* in March 2004 found that since September 2001, fifteen local authorities including Manchester¹⁹, London, Birmingham, Liverpool and Leeds have established their own same-sex partnership ceremonies.²⁰

But the uptake for these has been minimal. In the two-and-a-half years since such schemes were first introduced there have been only 849 ceremonies in total, a mere 340 per year.²¹ This is despite the high profile publicity campaigns and claims that homosexual couples were enthusiastic to demonstrate a public commitment and receive official recognition of their relationship.

It seems that very few homosexual couples are going to become ‘civil partners’. Although gay rights activists use heart-wrenching cases of legal difficulty to argue for civil partnerships, how many such situations are actually going to be helped? Do civil partnerships really have another purpose altogether?

Same-sex marriage round the corner

The Government's consultation on civil partnerships reported:

“It was clear that many of those who supported the principle of a civil partnership scheme would prefer that marriage was made available to same-sex couples.”²²

The Netherlands became the first country in the world to legalise same-sex marriage in 2001; Belgium followed in 2002. It is striking to note that both countries had created civil partnership schemes just a few years earlier. Clearly this did not reduce the pressure for full gay marriage.

“After the 1998 reforms ... the number of legal reasons why a same-sex couple could prefer marriage to registered partnership became almost zero ... However, this did not silence the call for the opening up of marriage. On the contrary, the social and political pressure increased.”²³

Civil partnerships were the Trojan Horse. Once marriage had been gutted of any legal significance, the step to full gay marriage became much easier.

“The passage of [gay marriage]... became possible because of the constant reduction in the Netherlands of the number of issues involved in the opening up of marriage... In fact, the debate could focus on whether there were any acceptable arguments against reducing the legal distinctions between same-sex and different-sex partners *a little further* [sic]”²⁴

UK gay rights groups are fully aware of the significance of civil partnerships in achieving same-sex marriage. The prominent gay rights magazine *The Pink Paper* predicts that once civil partnerships become law there will be full gay marriage by 2010.

“Pressure will continue to build on the government to give gay people full marriage, rather than just civil partnership... As civil unions for gay couples become acceptable in Britain gay rights campaigners will have the strength to eventually push for gay marriage. As Peter Tatchell said at the introduction of the bill, civil partnership will increasingly be seen as ‘marriage lite for queers’... activists will claim that straight unions are no different from gay partnerships. The idea of marriage as a ceremony reserved just for straights will come under fire.”²⁵

The Government states it has no plans to introduce same-sex marriage.²⁶ Civil partnerships may not introduce gay marriage by name, but once passed it is likely to be only a matter of time before calls are made to change the law again to allow homosexuals to become legally married. The Government's assurance against this in light of these proposals is akin to saying 'no surrender' whilst waving the white flag.

The ultimate agenda

The ultimate aim of the gay rights agenda is to completely equate homosexual relationships with marriage. Civil partnerships achieve this aim in law.

The government's Women and Equality Unit wants all official documentation asking for a person's 'marital status' to be altered to read 'civil status'. This would then include both marriage and civil partnerships.²⁷ Civil partnerships and marriage would therefore be seen as one and the same. Marriage would be purged from all official documents.

Some go much further. As radical American author Judith Levine, has said, "Because American marriage is inextricable from Christianity, it admits participants as Noah let animals on the ark. But it doesn't have to be that way. In 1972 the National Coalition of Gay Organizations demanded the 'repeal of all legislative provisions that restrict the sex or number of persons entering into a marriage unit; and the extension of legal benefits to all persons who cohabit regardless of sex or numbers.' Group marriage could comprise any combination of genders."²⁸ And that is her vision of the future.

Counterfeit marriage

The Civil Partnership Bill creates counterfeit marriage by:

- Creating a status equivalent to marriage for homosexual couples even though their relationships do not meet the same criteria
- Attaching to that status all the legal and financial rights of marriage and copying its formal requirements
- Completely dismantling the Western legal tradition whereby marriage is accorded special respect and protection.

