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'Las Vegas Is Not Where We Are': Queer Readings of the Civil Partnerships Bill

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INTRODUCTION

It may appear counterintuitive to argue that the UK Government's Civil Partnerships Bill is a text conducive to an analysis grounded in queer theory. After all, it is now a virtual cliché that the term 'queer' is associated with a politics of radical sexualities, transgression of heterosexual norms, and a challenging of sexual binaries and of traditional notions of family and kinship. Queer theory, in support of this politics, has paid much attention to subjecting texts -- literary, legal, political -- to a deconstructive analysis, seeking to uncover the incoherence of the hetero/homo binary at the heart of the construction of those texts specifically, and of sexual identities more generally. Of course, other theoretical and political movements have engaged in similar strategies both before and after the advent of queer politics and theory. However, I would argue that queer provided a fresh articulation at a particular historical moment that should not be minimised.

It is also important that queer theory emerged in response to the right wing, homophobic politics of the 1980s, when homosexuality was readily associated with discourses of disease, degeneration, and death. In that context, the importance of theorisation of *what was happening out there* was a particularly pressing, political task. In 21st century Britain, many would argue that there is still a right wing hegemony, but it is one in which the politics of sexuality has experienced a decided shift from the 1980s. We see in the UK today a central government that understands lesbian and gay politics through the language of equality, rights, dignity, multiculturalism, and citizenship, rather than the pathologisation of the individual. In addition, the discourse of consumer citizenship has become important through the equal provision of government services to all communities within the population, including the lesbian and gay *community*.

As well as the rhetoric, it would be churlish not to recognise the changed legal and political reality for lesbians and gay men in the UK. It can be argued that satisfying a gay political agenda is attractive for the Labour government because it can be grounded primarily in a (low economic cost) politics of recognition, rather than the (high cost and 'old Labour') politics of redistribution. Nonetheless, this signifies a changed political climate. The website of the Government's Women and Equality Unit is self-congratulatory on the range of advances for which the Government claims responsibility: the Adoption and Children Act 2002, as a result of which same sex couples can apply to adopt a child jointly; parternity leave and flexible working practices available to same sex partners; a right to register a death extended to same sex partners; anti-discrimination legislation which tackles discrimination in employment and training on the grounds of sexual orientation and religion (a legal requirement for member states of the European Union); sexual offences legislation which removes discrimination as between men and women, and as between those of different sexual orientations; the repeal of section 28 of the Local Government Act; the lowering of the age of consent to sixteen for gay men; the inclusion of same sex partners in the Criminal Injuries Compensation Scheme; and the amendment of the immigration rules to improve the situation for same sex partners (DTI 2004). Although many of these changes are less than ideal (and while many may continue to feel alienated from the omnipresence of a discourse of marriage and family emanating from the government), the reforms are significant.

As a consequence, does there remain a role for the deconstructive method of queer theory in this new, liberal minded political environment? Recall that one of the productive tasks of queer theory of the 1980s and 1990s was to deconstruct the discourses that surrounded, for example, right wing policy initiatives, underscoring the incoherence of the categorisations and

constructions of sexuality that underpinned them. In the context of liberal law reform -- supported by many within the lesbian and gay communities -- what place remains for the critical power of queer theory? In this article, I will attempt to demonstrate that there remains a useful role for the methodological toolbox supplied by queer theory. However, the focus of the deconstructive glare shifts, in my approach, away from the construction of sexual *identities* and practices per se, towards the ongoing and intense social construction of *relationships* within law and politics. In one sense, my approach might be seen to support the claim of Weeks that lesbian and gay politics has moved -- in its emphasis -- from identity to relationships. However, where I may differ from Weeks is that I argue that a critical analysis of the way in which particular relationship forms are constructed, disciplined, and normalised, remains much needed.

The Civil Partnerships Bill, and the debates within the House of Lords on the Bill which occurred in 2004, provide rich material with which to engage in such an analysis. By way of brief background, the Government introduced the Civil Partnerships Bill into the House of Lords on 30 March 2004. The Bill emerged from the Women and Equality Unit of the Department of Trade and Industry. The Government's hand had been forced by an earlier Private Member's Bill by Lord Lester which had been withdrawn on the basis of a commitment from Government to produce its own legislation. Lord Lester's bill took a fairly far reaching and innovative approach, limited not just to same sex couples, and designed explicitly as offering an alternative to marriage, open to all. The Government's Civil Partnerships Bill, by contrast:

creates a new legal status that would allow adult same sex couples to gain formal recognition of their relationship. Same sex couples who enter a civil partnership would access a wide range of rights and responsibilties (DTI 2004).

These includes the duty to provide reasonable maintenance for a civil partner; the duty to provide reasonable maintenance for children of the family; assessment in the same way as spouses for child support purposes; equitable treatment for the purposes of life assurance; employment and pension benefits; recognition under intestacy rules; access to fatal accidents compensation; protection from domestic violence; and recognition for immigration and nationality purposes (DTI 2004). Couples will enter (opt into) a civil partnership through a statutory, civil registration procedure. A dissolution process -- a formal process in the courts -- will be created which mirrors divorce proceedings (rather than the simple ending of a contract unilaterally or bilaterally). There is no requirement of cohabitation, nor is there any analogue drawn to the requirement of consummation. Nor is adultery an explicit ground for dissolution.The marriage bans, however, are included.

Following introduction of the Bill, it was debated in the House of Lords, receiving third reading on 1 July 2004. In that process, however, the Bill was amended by the Lords to extend its coverage to family members and carers who might wish to register and opt into the bundle of rights and responsibilities. The Bill has now passed to the House of Commons, and the Government has undertaken to remove this amendment. At the moment, the earliest the Bill could become law is late 2004, with another twelve months to implement. It should also be noted, by way of background, that the UK pressure group Stonewall has been staunchly supportive of the Civil Partnerships Bill throughout the Lords debate.

