

What's In A Name?



Is there a case for equal marriage?

David Skelton and Robert Flint
Edited by Blair Gibbs



What's In A Name?

Is there a case for equal marriage?

David Skelton and Robert Flint
Edited by Blair Gibbs



Policy Exchange is an independent think tank whose mission is to develop and promote new policy ideas which will foster a free society based on strong communities, personal freedom, limited government, national self-confidence and an enterprise culture. Registered charity no: 1096300.

Policy Exchange is committed to an evidence-based approach to policy development. We work in partnership with academics and other experts and commission major studies involving thorough empirical research of alternative policy outcomes. We believe that the policy experience of other countries offers important lessons for government in the UK. We also believe that government has much to learn from business and the voluntary sector.

Trustees

Daniel Finkelstein (Chairman of the Board), Richard Ehrman (Deputy Chair), Theodore Agnew, Richard Briance, Simon Brocklebank-Fowler, Robin Edwards, Virginia Fraser, George Robinson, Robert Rosenkranz, Andrew Sells, Tim Steel, Alice Thomson, Rachel Whetstone and Simon Wolfson.

About the Authors

David Skelton is Deputy Director and Head of Research at Policy Exchange. David has worked at the forefront of politics, policy development and public service reform for over a decade. He has also worked extensively in the private sector and with senior politicians and decision makers, with a focus on public sector reform. He has written regularly for a number of publications, including The Guardian, New Statesman, Prospect, Platform 10, Left Foot Forward and ConservativeHome, as well as appearing on BBC Radio and TV and Sky News. David's major policy interests include economic regeneration, spreading opportunity through education and re-engaging working class communities. David was born and brought up in Consett, County Durham. He was the Conservative Parliamentary candidate for North Durham at the last election, gaining a swing of almost 9%. He supports Sunderland AFC.

Robert Flint is a trainee solicitor at a major London law firm. Robert spent a number of years working on legal and constitutional matters in a research unit in the House of Commons, providing research briefings and advice to Cabinet ministers, MPs and Peers, before working in the office of Minister of State for International Development, Rt. Hon. Alan Duncan MP. He is a special constable in the Metropolitan Police and continues to write regularly on legal matters.

© Policy Exchange 2012

Published by

Policy Exchange, Clutha House, 10 Storey's Gate, London SW1P 3AY

www.policyexchange.org.uk

ISBN: 978-1-907689-24-6

Printed by Heron, Dawson and Sawyer

Designed by Soapbox, www.soapbox.co.uk

Contents

	About the Authors	2
	Contents	3
	Acknowledgments	4
	Introduction	5
1	A Brief History of Marriage	8
2	Why Marriage Matters	12
3	Is there a Conservative Case for Equal Marriage?	16
4	Equal Marriage as Equality Before the Law?	28
5	Evaluating the Arguments Against Equal Marriage	33
6	The International Experience	45
7	The Practical Implications of Equal Marriage	50
	Conclusion	58

Acknowledgments

The authors would like to thank Philip Jones, whose generous contribution helped to make this report possible. We would also like to thank Imogen Dale, Jenny Kataros, Emma Woolcott, Matthew Todd, Stephen Parkinson, Ben Furnival, Luke Tryl, Joe Phelan and Shane Fitzgerald for their assistance with various aspects of the report.

All errors, of fact and interpretation, are the authors' own.

Introduction

“Conservatives believe in the ties that bind us. Society is stronger when we make vows to each other and we support each other. I don’t support gay marriage in spite of being a conservative. I support gay marriage because I am a conservative.”

David Cameron, speech to Conservative Party Conference, October 2011

The Coalition government’s proposals to introduce civil marriage for same-sex couples have provoked controversy and wide-scale debate. The public consultation, which concluded in June 2012 sparked more responses than almost any other government consultation. The debate has, in many ways, been more diverse, impassioned and wide ranging than previous debates around ‘gay rights’. In particular, a ‘conservative case’ in favour of the reform has emerged.

This report seeks to adopt an evidence-based analysis of the arguments around marriage equality to consider whether there is a compelling argument to reform the law. This report will pursue a reasoned analysis of the equal marriage concept and its practical implications and evaluate the arguments on both sides of the divide. We will also explore the experience of other countries where equal marriage is already a reality.

Equal marriage in context

It is now almost half a century since the decriminalisation of homosexuality in England and Wales.¹ In that time, gay, lesbian, bisexual and transgender people have made enormous strides in British life.² Gay people are now openly in the public eye, from cabinet ministers to international cricketers. Homophobic language, often heard in politics and wider society as little as a decade ago, is now widely, and rightly, frowned upon. Gay people can now adopt children, are fully protected from discrimination in the workplace and enjoy equality under the law across a range of areas.

In the late 1980s, the British Social Attitudes Survey reported that the proportion of people who regarded sexual relations between two adults of the same-sex as “always or mostly wrong” stood at more than 70%. It’s now just over 30%. Conversely, whereas just over 10% of people in the late 1980s said that same-sex relations were “rarely wrong or not wrong at all”, that now stands at around 50%.³

The only major area in which gay people do not enjoy the same rights as heterosexuals is over the right to marry. Although civil partnerships, introduced in 2005, have proven to be enduring and popular, many argue that they remain a half way house towards marriage equality. This paper will consider whether a convincing case can be made to extend the right to marry to gay people.

1 Homosexuality was not legalised in Scotland until 1980 and in Northern Ireland until 1982.

2 From now on, for the sake of elegance and brevity (not out of any particular principle) when we say ‘gay’, we also mean lesbian, bisexual and transgender. We also use the term, ‘equal marriage’ not ‘gay marriage’ because we think that many arguments are about more than a person’s sexuality.

3 Office of National Statistics, Civil Partnerships – Five Years On

The debate over equal marriage

In October 2011, the Prime Minister, David Cameron, made clear the government's support for introducing legislation to allow gay, lesbian and bisexual people to marry, following a Home Office consultation. The debate has raised strong emotions on both sides. This paper aims to consider the arguments used both by supporters and opponents of equal marriage, whilst also setting out how we believe equal marriage could work in practice. We will also consider whether a uniquely 'conservative' case for equal marriage can be identified.

Advocates of equal marriage suggest that there are four major reasons that marriage should be extended to gay and lesbian people:

- Fair treatment dictates that people should not be denied access to a public institution on account of their sexuality;
- Marriage is a powerful and important social institution and allowing gay couples to marry would be beneficial for gay people and for society, and would strengthen – rather than undermine – the institution of marriage, and valuable notions of commitment, fidelity and responsibility (the 'conservative case for equal marriage');
- Equal marriage represents equality before the law for all citizens and this principle must be upheld in a democracy;
- The state's role should be limited to only prohibiting something in law if there is evidence that the prohibition prevents harm to others, and as there would be no harm from allowing gay people to marry it should be permitted.

Opponents of equal marriage suggest that the reform is unnecessary and could have damaging long-term consequences. In particular they argue that:

- Equal marriage would fundamentally change the nature of marriage, which has always been defined as being between a man and a woman;
- Equal marriage could damage freedom of religion, with churches eventually being forced to hold or bless marriages that go against their belief system;
- Equal marriage is not necessary, because gay people already have access to civil partnerships, which provide all of the legal benefits of conventional civil marriage;
- Equal marriage represents a "slippery slope", which could eventually lead to the legalisation of other forms of marriage, such as polygamous marriage.

This paper will look to consider these arguments in greater detail, considering whether the arguments against equal marriage are valid. The paper will also look at the experience of the ten countries which have already legalised equal marriage.

Structure of this report

Chapter 1 sets out a brief **history of marriage** – setting out how the institution has evolved over time.

Chapter 2 will consider **why marriage matters**. In this chapter, we will consider the social value of the institution of marriage and its value across a wide range of metrics. We will consider whether the benefits of marriage should be controlled

for other social factors and assess the argument that the benefits of marriage mean that gay people should not be excluded from it.

Chapter 3 will consider **whether there is a conservative case for equal marriage** – considering whether equal marriage would be beneficial for gay people, as well as society as a whole and the institution of marriage itself.

Chapter 4 considers the **case for equality under the law**. This will analyse the current law's infringement of individual freedoms and the status quo around civil partnerships.

Chapter 5 will **evaluate the arguments against equal marriage** and consider whether any safeguards might be devised that would mitigate these concerns.

Chapter 6 considers **the international experience of equal marriage**. Already, ten countries (as well as six US states) have legalised same-sex marriage. This chapter will ask what lessons can be learned from these countries, looking at the consequences of equal marriage where it has already been introduced.

Chapter 7 considers **the practical implications of equal marriage**. This chapter will explore the practical implications of marriage equality.

1

A Brief History of Marriage

In Western civilisation, marriage has been a vital building block of society for centuries. However, the nature of marriage has also changed considerably over time – it has evolved with society and has remained a pivotal part of it. Crucially, the state has acted to extend marriage to excluded groups three times in the past two centuries and the state also introduced marriage that was separate from religion almost two hundred years ago. The current law on marriage has therefore formed over centuries.

The evolution of marriage

The Anglican tradition of marriage, predominant in the United Kingdom, emerged from the Tudor and Stuart ‘commonwealth’ model, which saw a family

as a miniature version of society, with a similar structure: a husband and father at its head and a system of rules, designed to foster mutual love and respect in those bound by them. Over the seventeenth century, the traditional unit was reshaped and many argue became more of an

equal partnership between man and woman, where the two parties had rights vis-a-vis the other.⁴ This, in turn, provided the “rationale for the incremental liberalisation of English marriage law in the course of the next two centuries.”⁵

It was not until the Clandestine Marriages Act 1753 that rules requiring the presence of an Anglican priest, in an Anglican Church with two witnesses and registration were determined. It also introduced a minimum age for marriage. It was possible before this law for a couple to have a clandestine ‘fleet marriage’ without church involvement at all. Marriage was ubiquitous but not well defined and to the extent that it was defined, it was to the exclusion of people of certain faiths or those with none.