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

Civil partnerships strip marriage of its distinctive legal status, not by directly repealing it, but rather by extending the rights and benefits of marriage to other relationships.

Both the Government and gay rights groups emphasise the link between rights and responsibilities.²⁹ However, the responsibility entered into upon marriage is commitment to a life-long and monogamous union. Civil partnerships require neither.

The Government intends registered partnerships only to be “long-term”, not life-long.³⁰ Neither will a civil partnership require a commitment to an exclusive sexual relationship. This is why there will be no equivalent to adultery as a ground for dissolving a civil partnership. As the government’s Women and Equality Unit stated: “Adultery has a specific meaning within the context of heterosexual relationships and it would not be possible nor desirable to read this across to same-sex civil partnerships”.³¹

Introducing a legal framework to give the benefits of marriage to those who have actually rejected marriage and its responsibilities is wrong and devalues marriage.

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.³² 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.”³³

Civil partnerships may not use the word ‘marriage’, but by commandeering the privileges that pertain to married couples, along with registration at a registry office and a court-based process for dissolution, the scheme creates gay marriage in all but name.

This fact is clear to all. As *The Observer* has noted, “Although the Government will insist it is not officially a ‘marriage’ but rather a contract between two people, the fact that couples will have to announce their intentions beforehand in a similar way to the reading of the banns before a wedding reveals its true effect.”³⁴ The Government admits it is unaware of any significant rights and responsibilities omitted from the consultation paper.³⁵ To then argue the proposals are not gay marriage is disingenuous. Commenting on this issue, a leading legal journal concluded:

“The extent of the proposals raises the question as to why the Government did not just extend the right to marry to same-sex couples. The answer must be that to do so would be too controversial. By effectively achieving the same result under a different name, the Government has so far managed to avoid a public backlash...”³⁶

“Same result, different name”. Civil partnerships create counterfeit marriage.

Marriage – the cornerstone of society

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

Those calling for civil partnerships argue same-sex couples only want the same rights and privileges available to heterosexual couples. This ‘equality’ argument presupposes marriage is simply a legal right, one that should be granted to any type of couple. It isn’t.

Marriage is given a privileged position in law precisely because it is the cornerstone of society. All around the world, across all religions and cultures, the successful societies have been those based upon marriage.³⁷

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. Civil partnerships deny this most basic building block of society. The proposals are a fundamental rewriting of family law, removing an entire sex from legal marriage.

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

It is still true that two-thirds of children are raised by married couples.³⁸ 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.

Creating a form of legal relationship, which, legally and procedurally, mirrors marriage on almost every point, creates a form of de facto gay marriage which dispenses with history.

Redefining marriage and the family

The Government is very up front about the fact that it is using this legal change to attempt to force culture change.³⁹ When the plans were first announced, Barbara Roche, then Minister for Social Exclusion, stated that civil partnerships:

“...would send a powerful message about the acceptability of same-sex relationships and about the unacceptability of the homophobia still far too prevalent in our society”.⁴⁰

At the heart of the proposals then is the desire to further legitimise and ‘normalise’ homosexuality by redefining marriage and the family. *The Observer* declared that civil partnerships will be “...one of the most significant changes to Britain’s social make-up since the passing of equal opportunities legislation in the 1970s.”⁴¹

When the State supports marriage, it sends out the message that children need a mother and a father in a permanent relationship. The civil partnership scheme sends out the message that they don’t. It will legitimise the ‘family diversity’ agenda and obscure basic moral values.