My method in engaging with the Bill, and the debates which have occurred to date, is to return to queer theory's original focus on the deconstruction of binary categories. Whereas those binaries originally were centred on the foundational hetero/homo, act/identity couplings, in the

current political climate of relationship recognition, my choice of binaries shifts. I want to interrogate the Bill and the debates through six closely related dichotomies which usefully underscore a fundamental incoherence in the Government's approach to civil partnership. I characterise these binaries as: marriage/not marriage; sex/no sex; status/contract; conjugality/care; love/money; responsibilities/rights. In each case, it is possible to argue that the Civil Partnerships Bill is locatable on both sides of the binary, and that very fact renders the notion of civil partnership ultimately empty of essential meaning. This, in turn, underscores the social constructedness (and ideological character) of the idea (and ideal) of 'partnership' itself. It is by unpacking and emptying out the concept that we might then begin to devise a more radical political response to civil partnership specifically, and relationship discourse more broadly.

MARRIAGE/NOT MARRIAGE

The marriage/not marriage binary is an obvious starting point. Arguably, the ingeniousness of the Civil Partnerships Bill is the fact that it can produce a legal status of 'civil partner' that does not depend upon marriage, but which displays virtually all of the characteristics of a civil marriage. This is undoubtedly a strategy on the part of the Government to avoid what it perceives as the likelihood of backlash to same sex marriage in the UK. At the same time, it can fulfil its promise of equality by granting a legal status to committed same sex couples. The Government is strongly on record throughout its term of office as supportive of the institution of marriage for opposite sex couples -- as helping to foster stable relationships and as the best means to raise children -- and civil partnership provides an alternative, politically saleable route for same sex couples. The social benefits that marriage offers can be furthered through civil partnership, while avoiding the criticism that same sex unions undermine the institution of marriage. As Labour Baroness Scotland made clear during the debate:

This Bill does not undermine or weaken the importance of marriage and we do not propose to open civil partnership to opposite sex couples. Civil partnership is aimed at same-sex couples who cannot marry. ... We continue to support marriage and recognise that it is the surest foundation for opposite sex couples raising children (*Hansard*, Lords, 22 April 04, 388).

The stable couple form, it is argued, is good for the individual, for the couple, and for society (and the economy) as a whole. Long term, stable, legally recognised relationships thus become the socially preferred option for government. Marriage is the ideal, but civil partnership -- for those unable to marry -- becomes an alternative route which can further the same social policy goals.

Opponents of civil partnership [fn: Conservatives allowing free vote, but general front bench support, albeit with amendment], not surprisingly, draw on this point in arguing that the Bill creates 'a parody of marriage for homosexual couples' (*Hansard*, Lords, 22 April 04, 405, Baroness O'Cathain), and there is certainly evidence for this claim, and not only in the fact that civil partnership will accord many of the privileges granted to the married couple. Although civil partnerships cannot be formalised in religious buildings, partners are encouraged by the Government to arrange ceremonies of celebration which, it is pointed out, will benefit the catering industry in Britain (DTI 2004: 22). Whether such ceremonies should be interpreted as parodies of wedding receptions, remains to be seen. The prohibition on any religious element to civil partnership ensures the absence of any religious connotations similar to the marriage ceremony.

However, the Church of England representatives in the House of Lords are critical of the

Bill for its failure to more fully mimic the institution of marriage. First, they argue in favour of the autonomy of the churches in determining what is celebrated in a place of worship. Second, the argument is made, in support of civil partnerships, that set words should be drafted (vows) to provide substance to the commitment of the partners. As it stands, the argument runs, partnership is a rather empty vessel, which needs to be filled with appropriate state sanctioned words of commitment. Thus, for example, the Lord Bishop of Oxford argues that the Bill 'could strengthen rather than undermine the Christian understanding of marriage' (*Hansard*, Lords, 22 April 04, 398), but urged that the commitment be made explicit as 'a commitment of two people to one another to the exclusion of all others, through all the ups and downs of human existence, for life' (400). Of course, this might well be read as a not very subtle urging in favour of the practice of monogamy, in the absence of any mention of adultery as grounds for dissolution. Thus, paradoxically, the government is criticised by the Church of England for *insufficiently* replicating the institution of marriage.

Thus, we find a culturally unique 'solution' to the issue of same sex relationships. An alternative recognition route is created which parallels, but does not intersect with, the institution of marriage, with a bundle of rights and responsibilities that cannot be split up and which must be consciously accepted. This bundle is withheld from unmarried heterosexual couples and unregistered same sex couples, both of which lack evidence of stability and commitment justifying the privileges of the status. The social good of committed long term relationships justifies the benefits (but alongside the responsibilities) which accrue to married/registered couples.

From a comparative perspective, this is distinctive. Unlike the United States, the desire for marriage does not overwhelm the discourse. In this regard, Adam (2003: 273-274) has

described an 'American exceptionalism' in which politics displays a 'high-stakes, all-or-nothing symbolic contention over "marriage"', which has become the 'central symbolic axis around which the inclusion and participation of lesbians and gay men turns'. Similarly, Ettelbrick (2001: 912) has critically described 'stepping stone strategies toward the real prize of marriage' for activists. In the UK, by contrast, the major pressure group Stonewall (2004) strongly supports civil partnerships:

[It] will come without undermining, in any way, the institution of marriage. Civil partnership is a separate legal structure, designed for same-sex couples. There is no overlap in any way with marriage. Indeed, civil partnership arguably strengthens marriage, by recognising and valuing the importance of committed relationships to society generally.

By contrast, the understandable aversion to any parallel status that could be described as 'separate but equal' likely would make the Civil Partnerships Bill instinctively unpalatable to many lesbian and gay Americans.

At the other end of the spectrum, the Bill is very different in its ideological underpinnings from the French 'solution' of the PACS (Pacte Civile de Solidarité). The PACS allows two people -- whether living in a conjugal relationship or not -- to register a contract in a municipality, which reduces to writing their commitment to each other, and which must include the obligation to provide mutual assistance and support. The parties are able to contract over most of the terms of their relationship and the PACS can be ended unilaterally, on notice. The PACS can be located firmly within the French ideology of republicanism and universality. It is justified as a universally available contract to which all are equally entitled to participate on the

basis of being members of the Republic. By contrast, the Civil Partnerships Bill is explicitly and specifically designed for one group with no expectation that the needs of other constituencies can be solved by this legislation.