“The nature of marriage has also changed considerably over time – it has evolved with society and has remained a pivotal part of it”

4 Witte, Jr., J. *From Sacrament to Contract: Marriage, Religion and the Law in the Western Tradition* (Louisville, 1997) p. 9

5 Ibid p. 10

A timeline of marriage reform

1753 – Marriages Act requiring presence of an Anglican Priest, in an Anglican Church with two witnesses and registration for a marriage to be valid

1835 – Jews and Quakers given freedom to marry under their own religion

1836 – Marriage Act introduced civil marriages. For the first time details of all marriages were kept in one place by the General Register Office. The Act also prescribed that marriage should be celebrated *“with open doors between the hours of nine in the forenoon and three in the afternoon.”*⁶

1855 – Ecclesiastical Courts Act and 1860 Ecclesiastical Courts Jurisdiction Act gradually moved marriage regulation into the hands of the State

1857 – Divorce and Matrimonial Causes Act permitted divorce for the first time

1949 – Marriage Act abolished marriage for those under 16 years and increased the hours in which a marriage could be held

1969 – Divorce Reform Act radically liberalised divorce laws (came into force in 1971)

2005 – Civil Partnerships introduced

The introduction of civil marriages

Civil marriages were introduced in 1836 in which a religious element was optional. Jews and Quakers were given the freedom to marry in the manner of their faith the previous year. Catholics were not included until later. This demonstrates historical precedent of the state intervening to help define marriage and intervening to incorporate groups who were previously excluded.

English law sees no distinction between a civil marriage and a religious marriage and has not seen any distinction since 1836:

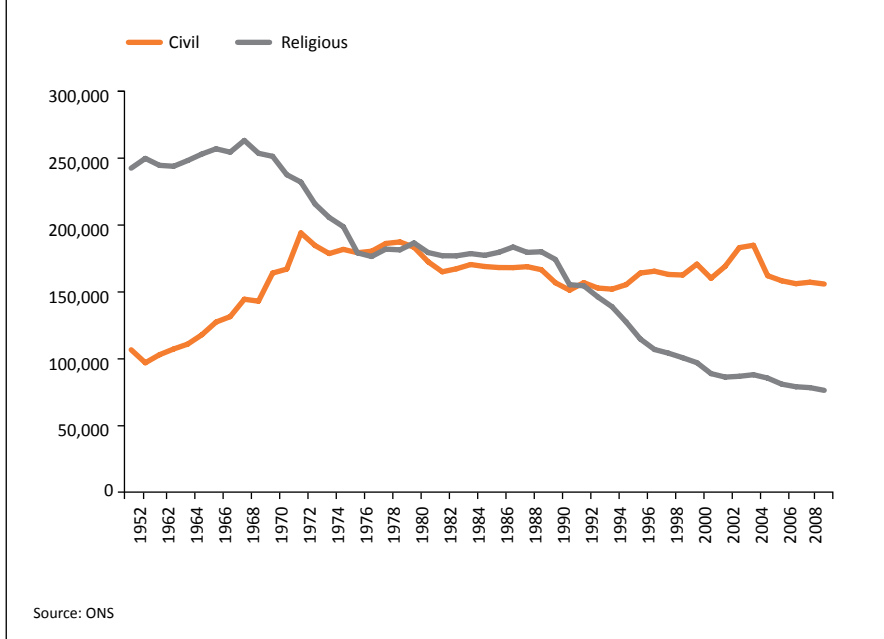
*“Marriage ... is one and the same thing whether the contract is made in church with religious vows superadded, or whether it is made in a Nonconformist chapel with religious ceremonies, or whether it is made before a consul abroad, or before a registrar, without any religious ceremonies.”*⁷

In recent years, civil marriages have become increasingly popular, whilst the number of weddings held in religious institutions has declined. This is set out in Figure 1:

6. <http://www.marriagerecords.org.uk/history-of-marriage/marriage-act-1836/>

7 R v Dibdin [1910] P 57, CA.

Figure 1: Civil and Religious Marriages in England and Wales since 1952



In 2008, there were just under 156,000 civil marriages and just over 76,000 weddings held on religious premises.

Further reforms to marriage

The Divorce and Matrimonial Causes Act of 1857 gave, for the first time, the common law courts, not religious courts or an Act of Parliament, marital jurisdiction. For the first time it was presumed that the mother should have custody of a child on divorce, as opposed to the father or the father’s family.⁸ Equally, legal changes to the fundamentals of marriage only brought slow improvement to women’s rights. Opponents of liberalisation at the time argued that “Men [and women] are fundamentally unequal, and this inequality will show itself...” whatever laws one passed.⁹ In 1869, John Stuart Mill argued in the *Subjection of Women* that:

“The law of servitude in marriage is a monstrous contradiction to all the principles of the modern world, and to the experience through which those principles have been slowly and painfully worked out... There remain no legal slaves, except the mistress of every house.”

In the 1870s and 80s Parliament gradually permitted women to hold property separately from their husbands.

The effects of Enlightenment thinking were felt more in the 20th century: marriages became easier to enter and dissolve, women became fully equal partners in a marriage and the state and civil law became the main arbiter of marriage.¹⁰ The 1969 Divorce Reform Act, which came into effect in 1971, made it considerably easier to seek a divorce.

Yet a grotesque anomaly persisted until 1991: until that year a wife was deemed to have given her irrevocable consent to sex with her husband, thus making ‘rape’

8 Humphreys, J., *The Civil Partnership Act 2004, same-sex marriage and the Church of England*, *Ecclesiastical Law Journal* (2005)

9 J.F. Stephen, *Liberty, Equality, Fraternity*, ed. S. D. Warner (Indianapolis, 1993) p9 138–141 and 150–153 cited in Witte, Jr., J. *From Sacrament to Contract: Marriage, Religion and the Law in the Western Tradition* (Louisville, 1997) p. 199

10 *Radmacher v Granatino* [2011] 1 A.C. 534

within marriage impossible.¹¹ It was not until a case came before the House of Lords that rape within marriage was criminalised. In the words of Witte:

“The arm of the state no longer knocks at the bedroom door with the same ease that it did in the past. But today, if a distressed party opens the door for it, the state will reach deeply into the intimacies of bed and board and punish severely those who have abused their autonomy.”¹²

The history of marriage is clearly not one of rigidity. Instead, it has gradually evolved over recent centuries. Notably, the state has intervened on a number of occasions to subtly alter the nature of marriage: by introducing civil marriages; by allowing Jews, Quakers and Catholics to marry under their own faith; by introducing divorce reform legislation; and by ensuring that marriage moved away from being an institution of male dominance. The state has also intervened since the 19th century to set the parameters for where a marriage could be held and the time of day in which a marriage was valid. Each change was accompanied by impassioned debates and threats about marriage being undermined. With each change the institution has retained its power. Extending marriage to include gay and lesbian people would not be inconsistent with the history of marriage as a human construct in civil law.

11 R v R [1992] 1 A.C. 599

12 Witte, Jr., J, *From Sacrament to Contract: Marriage, Religion and the Law in the Western Tradition* (Louisville, 1997) p. 12

2

Why Marriage Matters

This chapter will consider the evidence about the importance of the institution of marriage and consider whether marriage does provide the social benefits claimed for it, once other social factors have been controlled for. It will then go on to assess the first argument in favour of equal marriage – that the benefits of marriage are strong and unique and that these benefits should not be denied to people on account of their sexuality.

The importance of marriage

Commentators from across the political spectrum have argued that marriage is good for society and good for individuals who get married, suggesting that marriage enhances social bonds, strengthens communities and encourages commitment and stability. They argue that marriage is an important social good, which has been one of the bedrocks of civilisation, helping to bind individuals and communities together. There is no comparable social institution for this positive role in society.

Linda Waite and Maggie Gallagher's *The Case For Marriage*, published in 2000, offers the American conservative case for marriage. While the authors disagree with some of their conclusions, the central premise that "married people are happier, healthier and better off financially" is correct.