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.”⁴² Christ himself quoted this passage.⁴³ 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”.⁴⁴ This definition was given in the leading case *Hyde v Hyde and Woodmansee* [1866].⁴⁵ 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.⁴⁶ 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 redefine the family. The head of the government unit responsible for civil partnerships, Angela Mason, is very clear that the real battle is about fighting for the legal acceptance of homosexual ‘families’. When director of the leading gay rights group Stonewall, she said:

“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.”⁴⁷

The proposals achieve this. They represent a seismic change in how the State views a family unit. For example, same-sex couples, registered or not, will be treated as a “single family unit” for income-related benefit purposes.⁴⁸

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."⁴⁹ The Government restated this in March 2004.⁵⁰ It is still true that most people marry and most marriages (59 per cent) last for life.⁵¹

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 the nurturance of their children as they are committed to each other as husband and wife?"⁵²

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 (Emeritus Professor 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."⁵³

Marriage is a relationship in which children can be naturally conceived and nurtured and in which the adults have made an exclusive lifelong commitment to each other. Homosexual 'civil partners' cannot fulfil the first criteria and will not be asked to fulfil the second.

Giving homosexual couples equal rights therefore, far from preserving marriage, actually trashes marriage. The whole premise of the 'equality' argument is fundamentally wrong. It is hard to think of any other example in society where people would claim discrimination for not receiving a benefit when they blatantly do not fulfil the requirements.

Of course not all married couples are able to have children. But marriage is privileged in recognition of the fact that it is the best environment for raising children. And the great majority of children (two-thirds) live in a household headed by a married couple.⁵⁴

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”.⁵⁵

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,⁵⁶ 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.”⁵⁷

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.”⁵⁸ National statistics show that less than 0.2 per cent of households are headed by a cohabiting same-sex couple⁵⁹, 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.”⁶⁰ 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.”⁶¹

Lessons from history

There are no precedents in recorded history where advanced civilisations have endured based on homosexual or temporary relationships. Neither are there any advanced civilisations which have endured where marriage has been equated with such 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.⁶² 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.⁶³

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..."⁶⁴ Then the 1926 *Family Code* recognised couples living together without any form of registration.⁶⁵ Only three days were needed to get a divorce. Between 1926 and 1927 an already high divorce rate rose by nearly 70 per cent.⁶⁶ At the time it was written "...we have in Russia if not a condition certainly a spirit of free love..."⁶⁷

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 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.⁷⁶⁸

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.”⁷⁶⁹

He describes the story of a 30-year-old man in revolutionary Russia who had been ‘married’ and ‘divorced’ twelve times.⁷⁰

However, the ensuing 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”.⁷¹ Immense problems were posed by divorce, alimony, family instability and homeless waifs wandering the streets (‘besprizornost’).⁷²

Even Lenin was appalled at the consequences of the policy which he himself had instigated. In 1929, five years after Lenin’s death, 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’.”⁷³

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”.⁷⁴ “In 1936, jurists repudiated many of their earlier ideas, and in a clear ideological shift, demanded the strengthening and stabilization of the family.”⁷⁵ By 1944 Stalin’s *Family Edict* had returned divorce proceedings to the courts and ‘de facto marriage’ was abolished.⁷⁶ In 1959 ‘solemn ceremonies’ had been created to establish secular marriage ceremonies.⁷⁷

In short, the State's rejection of marriage as an absolute resulted in social harm to such an extent that the 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.⁷⁸ In 1792 France passed a law establishing divorce by mutual consent.⁷⁹

But social disorder followed rapidly. There is evidence that the casual 'free unions' caused significant numbers of women and children to be abandoned.⁸⁰ Women demanded a law to punish the men who had abandoned them.⁸¹ 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..."⁸²

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".⁸³ Napoleon's *Civil Code* of 1804 completed the reversal and made divorce much harder to obtain.⁸⁴ The restoration of the monarchy in 1816 saw divorce outlawed altogether.⁸⁵

The scope of the proposals

The scope of the proposals is huge. The Government has drawn up a list of all the ways in which the legal system recognises and privileges marriage and systematically sought to mirror them in civil partnerships. 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, and the value of marriage in raising children. These privileges will now be open to any homosexual couple who registers 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 the Government's proposals 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 registering a relationship.