Moreover, unlike the PACS, which was intended to recognise 'a social reality' with its emphasis upon easy exit from the relationship by either party, the Civil Partnerships Bill extends the perceived social policy benefits of marriage to a group, and to discipline that group into a marriage-like institution with divorce-like dissolution procedures. Paralleling the abandonment by the Government of no fault divorce reform, the ending of a partnership through formal procedures signifies the importance of commitment, and empowers the courts with the same ability as in divorce to vary pre-existing contractual arrangements between the parties as it sees fit (Auchmuty 2004: 115). As the Conservative Baroness Wilcox notes, civil partnerships:

... contain rights and responsibilities. They are serious and constitute a legally binding agreement. Getting out of such an agreement will be expensive and painful. We encourage the Government to urge caution when promoting the Bill. Las Vegas is not where we are and not where we want to be (*Hansard*, Lords, 22 April 04, 395).

Thus, a paradox is apparent. While long term commitment is advocated for its benefits to individuals and to society, the serious of this commitment is such that it should not be entered lightly, because of the potential consequences upon exit. Like marriage, the bundle of rights and responsibilties includes a responsibility to stay the course, because of the inherent good of lengthy relationships, which are encouraged through the formality of dissolution.

Thus, civil partnerships sit uneasily on the marriage/not-marriage binary, and this appears

to be justified only by New Labour's fear of backlash from 'middle England' against same sex marriage. Yet Auchmuty (2004: 115-116) has argued that:

... most British people could not care less whether gays and lesbians have the right to marry or not. They would certainly not object to any such extension. For them, marriage has been stripped of so much of its religious, legal or social status as to be immaterial -- a mere lifestyle choice.

If that is the case -- and this again may differentiate the UK from the USA -- then what justification can there be for this awkward category that both is and is not marriage?

An answer can be found within the literature emanating from the law and economics movement, particularly in the work of Rowthorn (2002). For him, the law has a legitimate interest in keeping couples together and marriage is the best predictor of the long term duration of a relationship. Moreover, Rowthorn (2002: 146-147) echoes the government position that marriage is a 'marker' for numerous outcomes including mental, physical, and sexual health, as well as healthy children, in large part because of the role that marriage plays in domesticating men. From a social policy perspective, it might be asked why same sex couples should not be encouraged into such a socially beneficial institution. Rowthorn provides an answer in advocating precisely the two track model of marriage and civil partnership proposed by the Government. The justification is the 'signaling function of marriage', which might be undermined if same sex couples were allowed entry:

Western society places a high premium on marriage as a life-long, sexually exclusive union and the opponents of same-sex marriage believe that homosexual couples would not subscribe to, or abide by, these rules. They would reject the ideal of life-long monogamy. They would divorce

and remarry even more frequently than heterosexuals do at present and they would be highly promiscuous while married. Such attitudes and behaviour, it is claimed, would bring the institution of marriage as a whole into disrepute and undermine its value for heterosexual couples and society in general (Rowthorn 2002: 150).

Recognising that promiscuous gays might be less attracted to marriage than monogamous ones (a debateable proposition), Rowthorn (2002: 152) identifies the difficulty of ensuring that 'marriage was reserved for homosexuals who were suitably committed'. Because it is impossible to create such a screening device (although divorce proceedings may partially provide such a mechanism), Rowthorn (2002: 152) advocates 'having distinct legal institutions for the two types of couple'. The marriage/not-marriage dichotomy thus becomes explained, as lesbians and gays are channelled into an institution which will domesticate, but which does not have expectations which they may be unable to meet, which would undermine the social stability of the institution, were they accepted within it.

SEX/NO SEX

This leads to the second binary which frames the Civil Partnerships Bill, namely, the sex/no sex dichotomy. In this respect, again, we find a culturally unique articulation of the basis of civil partnership by the Government. Throughout the material surrounding the Bill, and in the debates themselves, there is an assumption -- sometimes explicitly made -- that civil partnerships are sexual relationships, and that they are entered into by people who self-define as lesbian or gay (and lesbians do not form civil partnerships with gay men). This is an important point, because it is necessary to essentialise the category of 'partnership' in order to contain it, and prevent its extension to other 'categories' that emerge in the debates, such as 'carers', 'siblings', 'spinsters',

'bachelors', and 'friends'. The Government makes clear that the Bill 'is not a cure-all for the financial problems of those outside marriage' (*Hansard*, Lords, 22 April 04, 388, Baroness Scotland), but in privileging this category of relationship (in a way analogous to married couples), the sexual dimension is a fundamental means by which to justify why the stronger analogy is to a married couple rather than to other competing categories. It is only through the strength of that analogy that frequent claims to unfairness in treatment of other types of partnership can be answered.

An interesting parallel can be drawn to other jurisdictions on this point. Boyd and Young (2003: 14) describe backlash to same sex spousal rights in Canadian jurisdictions, in which the discourse focuses on the extension of domestic partnership benefits to any two people in a situation of 'economic interdependence'. In this way, the significance of gay spousal rights is diminished by its extension which 'may well de-sex the way we allocate rights and responsibilities' (28), and perhaps problematically, may erase the specificity of lesbian and gay partnerships (of a certain form). The UK Government, however, seeks to resist such an extension, claiming that the Civil Partnerships Bill is an inappropriate vehicle to deal with economic dependence more generally, and therefore must 'sex' (rather than 'de-sex') the partnership to contain the category. Surprisingly, then, we find that implicitly lesbian and gay sex (provided it is contained within this relationship form) is one of the prime justifications for the privileging of the relationship. Sex has its privileges.

This also radically distinguishes the Civil Partnership Bill from the PACS. In France, the formulation of the PACS was quite explicitly designed to avoid the question of sex in relationships. Sex is seen as a private matter which should not be relevant to the social recognition of a relational contract. In the French context, the privileging of relationships on the

basis of a sexual partnership (other than marriage, of course) is seen as inappropriate, focusing as it does on the particularity of a relationship, rather than on the universal availability of the PACS as an aspect of republican citizenship. As a consequence, the difference between the French and UK approaches in part lies in the distinction between a model of universal republican citizenship, and a multiculturalist ideology increasingly focused on remedying the problems of specific communities.