Waite and Gallagher argue that the health benefits alone make marriage worthwhile, suggesting that, in health terms, "a new campaign to reduce marriage failure is as important as the campaign to reduce smoking." Married men are, for example, less likely to suffer from depression than single people or cohabiters, possibly because of the unique support and sense of security that marriage offers.¹³

Their argument is supported by more recent research by the US Department of Health and Human Services. Their research found that married people are generally healthier than unmarried people. Marriage reduces heavy drinking and overall alcohol consumption and is associated with reduced marijuana use. Marriage is also associated with shorter average hospital stays, fewer hospital visits and reduced risk of nursing home admission.¹⁴ A Cardiff University survey of 148 separate studies showed that marriage provided considerable physical and mental health benefits, as well as a social support system. It indicated that there was a sliding scale of benefits of relationships, with marriage being at the most beneficial end. The study suggested that greater commitment leads to greater benefits.¹⁵

¹³ Linda Waite and Maggie Gallagher, *The Case for Marriage*

¹⁴ US Department of Health and Social Services, *The Effects of Marriage on Health*, 2007, pp1–4

¹⁵ Jenny Hope, *Marriage, the key to a better life: Study finds tying the knot means improved health and longer life expectancy*, Daily Mail, 28th January 2011

Marriage as a ‘commitment device’

On the issue of cohabitation, Waite argues that “cohabitation is not just like marriage. On average, cohabiting couples are less sexually faithful, lead less settled lives, are less likely to have children, are more likely to be violent, make less money, and are less happy – and less committed – than married couples.”¹⁶ Cohabitants are much less likely than married couples to pool financial resources, more likely to assume that each partner is responsible for supporting himself or herself financially, more likely to spend free time separately and less likely to agree on the future of their relationship.¹⁷

It is argued that marriage, by encouraging fidelity and lifelong relationships, acts as a ‘commitment device’ – being a powerful enough institution to alter behaviour. Social science research has underscored the importance of marriage to enable commitment. Michael Johnson broke down commitment in relationships into three separate elements – structural, moral and personal. Structural commitment is commitment based on external factors, such as marriage vows, moral commitment is commitment based on a value system and personal commitment is commitment based on the personal satisfaction and pleasure gained from the relationship. Without marriage, relationships are only held together by personal commitment, whereas marriage helps to build commitment through structural, moral and personal commitment.¹⁸ By declaring their commitment and sharing vows in a public ceremony, in addition to making a legal contract of marriage, married couples appear to be more likely to stay together, more likely to work through rocky patches in their relationship and more likely to feel external social pressure to remain committed and monogamous.¹⁹ In their, *Breakthrough Britain* report, the Centre of Social Justice (CSJ) argued that:

“It is impossible to escape the importance of family structure when discussing commitment (although this need not exclude a consideration of the importance of relational quality). Statistically the chances of staying together without marriage are low... Returning to the dichotomization of optimists and pessimists... the former overlook the concept of marriage as the nursery of obligations and argue that the quality of commitment can be just as high outside of formal arrangements. However, this view neglects the meaningful and beneficial life script which marriage provides, especially for men... Healthy marriages (high in structural and personal commitment), well supported from prevailing cultural messages (moral commitment) provides the most secure foundation for [children’s] upbringing and for their parents’ adult lives”²⁰

Marriage also seems to provide clear economic and financial benefits. The ‘marriage premium’ means that married men earn around 15% more than single people or cohabitantes and married women also have higher earnings than their peers. Evidence suggests that married men are more successful and productive at work, in part because of obligations to family members and the desire to be seen to be living up to the ideal, as represented by previous generations and popular representations of marriage.

The institution of marriage is a long-term contract, allowing the partners to make choices that carry immediate costs but eventually bring benefits.²¹

It is also suggested that marriage has substantial benefits for society more generally. Children brought up by married parents are more likely to grow up in a settled household, with direct benefits for the education and wellbeing of

16 Waite and Gallacher, *The case for marriage*, p201

17 Kiernan, K., ‘Childbearing Outside Marriage in Western Europe’, *Population Trends* 98, 1999, pp. 11–20, quoted in *Civitas, Does Marriage Matter*, p7

18 Quoted in CSJ, *Breakthrough Britain*, p31

19 See, for example, Mark White, *Why Get Married? The Value of Commitment*, *Psychology Today*, April 2010, <http://www.psychologytoday.com/blog/maybe-its-just-me/201008/why-get-married-the-value-commitment>

20 Centre for Social Justice. *Breakthrough Britain*, (London: CSJ, 2006), pp17–18, p32

21 Waite, *Does Marriage Matter? Demography* 32, p498<?>

the child and indirect benefits for their friends and classmates. According to an analysis of the last census by the CSJ, fewer than one in ten married parents have split by the time a child is five, compared with more than one in three who were not married. ninety-seven per cent of all couples that are still together by the time their child is fifteen are married.²² Stable families are the lynchpins of stable communities and neighbourhoods. Many of those families have a married couple at their heart.²³

Martin Daly and Margo Wilson have argued that marriage has a “pacifying effect” on young men. They point out that unmarried males, particularly between the ages of 25 and 35 are disproportionately likely to engage in high-risk activities and violence.

How should we control for the benefits of marriage?

Although there is a considerable level of agreement that marriage is beneficial, some argue that it is not marriage that delivers these benefits; rather it is the type of people who get married. Take an Institute for Fiscal Studies report on the impact of marriage on children. The report accepts that, “it is widely accepted that children born to married parents achieve better outcomes, on average, both at school and in terms of their social and emotional development, than children born into other family forms, including into cohabiting unions.”²⁴ The report then controlled for a variety of variables, ranging from the mother’s ethnicity, through parental education, employment and housing tenure to other factors such as relationship quality. It found that married couples tend to be better educated and higher earning.

Using these controls, the report found that, “the gaps in cognitive and socio-emotional development between children born to married parents and those born to cohabiting parents mainly or entirely reflect the fact that different types of people choose to get married (the selection effect), rather than that marriage has an effect on relationship stability or child development.”²⁵

Some of the factors that were used to control the data could also be caused by the couple being married or the so-called marriage effect, rather than something that should be treated separately. Data concerning marriage can, at times, be over-controlled. Take relationship quality and relationship stability as examples. As we have seen, married couples are far less likely to separate than couples who cohabit – both the quality of relationships and the stability of relationships have been shown to be greater when a couple are married.

And marriage seems to maintain its power as an institution, with nine out of ten young people saying that they would like to get married in the future and 75% of cohabitantes aged under 35 saying that they would like to get married.²⁶ Although other factors, such as the social background of people who are more likely to get married, should be borne in mind, individuals who marry are still likely to gain benefits that they would not otherwise gain. It still seems clear that marriage is a beneficial and a positive institution

Why should the benefits of marriage be restricted?

The authors accept that marriage does not deliver benefits for everybody; indeed in some cases it may even be detrimental to the individuals involved (including children). The benefits of marriage may also, at times, be connected to the kind of people who choose to get married. Even bearing sensible controls in mind, marriage is still clearly a beneficial institution and the ‘marriage effect’ can have a

22 Centre for Social Justice, *It's Time To Back Marriage*, 2012, p3

23 See Civitas, *Does Marriage Matter?*

24 Alissa Goodman and Ellen Greeves, *Cohabitation, marriage and child outcomes*, (London: IFS, 2010), p7

25 Claire Crawford, Alissa Goodman, Ellen Greeves and Robert Joyce, *Cohabitation, marriage and child outcomes: an update*, (London: IFS, 2011), p3

26 CSJ, *It's Time To Back Marriage*, quoting Opinion Research Business poll from 2000 about *Young People's Lives In Britain Today* and ISER, *British Social Household Survey*, 2009

profound impact on relationships. Marriage clearly benefits many individuals who get married, as well as encouraging commitment and helping to bond society together. It is also a powerful, historic institution that is universally understood.

The benefits of marriage appear to be considerable. Given this is the case, it would seem that gay people could also benefit from marriage. To some, the case for marriage is also the case for equal marriage – if marriage is a social good, then there should be good reasons for it not being extended to gay citizens.

It is worth pointing out that this discussion is happening against a markedly different political backdrop concerning homosexuality than was the case only a few years ago. The majority of the general public are now relaxed about homosexuality, according to recent opinion polls, with a large and rising majority regarding it as “rarely wrong or not wrong at all.”²⁷ Scientific evidence has strengthened the case that homosexuality is not a “lifestyle choice”, rather it is biologically determined.²⁸

As it has become more accepted that homosexuality is both normal and natural, the nature and tone of the debate has shifted. Many argue that belief that marriage is a beneficial institution should lead logically to a belief that people should not be excluded for an institution that will benefit them – this is the first argument in favour of equal marriage. This is an argument that appears difficult to disagree with. Only if sufficient arguments can be made not to extend the benefits of marriage to gay and lesbian people is there good reason not to extend the benefits of gay and lesbian people.

We will consider, in detail, the arguments against equal marriage in Chapter 5 and assess whether they have sufficient credence to prevent marriage being extended to gay and lesbian people. There is certainly, though, considerable merit in the argument that marriage is a beneficial institution and these benefits should not be denied to people purely on the basis of them being gay or lesbian.

“Many argue that belief that marriage is a beneficial institution should lead logically to a belief that people should not be excluded for an institution that will benefit them”

27 British Social Attitudes Survey, January 2010. See also Populus ‘Gay Britain’ polls in 2010 and 2012.

28 This article in the Boston Globe sets out the arguments that homosexuality is involuntary: http://www.boston.com/news/science/articles/2003/12/02/the_biological_basis_of_homosexuality/?page=full

3

Is there a Conservative Case for Equal Marriage?

This chapter will consider the history of homosexual law reform before asking whether the benefits of marriage will prove particularly beneficial for gay and lesbian people, as well as for wider society and the institution itself. In short, we will ask whether there is a 'conservative case for equal marriage'.

Introduction

The UK has come a long way since the decriminalisation of homosexuality in 1967. Twenty five years after Section 28 was introduced, gay couples are now able to adopt children and engage in a civil partnership. Gay people are also protected from discrimination in the workplace by a number of measures, including the Equality Act.

Homosexual law reform timeline²⁹

1533 – Buggery Act introduced by Henry VIII brought sodomy within the scope of statute law for the first time and made it punishable by hanging.

1785 – Jeremy Bentham is one of the first people to argue for the decriminalisation of sodomy in England.³⁰

1836 – Last known execution for sodomy in the UK.

1861 – Offences Against the Person Act formally abolished the death penalty for buggery in England and Wales.

1885 – Labouchere amendment passed 7 August (Section 11 of the Criminal Law Amendment Act). Created the offence of 'gross indecency' and thus became the first specifically anti-homosexual act.

1954 – Appointment of the Wolfenden Committee on 24 August to consider the law in Britain relating to homosexual offences and prostitution.