New rights for homosexual couples

Under the Civil Partnership Bill, civil partnerships will offer the following:

During the relationship –

- Joint treatment for income-related benefits
- Joint state pension benefits
- Ability to gain parental responsibility for each other's children
- Recognition for immigration purposes

On dissolution of a partnership –

- Arrangements for property division
- Residence arrangements
- Contact arrangements with children

On death of one partner –

- Right to register the death of the partner
- Right to claim a survivor pension
- Eligibility for bereavement benefits

- Compensation for fatal accidents or criminal injuries
- Recognition under inheritance and intestacy rules
- Tenancy succession rights

Registered ‘civil partners’ will also gain the exemption from inheritance tax and capital gains tax which currently applies only to married couples. The Inland Revenue has stated: “For tax purposes registered same-sex couples will be treated the same as married couples”.⁸⁶ (As a tax matter, this will be dealt with in “the first available” Budget and not in the Civil Partnership Bill.)

Formal requirements

The Government intends to set up a formal court-based process for the formation and dissolution of partnerships, which largely mirrors that of marriage. For example:

- Both parties would have to be 16 years of age or older. Except in Scotland, individuals aged 16 and 17 would have to obtain written consent from their parents or legal guardians.⁸⁷
- The ‘prohibited degrees of relationship’ provision which applies to marriage will also apply to civil partnerships. Close relatives will be prohibited from forming a civil partnership, i.e. those who are close blood or half blood relations or who are related by degrees of affinity.⁸⁸
- The relationship will have ‘legal status’. Any individual still in a registered partnership or marriage will not be able to register a partnership with another person until that partnership or marriage is legally dissolved.⁸⁹ There must be no ‘impediment’ – a familiar term in marriage law.⁹⁰
- There will be a 15 day waiting period between notifying the registrar and registration.⁹¹ (This is parallel to the legal requirement for civil marriages.⁹²)
- The couple will sign the register in the presence of the registrar and two witnesses and may receive a certificate as evidence of their registration.⁹³

- There will be no legal requirement for a ceremony, but local authorities would be free to offer one on the day if both parties wished.⁹⁴

The dissolution process

The Government proposes that the arrangements for dissolution of a registered partnership should be “broadly similar” to those required to end a marriage by a decree of divorce.⁹⁵ It therefore proposes a court-based process by formal application. The partner applying for dissolution will have to show the partnership had broken down irretrievably.⁹⁶ Adultery will not be a specific ground for the dissolution of a partnership.⁹⁷

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 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:** In the tax year 2004-05 this will only be payable on amounts above £263,000. Everyone except the surviving spouse of a marriage has to pay inheritance tax on inheritances above this level. This includes a daughter who must pay inheritance tax when she inherits from her mother. The daughter may have nursed her mother for ten years - she still has to pay inheritance tax. In the same way a member of a homosexual couple (or a cohabiting heterosexual 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 homosexual couple where one partner died intestate. The solution to the problems of intestacy is simply to make a will.
- **Tenancy:** Following the case of *Fitzpatrick v Sterling Housing Association* in 1999,⁹⁸ 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. (Since 1988 heterosexual cohabitees have been entitled to succeed to a tenancy where their cohabiting partner dies.⁹⁹)

- **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 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.

A tax dodgers' charter

The proposals do not require a sexual relationship as such,¹⁰⁰ merely fifteen days notice given to the registry office 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 proposals may present unique opportunities for tax evasion, especially as there is *no requirement to live together*.¹⁰¹ This can hardly fail to be noticed by tax lawyers and independent financial advisers. Mike Warburton, senior partner at the financial advisors firm Grant Thornton states:

“It would not make sense to allow any couple living together – whether gay or heterosexual – the same rights as married couples unless they also accept the obligations that go with that; otherwise, it will turn into a tax dodgers’ charter.”¹⁰²

In respect of gay couples, under the Government’s scheme the scope for tax avoidance is even greater than he feared because there is no requirement for the two people to live together.