Curiously, although there is an assumption that civil partnerships are sexual relationships, the question of what constitutes lesbian and gay sex remains shrouded in mystery. Moreover, what constitutes the norms of sex within lesbian and gay relationships remains equally mysterious within the material surrounding the Civil Partnerships Bill. Returning to the marriage/not-marriage dichotomy, there are interesting passages within the Government commentary on the Bill wherein the state recognises explicitly that somehow (in an unexplained way) gay relationships are different from marriage, and this on the basis of sex. First, and perhaps most obviously, there is no provision for voidability on the grounds of lack of consummation. As the Government explains:

Consummation 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. The absence of any sexual activity within a relationship might be evidence of unreasonable behaviour leading to the irretrievable breakdown of a civil partnership, if brought about by the conduct of one of the parties. However, that would be a matter for individual dissolution proceedings (DTI 2004).

In this moment, there is recognition that same sex relationships might involve 'no sex', and the question of what constitutes 'sexual activity', or its absence, remains unexplained.

Relatedly, the Government has considered the issue, not of 'no sex', but of too much sex, but too much sex outside of the partnership, namely, adultery. There is no provision in the Civil Partnerships Bill for automatic dissolution on the basis of adultery. As the Government explains in its documentation:

Adultery has a specific meaning within the context of heterosexual relations and it would not be possible nor desirable to read this across to same-sex civil partnerships. The conduct of a civil partner who is sexually unfaithful is as much a form of behaviour as any other. Whether it amounted to unreasonable behaviour on which dissolution proceedings could be grounded would be a matter for individual dissolution proceedings (DTI 2004).

The adultery non-provision is reminiscent of the law and economics concern that lesbians and gay men might not 'sign up' to monogamy were they to be given access to same sex marriage, and therefore might not submit to its disciplinary, domesticating function. But the consummation non-provision suggests that it is only within a heterosexual context of penetration that there can be a clear test of what constitutes sexual behaviour anyway, making the determination of same sex adultery problematic. Consequently, in the context of lesbian and gay civil partnerships, we are very much in a 'grey area' in determining when the parties are in a sexual relationship (with each other), and when they have committed adultery, and what the significance of adultery is for the partnership.

While the adultery problem concerns the potential 'untameability' of gays, the non-

consummation problem concerns the undefinability of gays as a category, and this is a point that connects very closely to the concerns of queer theory, which is aimed at fostering category crises as a way to de-naturalise the hetero/homo binary. The no-sex gay *relationship* -- like the celibate gay as an *identity* -- troubles the civil partnership scheme. In this regard, there are some very queer moments in the House of Lords debate, particularly in the speech of Lord Higgins, who incisively understands and underscores the issues involved:

The trouble is that the Bill implies, to some extent, that these civil partners will have a sexual relationship. However, other speeches have suggested the opposite; namely, that the Bill does not do so. ... [I]t is not at all clear why a same-sex couple in a sexual relationship entering into a civil partnership should enjoy the tax and other benefits which a same-sex couple entering into a civil partnership which does not have a sexual relationship would not have. This brings me immediately to the point ... of people who are living together, but not necessarily in a sexual relationship. Should they be entitled to enter into a civil partnership and enjoy the benefits which result from that? (*Hansard*, Lords, 22 April 04, 428-429).

This conundrum is neatly summed up by Lord Higgins' phrase, the 'spinster problem':

why should it be the case that two spinsters who have lived together for many years should not enter into a civil partnership and, as a result, enjoy the various benefits that would accrue to a same-sex couple with a sexual relationship? (*Hansard*, Lords, 22 April 04, 429).

What Lord Higgins has touched upon is the social construction of sexual identities, and

the use of the term spinster is particularly apt in this regard. A brief turn to lesbian and gay history discloses the attempt to reclaim the identities of spinster and bachelor, reconstructing those identities as lesbian and gay. In other words, when is the elderly spinster couple also a couple of lesbians? The presumption of heterosexuality starts to become displaced in this passage, as the question of what amounts to an 'authentic' couple (or a fraudulent one) comes to the surface. It seems unfair, so opponents argue, that the spinster couple cannot be civil partners. Except, of course, that they can, provided that they register and accept both the benefits and burdens of partnership. However, if they are spinster *sisters*, then they cannot register under this Bill. The issue of when a couple is a 'real' couple troubles, I would argue, the whole question of coupling, in that it deessentialises the notion of a 'stable relationship' itself. Unwittingly, perhaps, the Lord Bishop of Chelmsford hits upon this very point when he states, 'perhaps I may say to some noble Lords opposite that this is not just about gay and lesbian couples; it is about same-sex partnership' (*Hansard*, Lords, 24 June 04, 1440).

The sex/no sex binary is further complicated by the fact that cohabitation is not a prerequisite for partnership. Therefore, there is nothing to stop the registration of a civil partnership of two people who neither have sex nor live together, but who wish to take advantage of the benefits, and agree to the responsibilities of the Civil Partnerships Bill. Consequently, civil partnership is available to two same sex people who neither live together nor have sex, yet it is not available to two opposite sex people who do live together and have lots of sex with each other. Moreover, the state retains the ability, for the purposes of the determination of eligibility for public benefits, to deem that an opposite sex couple is married and, under the Civil Partnerships Bill, that an unregistered same sex couple be treated as civil partners. This underscores the extent to which civil partnerships can impact differentially depending upon

social class, a point to which I return. With no functional test, the determination of what amounts to partnership raises difficult questions, and undermines the claim that this is a voluntary 'opt in' process. The relationship of sex to partnership must be a fundamental question in any such determination. However, that, in turn, raises the issue of the relationship of physical intimacy to emotional interdependence, and the definition of gay sex. What about the flatmate with whom you occasionally have sex (and joint bank accounts), when you also have a valid civil partnership with someone else with whom you may (or may not) have sex, and with whom you do not live, and from whom you might have complete financial independence?