1967 – Sexual Offences Act came into force in England and Wales and decriminalised homosexual acts between two men over 21 years of age and 'in private.'

1980 – Male homosexuality decriminalised in Scotland.

1982 – Male homosexuality decriminalised in Northern Ireland.

1987 – Section 28 of Local Government Bill introduced, coming into force in May 1988.

1992 – Homosexuality decriminalised in the Isle of Man.

1993 – Homosexuality removed from the list of psychiatric disorders.

²⁹ Stonewall, http://www.stonewall.org.uk/at_home/history_of_lesbian_gay_and_bisexual_equality/default.asp

³⁰ <http://www.columbia.edu/cu/lweb/eresources/exhibitions/sw25/bentham/index.html>

1997 – Same-sex partners recognised for immigration purposes.

1998 – House of Commons votes to reduce age of consent to 16, but this is blocked by the House of Lords.

2000 – Removal of ban on lesbians and gay men serving in the armed forces.

2001 – Reduction of age of consent to 16.

2001 – First same-sex partnerships registered in London at the GLA.

2002 – Equal rights given to same-sex couples applying for adoption.

2003 – Repeal of Section 28.

2004 – Civil Partnership Bill introduced Offences of buggery and gross indecency abolished.

2005 – Civil Partnerships introduced.

2006 – Equality Act gains Royal Assent.

2010/11 – Abolition of historic gay sex offences on criminal records.

2011 – Amendment to Equalities Act allowing civil partnerships in religious premises.

2011 – David Cameron announces his support for marriage equality – his support is shared by Ed Milband and Nick Clegg.

Changes in public opinion have also been stark in the past two decades. It is unclear whether effective social reform has driven public opinion or trends in public opinion have driven public policy. In the late 1980s, the British Social Attitudes Survey reported that the proportion of people who regarded sexual relations between two adults of the same-sex as “always or mostly wrong” stood at more than 70%; now it is just under 30%. Conversely, whereas just over 10% of people in the late 1980s said that same-sex relations were “rarely wrong or not wrong at all”, that figure now stands at around 50%.

A 2012 Populus poll showed that 76% of people agreed that gay couples should have “exactly the same rights as heterosexual couples.”³¹ A 2009 poll found that 84% of respondents said that it would not make any difference to how they voted if a political party had an openly gay leader. The same poll suggested that 43% of people had an openly gay person amongst their close group of friends.³²

It is clear, then, that British society and the UK legal system has become considerably more tolerant in the past decade and a half. That is not to suggest, however, that problems do not remain. Homophobic attitudes still remain in parts of society and homophobic bullying and gay suicide remains an issue of concern. Last year, the Metropolitan Police reported that there were 1,335 homophobic criminal offences in London. Young gay men are also considerably more likely than young, heterosexual men to suffer from mental health problems, attempt suicide or to self-harm.

Not a single professional footballer in the UK is currently ‘out’ as a gay player. Homophobic chanting is a regular feature in football grounds, where the racist chanting that used to pollute the air at matches is now a thing of the past. Football clubs have done little to crack down on this. The publicist Max Clifford has said that he advises gay footballers who approach him not to ‘out’ themselves as gay.³³

31 <http://www.populus.co.uk/Poll/Populus-Gay-Britain-poll-2012/>

32 <http://www.populus.co.uk/Poll/The-Times-Gay-Britain-Poll/>

33 Quoted on ‘Britain’s Gay Footballers’, BBC Three, 1st February 2012

Equal marriage as a conservative idea?

Some argue that equal marriage would be a deeply radical, rather than a conservative reform – suggesting that it fundamentally changes or redefines the institution of marriage. For most of the period since 1967, gay rights and the movement for equality has been regarded as a left-wing one. To many, gay rights was an off-shoot of the 1960s counter culture. Tony Benn regarded gay groups as a crucial part of a left-wing “rainbow coalition” in the early 1980s and Hannah Dee has referred to “the red in the rainbow” to define the traditionally left-wing nature of “gay politics”.^{34,35}

Some argue, however, that there are ‘conservative’ rather than radical reasons for equal marriage. The concept of marriage equality is becoming an issue increasingly associated with the centre-right. Whereas the gay rights movement had previously emphasised what made gay people different and unique, over recent years the debate has focused on what makes them like the rest of the population. The debate has moved on to consider gay people as insiders rather than outsiders.

Many gay rights spokesmen and women of a previous generation were hostile to equal marriage, regarding it as a conservative institution, antithetical to the concept of the gay community as an outsider movement. Take this quote from Peter Tatchell (now a supporter of equal marriage) from 1998:

“Marriage is an institution that evolved primarily to ensure the sexual control of women by men, and to regulate the conception and rearing of children. Tailor-made for an old-fashioned, patriarchal version of heterosexuality, it’s irrelevant to the vast majority of lesbian and gay people (and to many liberal minded straights too). What’s more, being queer frees us from the rules and rites of hetero culture. Having enjoyed the greater lifestyle choices that same-sex relationships offer, it would be a backward step for gays to turn around and don the straight-jacket of wedlock.”³⁶

The first part of the conservative case for equal marriage is the hostility of many on the radical left to the institution of marriage. If conservatives believe in the institution of marriage, there is a strong argument for that to be extended to gay and lesbian people.

The argument follows that the case for marriage equality is fundamentally a case which could be associated with the philosophical centre-right, rather than the philosophical left. First, marriage equality is based on the premise that marriage is a social good and a small minority of the population should not be excluded from an institution that hugely benefits society. Second, that same-sex marriage should be seen through the prism of equality under the law. Both of these cases have traditionally been associated with the political centre right, although many politicians of the centre-left have, of course, espoused these views.

Andrew Sullivan, one of the most important commentators on these issues, has made clear his belief that the case for gay marriage is a conservative one. In *Virtually Normal*, written in 1996, he wrote:

“So long as conservatives recognise, as they do, that homosexuals exist and that they have equivalent emotional needs and temptations as heterosexuals, then there is no conservative reason to oppose homosexual marriage and many conservative reasons to support it. So long as liberals

³⁴ Hannah Dee, *The Red In The Rainbow – Sexuality, Socialism and LGBT Liberation*, 2011.

³⁵ We are sceptical of definitions such as “gay politics”. This suggests that gay people vote based on their sexuality, rather than issues such as the economy, crime etc. Such an approach is outdated and unproven.

³⁶ ‘Thud’, 29th January 1998, http://www.petertatchell.net/lgbt_rights/partnerships/unwedded_bliss.htm

realise, as they do, that citizens deserve equal treatment under the law, then there is no liberal reason to oppose it and many liberal reasons to be in favour of it.”³⁷

The US conservative, David Brooks, passionately made the case in a New York Times column entitled *The Power of Marriage* in 2003. He suggested that:

“The conservative course is not to banish gay people from making such commitments. It is to expect that they make such commitments. We shouldn’t just allow gay marriage. We should insist on gay marriage. We should regard it as scandalous that two people could claim to love each other and not want to sanctify their love with marriage and fidelity.

When liberals argue for gay marriage, they make it sound like a really good employee benefits plan. Or they frame it as a civil rights issue, like extending the right to vote.

Marriage is not voting. It’s going to be up to conservatives to make the important, moral case for marriage, including gay marriage. Not making it means drifting further into the culture of contingency, which, when it comes to intimate and sacred relations, is an abomination.”³⁸

Ironically, given the way that the discussion is portrayed in the media, some argue that the case for equal marriage can be regarded as a fundamentally conservative one.

The remainder of this chapter will consider how traditional conservative thinking could regard equal marriage as particularly beneficial to gay people, particularly in terms of the values of commitment, fidelity, stability and role models that they might benefit from.

Equal marriage and the Tory tradition of social reform

“I am a Conservative to preserve all that is good in our constitution, a Radical to remove all that is bad.”

Benjamin Disraeli

“A state without the means of some change is without the means of its conservation.”

Edmund Burke

Conservatism is often caricatured as a political philosophy that is reactionary and resistant to change. Historically, that has very much not been the case. Conservatives have been responsible for some very important social reforms – Wilberforce and the abolition of slavery probably being the most celebrated example. History shows us that Conservatives are prepared to make sometimes radical, often incremental reforms to the established order in order to right a proven wrong.

Disraeli’s support for the Second Reform Act, as well as his legalisation of trade unions and substantial social reforms, such as slum clearance, can also be seen as examples of this tradition, as were the 1918 extension of the vote to women, and social reforms instituted by Joseph Chamberlain and Harold Macmillan. In many cases, Conservative governments made ‘progressive’ changes because they felt that they were the right thing to do, would bring about incremental change

37 Andrew Sullivan, *Virtually Normal*, pp180–187

38 David Brooks, *The Power of Marriage*, New York Times, November 22nd 2003

and see off revolutionary dangers, and would put the Conservative Party on the 'right' side of history. In the case of the Second Reform Act, Disraeli wanted to make a great reform a Tory, rather than a Liberal, reform.

In this context, Conservatives might consider the importance of making a great reform a 'Tory' one when they are considering the issue of equal marriage. Although the Wolfenden committee was commissioned by a Tory government, it is fair to say that the Conservative Party has not always been on the side of progress when it came to gay rights.³⁹ Indeed, it has been, at times, opposed to homosexual law reform, and almost all of the major legal changes benefiting gay people have happened under Labour governments.