One possible example may be:

- 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 they both give notice to the registry office and register their ‘partnership’ fifteen days later. 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.

Religious liberties

The Government has made clear that registration officers will have a statutory duty to conduct civil partnership registrations.¹⁰³ Registrars with a deeply held moral or religious objection who do not wish to take part in formalising a homosexual union will risk losing their job.

In the Netherlands, a Christian registrar who refused to perform a gay marriage ceremony was forced to complain to the Equal Treatment Commission who decided that her employer had discriminated against her on the basis of her faith for refusing to recognise her conscientious objections.¹⁰⁴

At present registrars are office holders. There are Government proposals to make registrars employees of the local authority.¹⁰⁵ This would increase the possibility of registrars being forced out of their jobs for conscientious objections.

Another concern for religious liberties are plans to give civil partnerships “employment benefits reserved only for married partners”.¹⁰⁶ This could open the door to further hostile litigation against faith-based employers.

Conclusion

There is no legal requirement on the United Kingdom to create a legal status for same-sex couples.¹⁰⁷ Yet under the guise of ‘general equality’ and ‘social justice’ the Government is proposing the most radical change to family law in English legal history. Stonewall, the largest UK gay rights group, has backed civil partnerships as “in many ways the greatest prize” that they could win.¹⁰⁸

Civil partnership will create de facto ‘gay marriage’, equating the institution of holy matrimony with homosexual relationships in the eye of the law.

Since in Christian understanding sex is exclusively for marriage, civil partnership equates holy matrimony with something which is morally wrong. This causes deep offence. Virtually all the world’s religions take the same view that sex is exclusively for marriage.

The Government is very clear that it is using civil partnership to force society to accept and value homosexual relationships. What the Government fails to recognise is that disagreement with homosexual practice is based on moral and religious views. It is not merely ‘cultural’. Most people who think homosexual relationships are wrong do not hate homosexual people. They simply think what they do is wrong. It is therefore offensive to use the law to seek to force people to shed their moral objections.

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. Nevertheless, the evidence is that those who cohabit before marriage are 60% more likely to divorce within 8 years of marriage.¹⁰⁹

Whatever surveys of public opinion may say, 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.

In 2001 the government’s *Health Statistics Quarterly* reported an analysis of thirty years of data on men’s health. The study concluded that “Marriage was associated with good health”.¹¹⁰

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, Brenda Hoggett, the family lawyer (now Baroness 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.”¹¹¹

Whatever Lady 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.¹¹² This is regularly echoed by surveys of popular opinion.

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. Marriage is already in danger of death by a thousand cuts, already losing privilege after privilege, and in turn holding fewer and fewer incentives. Civil partnerships would effectively be the death-blow to the special status of marriage in law and society.

Eroding marriage, not extending a privilege

Civil partnerships will effectively dismantle the Western legal tradition whereby marriage is accorded special respect and protection.

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

It is argued that allowing homosexuals to affirm their relationship within a civil contract does not undermine the institution of marriage, and might even reinforce it.¹¹³

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 to whom it belongs. 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 right. The disabled parking permit would become worthless.

If Cambridge University started handing out law degrees at the post office to anyone who could name the Lord Chief Justice, that degree would be drastically devalued. It would still be called a Cambridge law degree, but those who had worked tirelessly for years to qualify for one would be outraged and their precious degree in the eyes of potential employers would be worth little more than confetti.

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. Through the formality of legal recognition society is invited to witness and condone a minority sexual behaviour –one which many people disapprove of,¹¹⁴ which is medically dangerous¹¹⁵ and which can never naturally result in children. The currency of marriage will be devalued.

Discriminating against ordinary families

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 Government's proposals. For every case cited of hardship endured by a gay couple, there will be **almost 60 times** as many cases which apply to people in ordinary families who experience the same problems.¹¹⁶

The proposals do not extend to siblings and other 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. Under the proposals elderly spinsters living together as friends will have to claim they are lesbians in order to get the benefits held out by civil partnerships.