The role of sexual activity in the determination of authentic (or fraudulent) relationships is fraught with difficulties, in part because of what Roseneil (2002: 32) refers to as 'the postmodernization of the regime of sexuality', in which the links between sex, cohabitation, and emotional and financial dependence and friendship may all be loosened, and capable of being reworked in an infinite variety of ways. In this context, the creation of a new legal status which is so closely aligned to marriage seems deeply problematic, particularly in the way in which it depends upon an ambiguous (but definite) connection to sex. This provides evidence for Cooper's (2002: 246) analysis of 'the desiring state', and what she describes as the 'uncomfortable' relationship of the liberal state to desire. The sex/no sex binary, I would argue, demonstrates this unease, and the ongoing need to essentialise the category of same sex partnership in order that it can be regulated intensely through law.

STATUS/CONTRACT

The sex/no sex binary is intimately bound up with another dichotomy: status and contract. In order to bolster arguments in favour of the extension of civil partnerships to carers, friends, spinsters and spinster sisters, opponents of the Bill, as it was introduced by the Government,

argue that the basis of the legislation should be contract. The agenda should focus on recognising and supporting agreements between people to live intertwined, interdependent lives, and the state should provide its imprimateur and support to all such agreements. On this point, an amendment was made in the House of Lords to replace the term 'relationship' in the Bill with the term 'contract', as part of the wider strategy of amendment to include carers and other dependent relationships. This move is closely related to the sex/no sex binary, in that it removes any assumption about sexual relationships, changing the focus of the Bill to contractual agreements to share lives. In this way, opponents hope that the limitation within the Bill to same sex assumed sexual relationships is rendered more difficult to sustain. The contractual point mirrors the PACS, which is justified as the legal recognition of a contract. Thus, if civil partnership is not marriage, then what can it be except a domestic contract? And if contract, then surely anyone can contract, including spinster sisters (or, for that matter, more than two people).

Conservative Baroness Wilcox makes this precise point, when she argues for the extension of civil partnerships, and does so through repeated reference to contract:

These civil contracts will, I hope, be extended or adapted to bring mutual security and comfort to spinsters, bachelors, carers and other partnerships who are also disadvantaged by not being able to marry. To these groups, such contracts would bring financial security and peace of mind, particularly in old age. Too many of us live alone. ... Society will benefit greatly if more long-term partnerships are encouraged (*Hansard*, Lords, 22 April 04, 395).

Of course, there is nothing to stop the parties in any of these relationships forming contracts as between themselves to structure their relationships. It is the state benefits that flow (or not) to the relationships that are of relevance.

These arguments are deeply troubling for defenders of the Civil Partnerships Bill because they force them to fall back on arguments which underscore the incoherence of the Bill in terms of the marriage/not marriage binary. In particular, the Government must point to the divorce-like proceedings, as well as the incest taboo, as justifications for limiting the scope of the Bill. Should you be required to 'divorce' your own grandmother in order to marry someone? Would you want to be your own grandfather? Of course, these arguments underscore that what is created is a status that appears to be marriage in all but name.

But the more interesting arguments raised both by the Government and by the pressure group Stonewall focus on contract itself, and its apparent inapplicability to an understanding of same sex relationships. This centres on the significance of contract, and how it sullies and demeans the same sex relationship, underscoring the sharpness of the distinction drawn between contract and (marital and marital-like) status. As Baroness Scotland explains:

We still believe that 'relationship' is of real importance and signifies a difference from a mere 'contract'. We are dealing with intimate connections between people and we do not think that 'contract' accurately expresses what we are seeking to uphold. ... [W]e are talking about the tender relationships that can happen within families, relationships of support. They are relationships. They are not contracts and we think that it would be inappropriate to describe them as such. It demeans the quality of the relationships that we hope that people in these partnerships will be able to enjoy (*Hansard*, Lords, 1 July 04, 395).

It is noteworthy in this passage that Baroness Scotland implies, in the final sentence, that quality of life will be enhanced by the legislation. Registration will improve the partnership because it provides legal recognition through the granting of a status. Moreover, her

understanding of contract is important. To view the relationship as grounded in contract seems to lessen its transcendental quality. Contracts are entered into by rational, self-interested actors, for mercenary reasons. Relationships, by contrast, simply 'happen' because of, presumably, romantic and sexual love, which must not be tarnished by contract, with its implicit overtones of money and, therefore, prostitution and marrying for fianncial and other convenience. I will return to the binary of love and money, but this also suggests that prenuptual agreements, and the financial structuring of a relationship in advance through contract, is denigrated. Clearly, though, the aim is to justify the limitation of the status to those who experience the mysteries of this transcendental special relationship which rises above the banalities of contract, namely, the status of same sex partner. The presumption is that other kinds of relationships of care -- which can be reduced to contract -- lack these qualities.

The pressure group Stonewall (2004) makes a similar point in response to the proposed amendment:

[R]eferring to the loving and committed long-term relationships of homosexual couples as 'contracts' is demeaning, and downgrades the nature of their commitment. ... [A] civil partnership is more than just a contract, the very concept of which does not fit within family law which has traditionally been based on relationships. ... A civil partnership, like any family structure, is not a negotiable contract with optional components. This is why the contractual analogy is unsuitable.

This passage is telling about the social conservatism of Stonewall. First, we find an uncritical acceptance of the language of 'family' and its traditional underpinnings. Second, and more significant, is a failure to recognise the historical importance of private ordering and the structuring of same sex relationships outside of the limitations of family law. The freedom to

'unpack' the bundle of sticks that has constituted marriage and family, and to 'pick and mix' its components, may have helped to facilitate the evolution of relationships in ways that are now increasingly imitated by many heterosexual couples. In fact, as Auchmuty (2004: 115) has argued, the dissolution proceedings provide a means for judges to undermine the contractual arrangements that may have been agreed by the parties in advance.