Only a handful of Conservative MPs voted to legalise homosexuality in 1967 – amongst them were Nicholas Ridley, Enoch Powell and Margaret Thatcher. The introduction of Section 28, in 1988, which forbade local authorities from the "promotion of homosexuality" continues to provoke bitterness amongst many gay people to this day. As recently as 1999, William Hague sacked Shaun Woodward from the Tory front bench for supporting repeal of Section 28.⁴⁰ In 2002, Iain Duncan-Smith faced a rebellion of 35 Tory MPs, including Michael Portillo and Kenneth Clarke, and the resignation of John Bercow from his front bench, when he whipped Conservative opposition to allowing gay people to adopt. David Cameron apologised for the "mistake" of Section 28 in 2009.⁴¹

Conservatives should consider whether having a Conservative-led government being responsible for the most symbolic act in homosexual equality – that of equal marriage – would be consistent with the tradition of Tory social reform. This would be especially the case if equal marriage could be shown to be a conservative reform, which emphasised conservative principles such as the power of marriage in encouraging fidelity and commitment. The rest of this chapter will explore whether equal marriage can be said to do that.

Equal marriage, social incentives and the power of institutions

There is no substantive evidence to suggest that gay people are inherently incapable of benefiting from marriage, were it to be an option for them. Andrew Sullivan argues that "few people deny that many homosexuals are capable of the sacrifice, the commitment, and the responsibilities of marriage. And indeed, for many homosexuals and lesbians, these responsibilities are already enjoined – as they have been enjoined for centuries."⁴²

While we are particularly careful not to throw around hackneyed stereotypes about gay people, society does need to be concerned about rising levels of HIV/AIDS in the UK. One in ten gay men in London is HIV positive and one in 20 nationwide is living with HIV. In 2010, 3,000 gay and bisexual men were diagnosed with HIV – the highest figure to date. Gay men accounted for 45% of the new HIV diagnoses in 2010.⁴³ The number of new cases amongst gay men increased by some 70% between 2001 and 2010.

At the same time, research by the gay networking company Jake found increased levels of unsafe sex and promiscuity. The survey, of 1,500 of its members, found that "nearly three-quarters of those surveyed said they had had up to five sexual partners in the previous month, with a third of those over 40 having six or more in the past six months... As many as 72.8% have unsafe sex and 48.1% said they'd had unprotected sex with strangers." Only half of those surveyed had been for an HIV test in the previous year.

39 The Wolfenden committee had the remit of considering issues around prostitution and considering how "homosexual crimes" could be reduced, so the original purpose of the committee was by no means a progressive one.

40 The Independent, 3rd December 1999, <http://www.independent.co.uk/news/hague-sacks-frontbencher-for-supporting-clause-28-abolition-1126003.html>

41 The Guardian, Thursday 2nd July 2009, <http://www.guardian.co.uk/politics/2009/jul/02/david-cameron-gay-pride-apology>

42 Andrew Sullivan, *Virtually Normal*, (New York, First Vantage Books, 1996), pp179–181

43 <http://www.tht.org.uk/informationresources/factsandstatistics/uk/>

Ivan Massow, Chief Executive of Jake, commented:

“Forgive the crude analogy, but it seems that many of the gay men we surveyed behave like their heterosexual peers on a stag night – except the gay stag nights are permanent. While this kind of promiscuous lifestyle is acknowledged in the policies of countries such as Germany, Spain and Holland, it is not even on the agenda in Britain. No wonder HIV cases are rising.”⁴⁴

Matthew Todd, editor of the gay lifestyle magazine, Attitude, also pointed to such factors:

“The gay scene is incredibly sexualised. Kids come out into this sexualised world where there is lots of booze and lots of drugs, there’s nothing that’s healthy, gentle and relaxed.”

Tim Franks, from the gay and lesbian charity Pace, suggested that:

“They [gay people] enter a world of secrecy which can last for 20 minutes or 50 years. Even when you make contact with the adult world, it can be a very sexualised one. Imagine if we expected a young heterosexual girl to get her first lesson about relationships in a single bar.”⁴⁵

Although there are many examples of successful, monogamous relationships in gay life, many parts of the gay scene are still dominated by heavy drinking, drug abuse and short-term relationships – both of which can be detrimental to long-term physical and mental health. Websites such as Gaydar and phone apps such as Grindr offer the kind of on-demand sex that is still seen as a key part of the gay scene in 2012. However, the kind of short-term behaviour and levels of risk-taking that sociologists have identified with unmarried young males still forms a far bigger part of gay life than it does of heterosexual life. Whereas such a lifestyle is not always detrimental it does have the potential to be for many individuals.

West Hollywood therapist, Alan Downs identified this lifestyle and the pressures that go with it in his important 2005 book about mental health and gay men, *The Velvet Rage: Overcoming the pain of growing up gay in a straight man’s world*. He argues that:

“We have created a gay culture that is, in most senses, unlivable. The expectation is that you have the beautiful body, that you have lots of money, that you have a beautiful boyfriend with whom you have wonderful, toe-curling sex every night... none of us have that. To try to achieve that makes us really miserable. The next phase of gay history, I believe, is for us to come to terms with creating a culture that is livable and comfortable.”⁴⁶

A conservative case for equal marriage would suggest that equal marriage was a key part in creating a livable and comfortable gay culture, with gay people as insiders rather than outsiders.

Such evidence is taken by some on the right as providing evidence that gay people are not capable of showing the restraint and commitment necessary for a successful marriage. This argument ignores the fact that there are many examples of happy, lifelong, monogamous gay relationships. To quote Alan Downs again, “many gay men are able to grow up and have happy, successful adult lives with meaningful relationships, friendships and sex. I don’t want to get into this idea that we’re all broken.”⁴⁷ Opponents of equal marriage would be as well arguing that the behaviour of young, heterosexual

44 Ivan Massow, *Gay Britain*, New Stateman, 25th July 2011

45 Tim Franks and Matthew Todd interviews both taken from ‘*Breaking the taboo over the mental health crisis amongst Britain’s gay men*’, *The Guardian*, 22nd August 2010

46 Paul Flynn and Matthew Todd, *Pride and prejudice for gay men*, *The Observer*, 20th February 2011

47 Ibid

bachelors makes them unsuitable for the institution of marriage. Their reasoning, in other words, is back to front.

Marriage encourages commitment and discourages promiscuity, so a group which is unable to marry is likely to be more promiscuous, lacking the social norms towards commitment that marriage creates. Marriage as a “commitment

“A conservative understanding of marriage would regard marriage as an important way of improving outcomes for everybody, including gay people”

device” could be beneficial to gay people – encouraging commitment, long-term relationships and lower levels of risk taking. The importance of social institutions and social incentives in guiding behaviour is traditionally an important part of centre-right philosophy. In this case, it could

be argued that what many on the right describe as the “homosexual lifestyle” (actually only the lifestyle of a minority of gay people) is partially because gay people have been deprived by society of the ability to marry, and the order and social support that marriage brings. Traditional conservative thinking would suggest that the social institution of marriage and the social acceptance and social incentives offered by it can only be beneficial to gay people.

Indeed, many on the right who point to family breakdown and a decline in marriage when considering some of the problems of “broken Britain” could turn their logic towards equal marriage. Some on the right point to high levels of binge drinking and anti-social behaviour in parts of Britain and link this to family breakdown and a decline in marriage. As the Centre for Social Justice have suggested, “the most significant driver of social instability and poverty – [is] family breakdown... Backing marriage... would encourage strong and stable families, and tackle the social breakdown that fuels poverty.”⁴⁸ If marriage can be used as a tool to tackle social breakdown throughout society, why should conservatives oppose it being used as a powerful social institution to encourage fidelity and commitment amongst gay people?

M. V. Lee Badgett, of UCLA, produced a detailed study of the impact of equal marriage in the Netherlands. Her findings support this conservative approach about the benefits of equal marriage. She found that:

“On a personal level, many people said that getting married made them feel more committed to or responsible for their partners, or that they felt some larger emotional or spiritual effects, even though most of the couples had been together for many years before they could marry. Many same-sex couples were surprised to find that marriage changes how other people see them. Marriage triggers expectations of friends and family members, who support married couples and remind them that they’re part of a larger social institution...”⁴⁹

A conservative understanding of marriage would regard marriage as an important way of improving outcomes for everybody, including gay people. If “only marriage can mend broken Britain”, as a Daily Mail headline suggested, that logic should surely be extended to gay and lesbian people as well.⁵⁰ Denying gay people the ability to join the institution of marriage and take advantage of its benefits could be seen as unconservative.

48 CSJ, *It's Time To Back Marriage*, p1

49 Lisa Belkin, ‘Dutch Views on Same-Sex Marriage’, *New York Times*, 9th November 2009

50 <http://www.dailymail.co.uk/news/article-1193545/Only-marriage-mend-broken-Britain-says-judge.html>

Tackling mental health problems

Gay and bisexual men are more likely to suffer from mental health problems than heterosexual men. A recent report suggested that, over the past year, 3% of gay men and 5% of bisexual men had attempted suicide, compared to 0.4% of all men. Over the same period, 7% of gay and bisexual men had attempted self harm, compared to 3% of all men. 6% of gay and bisexual men aged between 16 and 24 had tried to take their own life over the past year and 15% had harmed themselves.⁵¹

Psychologist Alan Downs has set out the depression problems facing gay people in his important, *Velvet Rage*. He suggests that:

“Velvet rage is the deep and abiding anger that results from growing up in an environment when I learn that who I am as a gay person is unacceptable, perhaps even unlovable. This anger pushes me at times to overcompensate and try to earn love and acceptance by being more, better, beautiful, more sexy – in short, to become something I believe will make me more acceptable and loved.”⁵²

Research for the National Institute for Mental Health in the USA had stark findings about the level of mental health problems amongst gay men. It found that gay people were up to two-and-a-half times more likely to become alcohol or drug dependent; over two-and-a-half times more likely to suffer from anxiety or depression disorders. The report concluded that:

“It is likely that the social hostility, stigma and discriminations most LGB people experience is at least likely to be part of the reason for the higher rates of psychological morbidity observed. Prejudice against homosexuality is unlike other intolerance in that it can reach into families. Rejection by parents of their own children because of their sexual orientation is likely to have a severe emotional impact.”⁵³

The research quoted suggested that mental health issues, particularly amongst young gay and bisexual men, come from a feeling of alienation from wider society. The whole concept of “coming out” suggests that a young gay person is entering a lifestyle that is not part of the mainstream. Equal marriage, by making it clear that homosexuality is wholly accepted in law, may help to alter this perception.