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 to 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 for people who share a house in a genuine relationship of co-dependency, whilst letting marriage retain its privileged status.

If the Government was really concerned about injustice it would put forward a scheme to help people in ordinary families as well. The fact that it is content to ignore them proves that the civil partnership scheme is really about rewarding sexual relationships that are morally wrong. Indeed the Government's scheme assumes there will be a sexual relationship between 'partners'.

The pressure for same-sex marriage

If civil partnerships become law, the pressure for full gay marriage will not stop. It will dramatically increase. Gay rights groups openly admit their agenda is to allow same-sex couples to ‘marry’ and civil partnerships are a huge step towards achieving this.¹¹⁷

Yet at the same time it seems clear that very few homosexuals will register as ‘civil partners’. The Government has now admitted that even under its most optimistic hopes, only 3.3% of all homosexuals in the UK will register a civil partnership. So 96.7% will not.¹¹⁸ Evidence from Denmark and local ceremonies around England shows little enthusiasm amongst homosexuals to become like married couples.¹¹⁹

In the light of this, and the huge injustice created for house-sharers in a non-sexual relationship, the public arguments made for civil partnerships ring hollow.

Marriage - an objective reality

The Book of Common Prayer recognises three purposes, according to Scripture, for which marriage was ordained:¹²⁰

- (i) the procreation and nurture of children;
- (ii) as a remedy against sin (fidelity), and;
- (iii) for the mutual society, help and comfort of man and wife.

These three purposes of marriage have been historically accepted by all Christian denominations.¹²¹

Marriage is a union between one man and one woman. It is a creation ordinance, instituted by God. Quoting from the book of Genesis, the Lord Jesus Christ said:

“Haven’t you read,” he replied, “that at the beginning the Creator ‘made them male and female,’ and said, ‘For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh’?”¹²²

Marriage is an objective reality defined by nature not the State. The State merely recognises what already exists. In a very real sense the State can no more define

marriage than the State can decree that henceforth the moon shall be deemed to be made of cheese.

Jesus taught that marriage would continue until the end of time.¹²³ Couples who fulfil the requirements of marriage will be genuinely married in the sight of God and of those close to them. But what the law says and what is true can be very different. With civil partnerships, the Government is effectively redefining marriage by equating it with homosexual relationships. The implications of this public policy for the future of our society will be massive.

A counterfeit moral standard

Civil partnerships will equate gay liaisons the honourable estate of matrimony. They create a counterfeit moral standard that is imposed on all.

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 bisexual will need to 'marry' two people.

This shows the folly of creating counterfeit marriage.

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NB 1: The figures for how many house-sharers are related to each other (sisters, for example) will be available later in 2004.

NB 2: According to the alternative Labour Force Survey, in the three-month period ending November 2003 there were 50,887 same-sex couple households in Great Britain. House of Commons, Hansard, 24 March 2004, col. 844 wa