This yearning for traditional family status with no optional components sits very uneasily with what Stacey and Davenport (2002: 356) describe as 'the postmodern family' characterised by 'diversity, choice, flux and contest'. While the patriarchal and racist history of the legal construct of contract should always be recalled, contract today also represents the idea(l)s of fulfilling the reasonable expectations of parties, rather than imposing the requirements of a status which imitates marriage. The rejection of the language of 'options' in favour of 'rights and responsibilities' and 'tradition' by Stonewall is a limiting and misplaced strategy.

But the rejection of contract leaves us with a status that remains hollow (or, perhaps a more positive term is 'flexible'). After all, there is no prescribed set of vows for entering a civil partnership, so it is not clear what the partners are promising to each other. So too, the absence of adultery as a per se ground for dissolution demonstrates that this aspect of marriage is not necessarily part of the partnership bundle. Moreover, a religious basis for partnership is precluded by the Bill. All that the government offers is encouragement to the parties to hold a ceremony to mark the occasion. Thus, while this is a status, its hollowness may allow it to be filled with the reasonable expectations of the parties.

CONJUGALITY/CARE

Another, closely related, way of understanding the dilemma of the Civil Partnership Bill is through the binary of conjugality and care. As I have already argued, proponents of the Bill must

argue that same sex relationships are fundamentally conjugal, or at least have the potential to be so. If, by contrast, the *essence* of civil partnership is economic dependence, then the limitation to same sex couples becomes difficult to sustain. We are left in a situation, then, of competing analogies: to married couples or to caregivers. By focusing on care rather than conjugality, sceptics of the Civil Partnership Bill argue that it is inherently unfair, particularly given that, according to the Baroness O'Caithain, 'fewer than 80,000 people live as part of a same-sex couple, whereas 4.6 million people live together in non-sexual co-dependent relationships' (*Hansard*, Lords, 22 April 04, 407).

Sustaining such a distinction in benefits must be on the basis of conjugality. The difficulty, though, is that advocates of the Civil Partnerships Bill always argue on the basis of care rather than sex. As a strategic matter, this is hardly surprising, but it opens the door to opponents' arguments in favour of caregivers. Heart wrenching stories of long term same sex dependence and care, which inevitably ends in tragedy, are the discursive weapons of the proponents of the Bill. But the difficulty is that those narratives are indistinguishable from, for example, the stories of the tragic spinster sisters. Because lesbian and gay conjugal relations are both present (by necessity) but absent (by strategy), a discourse of care predominates. But it also bears remembering that neither dependence nor cohabitation (nor conjugal relations for that matter) are prerequisites to registration as partners.

There is another dimension to the care and dependency discourse. Increasingly within Government initiatives and debates, there is a recognition that lesbians and gay people -- both as individuals but mostly as couples -- are involved in the care of 'their' children. Legal changes under the Labour government have allowed the taking of parental responsibility by a lesbian or gay partner, and this is one of the justifications for registration. This is, however, a politically

mixed message. On the one hand, it is gratifying to see lesbian and gay parenting brought into public discourse in a way that is not pathologised, and this demonstrates the changed political climate since the 1980s. On the other, the consistent message from the New Labour Government is that children's best chance of success is within a married or, failing that, civilly partnered household, because of the assumption (grounded in empiricism) that the two parent married family is the most stable. Marriage is thereby assumed to be the best basis for the raising of children. It thus remains the case that a traditional model of family is privileged as an idealised locus of child raising.

The focus on care is also a significant part of the House of Lords debate. All sides pay homage to the caregiver who sacrifices for others and therefore warrants special consideration by the state either through an amended Civil Partnerships Bill, or through separate legislation. The debate thereby usefully brings care into Parliamentary discourse, and highlights the lack of benefits and privileges accorded to caregivers, and the unfairness of privileging sexual relationships (be they marital or otherwise) over other forms of privatised care. Ironically, opponents of civil partnership appear to advance the agenda advocated by feminists such as Fineman (2004: 289), who argues that 'it is important to point out that focusing on the caretaker's position ultimately illuminates something general about the organization of society'. The House of Lords debate gives space for the articulation of the value of care, and the justice of treating caregivers equally and fairly through assistance from the state. This may represent some recognition of forms of citizenship which transcend paid employment and which centre on human relationships, which is a significant change from the citizenship models that have dominated UK public discourse.

However, this emphasis on caregiving, like child raising, sends out a mixed message.

While the exhaltation of the caregiver as ideal citizen (as opposed to wage earner or entrepreneur) may be welcomed, it can also be argued that the Civil Partnerships Bill remains ideologically grounded in a privatised notion of care wherein the state facilitates the taking on of private responsibility, rather than expanding its own public, active role in providing care. Moreover, for both opponents and proponents of the Bill alike, the centre of care is the long term partnership presumptively located in a 'family home'. As Boyd and Young (2003: 25) argue in the Canadian context, partnership recognition is 'grounded in an acceptance of marriage and family as a central organizing feature of citizenship' (see also Freeman 2002: vii).

This privatisation of responsibility leads proponents of the Civil Partnerships Bill to argue that it is a cost saving device for the state. Stonewall (2004) is explicit in its briefing paper, asserting that:

The taxpayer would actually save money in the area of benefit payments. Same-sex partners currently claim benefits as two individuals, meaning that they will receive more money than if their needs had been assessed as a couple.

The assumption is that the outward appearance of partnership (however that might be defined) demands the assumption of responsibility for care, to the advantage of the state. Thus, the state presumes that it can determine what is a partnership, what is a roommate, and what is 'just friends'; all categories that a queer critique is intended to trouble (Freeman 2002: xv).

The Civil Partnership Bill encourages this privatisation of care; indeed, forcing it on those who appear to fall into the category of same sex partner. In this way, the Bill becomes another 'essential component of the strategy of dismantling the welfare state' (Diduck 2001: 307).

After all, 'the registration of a civil partnership involves both legal obligations as well as legal protections' (DTI 2004). As a consequence, as the Financial Regulatory Impact Assessment of the government makes clear, 'it is expected that civil partners would share their resources and support each other financially, reducing demand for support from the State and, overall, consuming fewer resources' (DTI 2004). Care thus becomes explicitly privatised on to the couple, and the differential impact of privatisation depending upon social class is obvious; highlighting, I would argue, a middle and upper class bias.