Equal marriage could also have an equally important and conservative role to play in improving health outcomes for gay men. Attitude editor Matthew Todd suggested that:

“There is the cliché that we are all having a great time partying, but actually we know, and the research is now showing, there are a hell of a lot of unhappy gay people; far higher rates of depression, anxiety and suicide than amongst straight men; far higher rates of self-destructive behaviour; substance abuse and sex addiction; and high levels of issues around intimacy and forming relationships.”

Equal marriage could provide levels of stability and commitment that would also play a role in improving mental health outcomes for gay people. The “pacifying effect of marriage” on young straight men could also have equal benefits for

⁵¹ Rachel Williams, *NHS is failing gay and bisexual men, major survey reveals*, The Guardian, 24th April 2012

⁵² Paul Flynn and Matthew Todd, *Pride and Prejudice*, The Observer, 20th February 2011.

⁵³ Ibid

young gay men in particular, having the potential to minimise their exposure to situations that might result in drug and alcohol problems, as well as other forms of high risk behaviour. By creating role models, developing social institutions and acting as a bridge between gay people and their parents, equal marriage could go some way towards tackling the sense of alienation felt by many gay people. This can be added to the health benefits associated with marriage, as mentioned earlier, showing that men who benefit from the social support structures of marriage are less likely to have drug or alcohol problems, or suffer from mental health issues. The support and commitment provided by marriage is crucial to this.

Providing role models to young people

Andrew Sullivan makes the point that equal marriage would provide “role models for young gay people, who, after the exhilaration of coming out, can easily lapse into short-term relationships with no tangible goal in sight.” He argues:

“More important, perhaps, as gay marriage sank into the subtle background consciousness of a culture, its influence would be felt quietly but deeply among gay children. For them, at last, there would be some kind of future; some older faces to apply to their unfolding lives, some language in which their identity could be properly discussed, some rubric by which it could be explained – not in terms of sex, or sexual practices, or bars, or subterranean activity, but in terms of their future life stories, their potential loves, their eventual chance at some kind of constructive happiness. They would be able to feel by the intimation of a myriad examples that in this respect their emotional orientation was not merely about pleasure, or sin, or shame, or otherness (although it might always be involved in many of those things), but about the ability to love and be loved as complete, imperfect human beings. Until gay marriage is legalised, this fundamental aspect of personal dignity will be denied a whole segment of humanity. No other change can achieve it.”⁵⁴

Whereas straight young people have several role models – in their household, in their family and as part of wider society – gay people have few or no close role models. Whereas straight young people have parents, elder siblings or other family members to discuss concerns or insecurities with, such close role models are less likely to exist for young gay people. Their first meetings with gay peers could be in bars or via websites – hardly the best environment to discuss concerns or insecurities. Equal marriage, by contrast, could provide a number of role models to young people in their families, their communities and in wider society, showing that their life will not have to be so different to that of their heterosexual peers.

The same could be the case concerning role models in popular culture. An annual report for a gay charity highlights how gay people are represented in popular culture. Many celebrities, such as cricketer Steven Davies, rugby player Gareth Thomas, broadcasters Evan Davis and Clare Balding and business leaders such as Lord Browne are successfully providing role models to young people that, in the words of Balding, “challenge the accepted view of gay men and women. They are supremely successful, confident and bold, they are very visible. They don’t need to march or wave a placard but, in their own way, they have had a huge impact.”⁵⁵

By producing a greater number of visible role models, the introduction of

⁵⁴ Andrew Sullivan, *Virtually Normal*, p184

⁵⁵ *The Observer*, 22nd August 2010

equal marriage could have a profoundly beneficial impact on gay and lesbian young people and help to normalise the aspiration that young people have of growing up and finding a stable, committed relationship.

Bullying and homophobic violence

Homophobic bullying also remains a major problem in the playground. Two thirds (65%) of young gay people experience homophobic bullying in school. Of them, 92% have been bullied verbally, 41% have suffered violent bullying and 17% have received death threats. ChildLine report that 2,725 young people call them each year to talk about sexual orientation, homophobia or homophobic bullying. Half of the young people who have been bullied have contemplated self harm or suicide.⁵⁶

Homophobic violence also remains a problem in British society. There were 1,335 homophobic offences in London in 2011.⁵⁷ Such attacks have also increased in areas regarded as very 'gay friendly', such as the West End of London, with a recent spate of high-profile, violent attacks. Some of the examples of the attacks are particularly shocking. Take, for example, the tragic death of 62 year old civil servant Ian Baynham in 2009. Baynham died after being "attacked stamped on and kicked by drunken teenagers screaming homophobic abuse."⁵⁸ The BBC reported at the time that:

*"Former public schoolgirl Thomas, of Anerley, south-east London, hurled obscene abuse at Mr Baynham, a civil servant, during the drink-fuelled assault. The court heard she swore and screamed "faggots", and smiled as she "put the boot into" the victim after he was knocked to the ground by Alexander. Mr Baynham died 18 days after the assault in central London."*⁵⁹

Homophobic abuse leading to serious violent crime are extreme and exceptional examples. The authors do not suggest that there is a link between equal marriage and tackling this kind of behaviour – undoubtedly equal marriage will not be a panacea for the behaviour of a minority of people who engage in criminal acts. However, enabling gay people to get married would signal that gay people are very much part of the mainstream of society and on its own this might make some contribution to challenging the prejudice of a minority against gay people. Equal marriage might be successful in further altering social norms in groups of people where homophobic discrimination and abuse persists.

Narrowing the divide between gay people and their parents

For obvious reasons, parental reaction to their child coming out is often confusing for the parent. As far as they are concerned, their child is part of a community that they have difficulty understanding and accepting. This is often combined with some trepidation about the perceived dangers of a gay lifestyle. Many parents, although understanding, are also aware that many of the dreams that they may have had for their child – that they will marry and have children of their own – are almost certainly not going to happen. Parents of gay children can regard their child's sexuality as something that puts a distance between them and divorces their children from mainstream society. Although a parent of a gay child wants to do their best to help them adjust and be happy, it's not always easy for them

⁵⁶ http://www.stonewall.org.uk/education_for_all/research/1731.asp

⁵⁷ Evening Standard, *Gay Charity accuses Met Police as homophobic attacks increase*, 8th December 2011

⁵⁸ The Guardian, *The Trafalgar Square Killers: two found guilty of attack that left gay man dead*, 16th December 2010.

⁵⁹ BBC News, *Pair jailed for Trafalgar Square homophobic killing*, 26th January 2011

to do so about an environment and a lifestyle they have difficulty understanding.

Equal marriage can potentially bridge the divide between generations. It would make clear to parents of gay children that their children can still play a part in institutions that they endorse, value and understand. Evidence from the Netherlands and more recent experience from New York state has suggested that equal marriage has helped to bridge the divide between gay people and their parents.⁶⁰ As Sullivan suggests, equal marriage could do more than anything else to integrate gay people back into traditional family life. Bridging the divide between children and parents is surely something that most people would cherish.

Benefits for children of gay parents

Considerable evidence has shown that the stability and commitment that marriage helps to reinforce is hugely beneficial in the raising of children. As we noted earlier, only 8% of children born into a married household see their parents split up before their fifth birthday, compared to 52% born into a cohabiting household. Gay people were given the right to adopt children a decade ago.

Almost all conservatives would agree that marriage is the best environment in which to raise children and, it should be remembered that a number of children are being raised by gay parents in the UK at the moment. According to the Office for National Statistics, in 2011 there were 5,000 civil partner couples with dependent children and 3,000 same-sex couples with dependent children.⁶¹ The logic of the conservative argument that children are best raised by married parents would lead to the conclusion that the 8,000 children currently being raised by same-sex parents would benefit if their parents were allowed to marry.

Extending the right to marry to gay people would also extend the institution to gay people that has proven to be the most effective institution for the raising of children. This is especially important for adopted children who need stability more than most once they are settled.

Conclusion: A conservative case?

Some conservatives might argue that equal marriage could be too much of a risk with an important institution and presents an overly radical, rather than a conservative, change. There is a strong conservative counter-argument to this, however. Conservative thinking is at its most profound when it is focused on including all members of society into the fabric of the nation and using social institutions to the benefit of all citizens.

Among the great strengths of centre-right thinking are its beliefs in the value of authority, its belief in the rule of law, and the idea of Britain as “one nation” that we can all feel proud of. These great strengths are at their most impressive when used for the good of people who are not particularly powerful, or numerous. This is a major part of the conservative case for equal marriage: the belief that power, authority and strength are to be used to bind, include and protect the whole nation, not just the established majority. Equal marriage could help to complete this integration with the rest of society and traditional conservative thinking would argue that the social incentives and commitment device provided by marriage could be of particular benefit to gay people.