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- ¹¹⁴ The largest and most reliable study of sexual attitudes to date was published in 1994. It covered over 18,000 people aged 16-59. It found that 70% of men believe homosexual acts are always or mostly wrong: Wellings, K et al, *Sexual Behaviour in Britain - The National Survey of Sexual Attitudes and Lifestyles*, Penguin, 1994, pages x and 253
- ¹¹⁵ Letter from the Department of Health, Sexual Health Team, 23 March 2001; McMillan A, Young H, Moyes A, 'Rectal Gonorrhoea in Homosexual Men, Source of Infection', *International Journal of STD & Aids*, 11 (5), May 2000, pages 284-287; Tseng H F, Morgenstern H, Mack, T M et al, 'Risk Factors for Anal Cancer, Results of a Population-Based Case-Control Study', *Cancer Causes & Control*, 14 (9), November 2003, pages 837-846; Stewart, G, 'Scientific Surveillance and the Control of AIDS; A Call for Open Debate', *Health Care Analysis*, 1994, (2), pages 279-286 (In this study of HIV infections amongst homosexual men Professor Gordon Stewart found that the relative HIV risk for this group was 2,700 times that of the general heterosexual population.)
- ¹¹⁶ Based on figures for England and Wales – see House of Commons, Hansard, 31 March 2004, col. 1411 wa and chapter 'Injustice for millions of house-sharers' in this publication. The National Statistician and Registrar General for England and Wales was asked how many households in England and Wales contain two or more persons, excluding students, who do not see themselves as a couple, according to the 2001 Census; how many people are in such households; how many people there are in such households where both are pensioners; and how many people in such households are related to each other. He replied "There were 1,763,170 such households in England and Wales containing 4,616,558 residents. Of these 4,616,558 residents, 183,775 were pensioners living in "All Pensioner" households." According to the 2001 Census, the number of people living in a same-sex couple, was 78,522 people – see House of Commons, Hansard, 24 March 2004, col. 844 wa. This means there are **59 times** as many house-sharers as people in homosexual couples (4,616,558/78,522 = 59). NB 1: The figures for how many house-sharers are related to each other (sisters, for example) will be available later in 2004. NB 2: According to the alternative Labour Force Survey, in the three-month period ending November 2003 there were 50,887 same-sex couple households in Great Britain. House of Commons, Hansard, 24 March 2004, col. 844 wa
- ¹¹⁷ *The Pink Paper*, Issue 831, 19 March 2004, pages 18 and 19
- ¹¹⁸ Explanatory notes to the Civil Partnership Bill, 30 March 2004, page 108 footnote 3
- ¹¹⁹ Lund-Andersen, I, *Op cit*, page 419. See earlier 'Do homosexuals want civil partnerships?' and 'Do homosexual couples want monogamy?'
- ¹²⁰ The Book of Common Prayer (1552) in *The First and Second Prayer Books of Edward The Sixth*, Everyman Library Edition, Dent, London 1910, page 410 and *Order for the Solemnization of Matrimony*, The Book of Common Prayer (1662), Erye and Spottiswoode, 1976, page 356.
- ¹²¹ The three-fold purpose of marriage is accepted in *The Westminster Confession of Faith* (1646), Free Presbyterian Publications, Glasgow, 1990, chapter 24, page 104. It also accepted in Roman Catholic doctrine see Neuner J and Dupuis J (Eds) *The Christian Faith in the Documents of the Catholic Church*, Collins, London, 1983, page 526 ; See The Encyclical Letter of Pius XI (1930) *Ibid* page 532, 533 ; Canon 1055 § 1, in Örsy, Ladislav (Ed) *Marriage in Canon Law*, Michael Glazier, Wilmington, Delaware, USA, 1986, page 50 see also pages 46-47, 53
- ¹²² Mathew 19:4-5
- ¹²³ Luke 17:22-30

'Gay marriage' in all but name

How 'civil partnerships' equate holy matrimony with homosexual liaisons

The Civil Partnership Bill extends all the legal rights and privileges of marriage to homosexual couples. The formal requirements precisely mirror civil weddings.

Why the Bill should be opposed:

- It undermines marriage by making it legally equivalent to homosexual liaisons. Marriage is **not** morally equivalent to such lifestyles.
- Marriage is the cornerstone of a stable society. It should be promoted, not devalued.
- The Bill is unfair on its own terms. Relatives, friends or disabled people and their carers who share a house are completely excluded. Many of these house-sharers will face grievous disadvantages in law compared to 'civil partners'.
- According to the Census, there are **over 4.6 million** house-sharers in England and Wales compared to less than 80,000 people in homosexual couples.
- The Government itself predicts that **only 3% of homosexuals** will become 'civil partners'.
- Cohabiting heterosexual couples will not be allowed to register. The Government says this is because they can get married at any time. This is the only point that the Government has got right in these proposals.

The Government boasts that civil partnerships will cause a culture change in the UK. The Bill is all about publicly promoting homosexual lifestyles and undermining marriage.