But the focus on care and its privatisation in the same sex couple also is a partial and incomplete analysis of the dynamics of care giving. Roseneil and Budgeon (2004: 142) argue, based on empirical data, that care increasingly takes place beyond the cohabiting couple and in extra-familial contexts. They point to three dynamics now at work which impact upon intimacy and care: (i) 'a decentring of sexual/love relationships within individuals' life narratives'; (ii) 'an increased importance placed on friendship in people's affective lives'; and (iii) 'a diversification in the forms of sexual/love relationships'. A focus on family fails to capture the increased provision of care through 'networks and flows of intimacy' (153), which do not centre on the couple as partners in care. If friendship is replacing partnership as a central organising principle of intimacy in many people's lives, then the maintenance of privileged categories -- whether spouse or same sex partner or even spinster sister -- becomes difficult to sustain. Care may take place in the private sphere, but it is not within a set model of relationship form, and to the extent that the state may wish to privilege certain relationship forms on the basis of dependency and care, it does so in an exclusionary way. Indeed, it forces us back into the recognition that same sex partnership is not necessarily coterminous with care or conjugality. It can mean both or neither, and both can and do exist outside of the dominant model of partnership. Neither side of

the dichotomy, though, can justify the privileging of this couple form.

LOVE/MONEY

[A]lthough it is paraded as an extension of human rights, it is nothing to do with fundamental human rights. It is about financial implications for homosexuals (*Hansard*, Lords, 1 July 04, 403, Lord Maginnis).

Love and money is another dichotomy around which the Civil Partnerships Bill spins uneasily. For proponents of the Bill, the relationship between love and money is straightforward. Long term coupling is based upon romantic love (certainly not contract), and long term relationships are proven to be beneficial to society. Therefore, there is a social interest in providing a set of benefits to committed couples, but also enshrining a set of responsibilities, which presumably same sex couples in love would fulfil anyway. The rationale is that the state has an interest in protecting and supporting relationships, be they married couples or same sex partners.

For sceptics of the Bill, by contrast, the rationale for the state support of relationships is probed more deeply and, for the Lord Bishop of Peterborough at least, the jury remains out on the issue:

It will remain a matter of judgment whether the extension of *positive discrimination* by creating a largely undefined or, perhaps, self-defined relationship will be beneficial to society, as well as to the individuals concerned (*Hansard*, Lords, 22 April 04, 423, italics added).

In this passage, the Bishop recognises that the state historically has positively discriminated in favour of married couples, and this in turn raises the question whether relationships per se are

necessarily social goods warranting special treatment which, as Lord Higgins articulates, amounts to 'a discrimination here against the single person' (*Hansard*, Lords, 22 April 04, 428). The debate thus at least begins to raise the question whether relationships -- marital or otherwise -- provide a sensible basis for making distinctions, for example, in the provision of employment pension benefits. As Lord Higgins makes clear, the provision of a 'wife's pension', justified by the likelihood of a diminished opportunity for making independent contributions, may seem of dubious applicability to many same sex couples (428). The door is therefore open to thinking about unfairnesses in the ways in which provision is made for old age, and certainly the difference between employment related pensions and state pensions in this context is important.

But just as the debates on the Civil Partnerships Bill uncovered a class perspective with respect to those same-sex couples in employment (winners) and those dependent upon the state through the benefit system (losers), the debate also discloses another differential class impact. This is with respect to the role of inheritance tax, still often referred to as 'death duties'. In the UK, wealth is taxed upon death, but can be transferred upon death between spouses exempt from inheritance tax. The government has promised that registered same sex partners likewise will be able to transfer wealth as between themselves upon death free of tax. Sceptics of the Civil Partnerships Bill in the House of Lords seize upon inheritance tax, questioning why those in other types of relationships of care and companionship should not also be entitled to exemption. As the Baroness O'Cathain states:

If we are to extend all the rights of married couples to others, what should be the criteria? Should they be extended only to those in homosexual relationships? ... The theoretical examples are known to everybody: people who move into a flat to care for a friend with a long-term illness; a

daughter giving up a well-paid job to care for a sick mother; or two sisters who never marry, living together all their lives in the home inherited from their parents. All of these people, when it comes to the death of one or other of them, will face a swingeing inheritance tax bill, which will in most cases lead to increasing dependency on the state by those people. These sorts of cases are appalling and something has to be done about them. ... Inheritance tax merely punishes families and other beneficiaries (*Hansard*, Lords, 22 April 04, 405-406).

The widespread hostility towards inheritance tax in the House of Lords is perhaps not surprising, given that it impacts upon the transfer of wealth between generations, only protecting spouses, presumably in order to ensure that widows have provision for their old age. Whether such a justification has become anachronistic, and whether it is compelling in the case of same sex couples (see Auchmuty 2004), is open to debate, as is the question whether inheritance tax provides an equitable and just means for redistribution more generally.

However, what also becomes clear for those focused on the financial implications of civil partnership (money rather than love), is that the presence of the ban on registration with a family member can be explained, not in terms of the analogy to marriage, but in terms of money and, specifically, tax avoidance. The Earl of Onslow is most explicit in recognising that the formation of legally sanctioned relationships may be about money rather than romantic love, at least for those seeking to shield wealth from the tax collector. In the absence of the ban, this could be achieved through intergenerational civil partnerships:

For some reason, the Biblical prohibition on close relationships is included in the Bill. Why? I cannot understand why. But I think I do. I think it is because I cannot register my son as my

catamite and then hand the whole of my property to him without death duties. When I first heard of the Bill, I thought 'Yippee. That is a frightfully good idea'. But one cannot do that (*Hansard*, Lords, 22 April 04, 416-417).