⁶⁰ <http://www.nytimes.com/2011/07/24/fashion/weddings/some-parents-of-gay-children-push-for-marriage.html?pagewanted=all>

⁶¹ ONS, http://www.ons.gov.uk/ons/dcp171778_251357.pdf

In essence, equal marriage would help to fully reconcile gay people with the rest of society. As Andrew Sullivan movingly describes:

“They call it the happiest day of your life for a reason. Getting married is often the hinge on which every family generation swings open. In my small-town life, it was far more important than money or a career or fame... But ...what it all really comes down to is the primary institution of love. The small percentage of people who are gay or lesbian were born, as all humans are, with the capacity to love and the need to be loved. These things, above everything, are what make life worth living. And unlike every other minority, almost all of us grew up among and part of the majority, in families where the highest form of that love was between our parents in marriage. To feel you will never know that, never feel that, is to experience a deep psychic wound that takes years to recover from. It is to become psychologically homeless.”

He argues that equal marriage is far from radical, rather “it is a profoundly humanising, traditionalising step”. This should surely be a step that most conservatives should approve of, providing the benefits of an institution that emphasises fidelity and commitment to gay people, whilst also providing positive role models and encouraging gay people to see themselves as a mainstream part of national life.

The authors therefore conclude that there is a conservative case for equal marriage. Given the advances in gay rights over the past decades, there is little appetite among many gay people for the outsider status that used to be a focus for the ‘gay liberation’ movement. Gay people are able to celebrate their differences with straight people, without rejecting the rest of society. In part this must be because gay people are not united by race, creed, political ideas or income. Their parents and siblings are likely to be straight. Gay people are not a community apart, they are an integral part of society. The impact, as Badgett’s research indicates, is not limited to those gay people who want to marry, but sends a signal to all that they are “invited to the party”.⁶²

62 Lisa Belkin, *op. cit.*

4

Equal Marriage as Equality Before the Law?

This chapter evaluates the third main element of the case for equal marriage – namely that equality before the law means that gay and lesbian people should have equal access to the institution of marriage.

Introduction

If marriage is one important element to a thriving and free society, then individual liberty and the rule of law are others. The power of the state should be limited by the rule of law, and certain individual liberties guaranteed.

In the common law tradition, a free society rests on the presumption that the people are free to do all that criminal law does not prohibit. In the realm of marriage, the state has a crucial role in deciding who can and cannot marry. The state's role is vital in giving marriage the legal authority that such an institution requires.

However, it could be argued that when the state excludes some citizens from the societal and moral benefits of marriage, it takes a step to interfere with the liberty of its citizens. The Archbishop of York says the state shouldn't legislate where it has no place to, but he is framing the argument the wrong way round: it is the current definition of marriage, not a change in the law, that should be considered as the active and continuing interference by the state – it is this interference which should be stopped.

The rule of law

The 'rule of law' is a phrase which has particular historical and political significance in Britain but over the past decade an alternative language of human rights has obscured this significance. More often than not, the language of 'rights' is too often associated with prisoners voting and terrorists resisting extradition, or as a survey for Policy Exchange in 2012 found, human rights were seen by 72% as "a charter for criminals and the undeserving."⁶³ The language of human rights poses a more insidious danger: it sets groups against one another by giving them definition and symbolic legal weapons to use against each other. The traditional language of the rule of law and personal liberty does not do this.

To decide whether the current ban on gay people marrying is consistent with the rule of law, it is important first to figure out what the phrase means. The rule of law is an old principle of English law but was only given a statutory basis recently in the Constitutional Reform Act 2005.⁶⁴ At its root the rule of law is the

⁶³ <http://www.policyexchange.org.uk/images/publications/northern%20lights.pdf>

⁶⁴ Any discussion of the rule of law normally starts with Dicey, A. V., *An Introduction to the Study of the Law of the Constitution* (1885) but the source here is Slapper, G. and Kelly, D., *The English Legal System* (Abingdon, 2009) pp. 25–32

law that governs individuals and their relationship with the state. A.V. Dicey, who coined the phrase but not the idea⁶⁵, Friedrich von Hayek, Joseph Raz and other theorists have all attempted to describe it. The broad themes of the current judicial interpretation of the rule of law were outlined by Lord Bingham in 2006, the two relevant themes for this chapter were:⁶⁶

- Equality before the law – no one is above the law and the law must be applied equally to all except where objective differences justify differentiation. In the words of theorist Jeremy Waldron, “If I am subject to another person, then I am at the mercy of his whims and passions, his angers and his prejudices. But if we are both subject to the law, then the personal factor is taken out of politics. By subjecting everyone to the law, we make ourselves, in a sense, equal again.”⁶⁷
- Fundamental human rights should be protected. Lord Bingham acknowledges that agreed rights are difficult to pin down but that “within a given state, there will ordinarily be a measure of agreement on where the lines are to be drawn, and in the last resort (subject in this country to statute) the courts are there to draw them.”

Lord Bingham summed up his lecture by referring to the:

“...fundamental but unspoken bargain between the individual and the state, the governed and the governor, by which both sacrifice a measure of freedom and power which they would otherwise enjoy... the state for its part accepts that it may not do, at home or abroad, all that it has the power to do but only that which the laws binding upon it authorise it to do.”

Morality and the law

A ‘positive’ approach to the rule of law sees the role of law as more limited: provided that the law is written down, applies equally to all and otherwise adheres to the principles of rule of law, positivists do not particularly mind what the law actually says. They argue that if Parliament passed a law banning Christmas, provided it was written down and was enforced equally in accordance with the law, then that would not breach the principle of the rule of law. Most jurists no longer accept this view, and argue that the rule of law depends on something more substantive such as fundamental human rights, as Lord Bingham described. The rule of law cannot be said to be upheld merely because it is in the correct form. The principles behind the law also have to be ‘right’. The law before the 1830s which prevented Jews and Quakers from legally marrying in the terms of their faith is an infringement of individual liberty and the rule of law could not be said to be upheld. The law cannot just look right, it has to enforce what is right. Equality before the law means more than equal enforcement of a law (even if that law is unjust): it means equality in the law itself.

This leads on to a discussion of what is ‘right’ and ‘wrong’. In Britain that discussion has historically been shaped by Christian morality. Many Christian groups, and other religious groups, are opposed on theological grounds to marriage equality (although elements of the Church of England, as well as Quakers, Unitarians and Liberal Jews are not). However, as states develop, their interpretations of what is right also changes. British law and politics do not rest

⁶⁵ That honour arguably goes to Aristotle, in *The Politics*

⁶⁶ Bingham, T, *The Rule of Law* (London, 2010)

⁶⁷ Waldron, J., *The Law* (1990) pp. 31–32

on absolute principles. For instance, no serious judge or politician would now argue that homosexuality should be illegal.

This uncertainty of right and wrong within the law does not mean that jurists should not try to look beyond the law to issues of right and wrong, but signals that caution should be taken when notions of right and wrong are changed suddenly by governments or the courts. It is the contention of this paper that 40 years between the legalisation of homosexual relationships and the introduction of marriage equality does not classify as an overnight change to the institution of marriage.

While defining what is 'right' is hard, the law nevertheless has to be seen to be 'right' to have any legitimacy. One way to damage the law is to make it internally inconsistent. If one law contradicts another, then one of those laws has to be wrong. The law gets into trouble when it relies on principles that do not stand up to scrutiny. In other words, relying on irrational principles invites contradictions. This lack of arbitrariness and dependence on reasoned thought is part of the law's legitimacy. EP Thompson put it eloquently:

*"The essential precondition for the effectiveness of law... is that it shall display an independence from gross manipulation, and shall seem to be just. It cannot seem to be so without upholding its own logic and criteria; indeed, on occasion, by actually being just."*⁶⁸

Religion and the law

If we accept that some people believe homosexuality is wrong, is it right for anyone to lay claim to the authority of the law and argue that it should penalise gay people? As Thompson says: "if the law is *evidently* partial or unjust, then it will mask nothing, legitimate nothing, contribute nothing..."⁶⁹ The anomaly of marriage inequality does more than harm the interests of gay people, it damages the internal consistency and moral force of the law. The Lord Chief Justice argued in the case of *McFarlane v Relate Avon Ltd*:

*"the conferment of any legal protection or preference upon a particular substantive moral position on the ground only that it is espoused by the adherents of a particular faith, however long its tradition, however rich its culture, is deeply unprincipled. It imposes compulsory law, not to advance the general good on objective grounds, but to give effect to the force of subjective opinion. This must be so, since in the eye of everyone save the believer, religious faith is necessarily subjective, being incommunicable by any kind of proof or evidence. It may of course be true; but the ascertainment of such a truth lies beyond the means by which laws are made in a reasonable society. Therefore it lies only in the heart of the believer, who is alone bound by it. No one else is or can be so bound, unless by his own free choice he accepts its claims."*⁷⁰

The Lord Chief Justice was not, but might have been, talking about marriage equality when he said:

*"The precepts of any one religion – any belief system – cannot, by force of their religious origins, sound any louder in the general law than the precepts of any other. If they did, those out in the cold would be less than citizens."*⁷¹

⁶⁸ Thompson, E. P., *Whigs and Hunters* (1977) pp. 262–263

⁶⁹ *Ibid*

⁷⁰ *McFarlane v Relate Avon Ltd* [2010] EWCA Civ 880

⁷¹ *Ibid*

The burden of proof is on the opponents of marriage equality to say, in the language the law understands, why gay people do not deserve the same liberties as their fellow citizens. The only justification for such a restriction of liberty is if harm is done to others.

The only possible ‘harm’ remaining is the harm of offence caused. There is no right to freedom from offence in this country. There is, in other words, “no parity between the feeling of a person for his own opinion and the feeling of another who is offended at his holding it.”⁷² If my being offended justifies the restriction of your freedom to walk the streets, it can also justify the restrictions of any liberty, including religious liberty itself. It is also worth noting that marriage is no longer the sole preserve of religion and hasn’t been since 1835, when civil marriages were introduced.