Thus, for those who advocate the extension of the Civil Partnerships Bill more widely, the issue is not so much about the recognition of relationships of love, but more fundamentally, about the avoidance (or at least a delay) in the redistribution of wealth. While the Government, and Stonewall, may emphasise that the Civil Partnerships Bill (at least) is cost-neutral for the state, although the government's own Financial Impact Statements show otherwise, this is achieved through the privatisation of the cost of care which reduces the responsibility of the state through the benefit system. With respect to private wealth and employee pensions -- the concerns of the upper and middle classes -- the advantages of registration are clear (while the poor are disadvantaged by being deemed to be partners for the purposes of public support). The Bill thus sits uneasily on the dichotomy of love and money, in that the government is keen that non-registration should not be financially advantageous (for those dependent upon state benefits). As well, the financial benefits which may accrue to some are limited to a clearly defined and essentialised class which is grounded in status rather than contract, in order to prevent at least the appearance of partnerships of financial convenience. Money must follow from love (status) rather than from tax planning (contract).

RESPONSIBILITIES/RIGHTS

The final binary that warrants at least a mention has already been foreshadowed throughout this article: responsibilities and rights. For Government supporters, the Civil Partnerships Bill is a carefully designed bundle of rights and responsibilities for same sex couples, rather than special

benefits or financial privileges. This is no *à la carte* of relationship options. Rather, in order to take advantage of the benefits, the responsibilities must be assumed, and this can only be done through the conscious act of registration with the state. In fact, the relationship between rights and responsibilities is characterised within the material surrounding the Bill as a careful balance between 'the responsibilities of caring for and maintaining a partner with a package of rights for example, in the area of inheritance'. Inheritance rights thus become the pay off for assuming the responsibilities of care. We thus find a very utilitarian notion of rights and responsibilities in which the two are quantifiable and measurable to achieve a perfect harmony.

It is the careful tailoring of this bundle to same sex couples that makes it inappropriate for other carers who, it is promised, in due course will receive their own legislation. For example, the dissolution proceedings, power of judges to make property orders, and requirements to provide support (potentially even after dissolution), make this a set of responsibilities, the Government argues, that would be ill suited to spinster sisters, for example.

What also underpins this bundle of responsibilities and rights, though, is an underlying faith in the power of the granting of rights to shape behaviour and to foster stable relationships. On the one hand, the Government recognises the existence of long term stable relationships which, it is assumed, are beneficial to individuals and to society. But, on the other, the assumption is that law reform will strengthen those relationships, foster the forging of new long term relationships, and improve the quality of life of those who enter into them. The power of rights thus is substantial in shaping our relationship choices; perhaps as powerful as love in shaping relationships.

CONCLUDING THOUGHTS

The Civil Partnerships Bill can be read on one level as a very 'unqueer' text: deeply

assimilationist, furthering a privatisation of care agenda, mimicking a marriage model, and foregoing the perfect opportunity to rethink in a radical way the institution of the family in law. With respect to the last point, the Bill is a lost opportunity. In trying to be all things to all people -- perhaps inevitable with respect to New Labour thinking on the family -- I have tried to show in this article that the Bill often slips into incoherence in the way in which it straddles numerous dichotomies.

I have also tried to touch upon how the Civil Partnerships Bill emerges out of a culturally distinct set of circumstances, despite the essentialism which often underpins the rhetoric. The similarity to the institution of marriage, but the aversion to the concept of same sex marriage, shapes this distinctiveness. This cultural uniqueness can also be rephrased as parochialism. Although the Bill does make provision for the recognition of foreign partnerships, there has been no coherent attempt to consider the obvious European Union issue of the right to free movement or, more generally, the difficult private international law issue of recognition in the UK of those partnerships (such as the PACS) which may involve a very different bundle of rights and responsibilities and which are not limited to same sex couples (see generally Crown 2004; Probert and Barlow 2000). While the Government seeks to essentialise same sex relationships, it cannot essentialise the patchwork of legal regimes of relationship recognition occurring within the European Union and beyond. As Baroness Scotland concedes, 'there is no common concept of same-sex registered partnership in other countries across the world' (*Hansard*, Lords, 22 April 04, 391). The dichotomy of marriage/not marriage rises again to the surface, as without such a universally recognised status as marriage, there is no easy basis upon which to determine whether to recognise a foreign registered partnership.

Finally, the marriage/not marriage dichotomy is brought into sharp relief by legal

developments within the European Union, and in particular, Directive 2004/38/EC on free movement of citizens of the Union and their family members, issued in April 2004. In defining 'family member', the Directive includes 'spouse' as well as:

[T]he partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage (article 2(2)).

In this moment, EU law forces the marriage/not marriage dichotomy to be laid bare, to determine whether this status, although consistently characterised by the Government as 'not marriage' is 'equivalent to marriage'.

This transnational point replays the incoherence of the Bill, which is covered over by its many silences. In the material surrounding the Bill, and in the House of Lords debate, what is apparent is a lack of engagement with the many types of relationship which lesbians and gay men form, and how that diversity might be reflected through law. Nor is there any interrogation of why and how marriage is valued and whether that has become anachronistic, based on models that are increasingly irrelevant. There is no serious discussion of why we privilege conjugal relations rather than relations of economic interdependence, and whether it would be possible to use the state and public benefit to help privatised care giving, nor whether care can be made *less* private. Finally, the debate touches upon, but never considers, the question of what constitutes authenticity in relationships, what might amount to a fraud on civil partnership, and, for that matter, what constitutes benefit fraud by unregistered same sex cohabitees.

As I have tried to demonstrate in this article, the basis of relationships seems to be any, or

many, or all of, love, money, sex, friendship and care, but the infinite variety of ways in which they combine make law a cumbersome device for the regulation of intimacy. This is particularly true when the model of regulation is drawn from the institution of marriage and then imposed upon what are increasingly complex, postmodern and queer lives. But the underlying incoherence of the legal category of partnership may well provide, I have also suggested, room for subversion and resistance in the ways in which lesbians and gays (and, indeed, others) map on to the law's attempt at categorisation. Whether and how that will occur will require some empirical data after (and if) the Civil Partnerships Bill in its current form becomes law. That analysis will entail looking at how queer lives intersect with what appears, on its surface, to be a very un-queer law through what may be the manipulation of the very incoherence on which it is founded.

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