Assessing the legal case for marriage equality

The legal argument is a complicated one but it is worth exploring because it has been wilfully misconstrued in the press. Some have suggested that a change in the law will require religious institutions to marry gay people, contrary to the beliefs of that religion. This is not what a change in the law would do. Equally, it would be wrong for us to argue for the removal of restrictions on one group of people only to impose them on another.

Perhaps unfortunately, the legal argument has been framed in the confusing language of human rights, where more traditional arguments about civil liberties might be more effective.⁷³ It is worth looking at because if the government does not act, it is possible that the European Court of Human Rights may do so. This would be bad for supporters and opponents of marriage equality alike.

Nevertheless, at first glance, there would seem to be a strong human rights argument for marriage equality. Article 12 of the ECHR states that “Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right” and Article 14 that: “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Article 8 adds that: “everyone has the right to respect for his private and family life, his home and his correspondence.” Look in more detail, however, and the rights are qualified. The Convention gives signatory states discretion to make their own laws. The right to marriage is limited by national laws governing marriage so if a national law says marriage is between a man and a woman, then marriage is between a man and a woman and there is no breach of human rights law. In the late 1940s, when the European Convention on Human Rights was drafted, it was not in the imagining of the draftsmen to give gay people the right to marry – indeed gay sex was still a crime in many European countries, including Britain. Ironically, it is Article 12, the right to marry, which is currently the biggest obstacle to marriage equality. Article 8, meanwhile, suffers from a lack of definition of what “private and family life” actually means and also permits interference with the right if it is in accordance with the law and “necessary in a democratic society... for the protection of health or morals, or for the protection of the rights and freedoms of others.” There is therefore no obvious legal case for marriage equality to be found in human rights law.

72 Collini, S. (ed.) *JS Mill On Liberty and other writings* (Cambridge, 1989) 7th Ed.

73 The European Convention on Human Rights 1950 (ECHR) sets out fundamental rights and the European Court of Human Rights (ECtHR) is the arbiter of those rights; the European Union (EU), through directives and regulations has shaped UK equality legislation; judgments in the European Court of Justice (ECJ) hold sway in UK courts. Both the UK and the EU are signatories to the ECHR so both EU law and UK law have to comply with the ECHR. The articles of the ECHR have also been incorporated into the law of England and Wales through the Human Rights Act 1998 (HRA), allowing UK courts to try cases while having regard to the ECHR and the decisions of the ECtHR.

Conclusion

While the language of human rights gear up both sides for a conflict and potentially makes the debate more acrimonious, the ancient language of liberty and the rule of law, defined and disseminated by Britain across the world, does not do so. Religious groups should be able to exclude gay people from marrying as part of a religious ceremony on their premises if they wish. On the basis of the rule of law, they should not be able to exclude gay people from entering into a civil or alternative religious marriage elsewhere.

5

Evaluating the Arguments Against Equal Marriage

Introduction

Opponents of equal marriage put forward a variety of arguments against the proposals. The arguments can be split into four broad categories – first, that equal marriage will result in a redefinition of marriage; second, that equal marriage will result in religious institutions being forced to bless same-sex marriages against their will; third, that the existence of civil partnerships makes equal marriage unnecessary; and fourth that equal marriage could lead to the acceptance of other forms of marriage, such as polygamy. We will consider each of these arguments in turn.

The redefinition of marriage?

“If marriage is redefined then a whole new group of people, parents, children and teachers will find themselves on the wrong side of law. Marginalised and sneered at by a minority liberal elite, who are happy to junk hundreds of years of law for the sake of being seen as progressive and modern.”

Peter Bone MP, Conservative Home, 4th March 2012

“Redefining marriage would make marriage adult-centred rather than child-centred. In those handful of nations that have gone ahead and redefined marriage, the status of marriage within those societies has been damaged.”

Coalition For Marriage

Opponents of equal marriage suggest that equal marriage would fundamentally redefine the nature of marriage. As the Coalition for Marriage argues, “marriage has always been between a man and a woman. Marriage reflects the complementary natures of men and women.”⁷⁴ They suggest that marriage is defined as between a man and a woman and that any change in that would be a fundamental change in the nature of marriage. Opponents also argue that equal marriage would redefine marriage as it would no longer be about procreation and the raising of children. To opponents, equal marriage presents a redefinition of traditional marriage and a threat to the institution.

Both the history of marriage and international experience of equal marriage should be considered when evaluating such an argument. It is also important to consider why gay and lesbian people are seeking equal marriage. Is it because they

74 Coalition for Marriage, home page

want to be a part of an existing, successful institution or is it because they want to change or redefine that institution? It seems pretty clear that most gay people have no desire to change the nature of marriage, instead they wish to join or be a part of the institution, because of the respect that they have for the institution. This should be reflected when considering the argument about redefining marriage. Nor is it clear how giving a small minority the same ability to get married to that enjoyed by the rest of society would weaken marriage. There is no evidence that heterosexual people would be less likely to marry if the right was extended to gay people, nor is there any evidence that public perception of marriage would change if gay people were given the right to marry. It seems that equal marriage is more likely to be an incremental change to the nature of marriage, rather than a revolutionary one.

It is also noteworthy that the institution of marriage has changed and evolved over time – it has incorporated different groups over recent decades without losing its unique character or its power as an institution. Marriage has already expanded to include Catholics, Jews and Quakers to marry under their own faith and allow divorcees to remarry. It also survived and prospered following the introduction of civil marriages in 1836. There seems to be little reason why it shouldn't adapt to meet new social trends. Indeed, there is even some historical precedent for same-sex marriage.⁷⁵ Given that something like marriages between lesbian and gay people have existed for some time and the Civil Partnership Act gave lesbian and gay people access to a similar institution to marriage, it would seem churlish to suggest that gay people are not willing or able to share in the unique benefits that the tradition of marriage provides. Equally, evidence from other countries has shown that marriage between members of the same-sex can and does work without threatening the institution as a whole.

Badgett's study of same-sex marriage in Holland found that the effects on society's perceptions of marriage as an institution as a result of marriage equality in the Netherlands had been minimal at most:

"I looked hard for evidence of changes in the cultural idea of marriage and for evidence that heterosexuals and gay and lesbian couples have different ideas and behaviour related to marriage – but I couldn't find any. The trends in marriage and divorce didn't change. The ideas about marriage expressed by lesbian and gay couples lined up with the ideas of their heterosexual peers: marriage is about the love and commitment of two people who work together to weather life's ups and downs, become members of each other's extended families, and often (but not always) raise children together.

"The big point is that all of the evidence suggests that same-sex couples will fit right into our current understanding of marriage... Marriage itself will not be affected. Dutch heterosexuals appear to have adapted to the legal change by changing how they see same-sex couples, not how they see marriage. Now they see gay couples as people who should get married, and they are happy to remind their gay and lesbian family members of that fact!"⁷⁶

We consider the international evidence in further detail in Chapter 5, but it seems clear that some of the starker concerns of opponents have proved to be unfounded.

⁷⁵ James Davidson, in his *The Greeks and Greek Love* considered the antecedents for same-sex marriage in Ancient Greek society

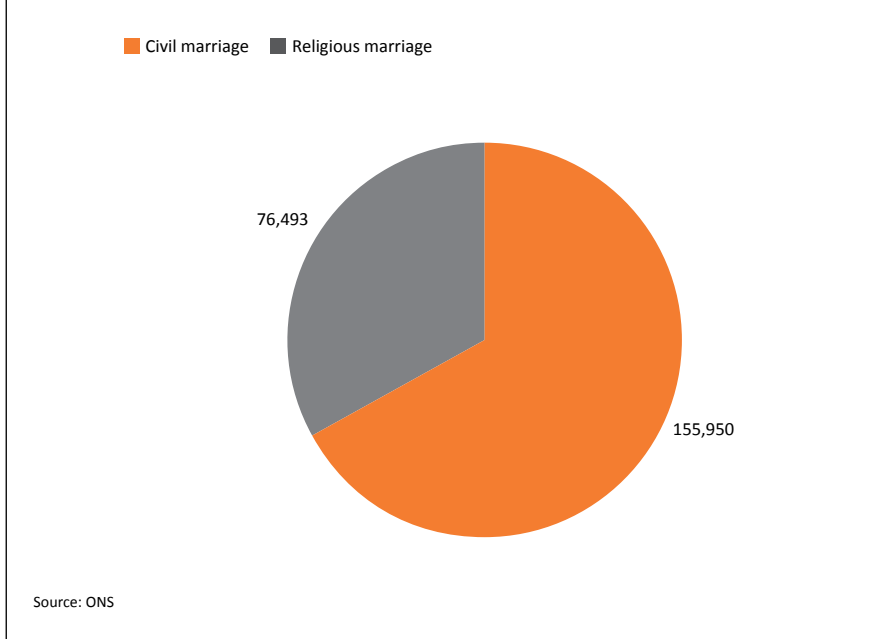
⁷⁶ Badgett, *op.cit.*

The Coalition for Marriage suggest that marriage would be redefined because equal marriage would be “*adult-centred rather than child-centred*”, in other words, when involving gay couples the institution cannot be procreative. This is difficult to support using available evidence. The intention to rear and nurture children is not a legal prerequisite for a marriage and many married couples do not have children. Not a single wedding certificate anywhere in the world is granted on the condition that the marriage is a procreative one and it would be regarded as absurd if an infertile couple was not allowed to marry. Many heterosexual marriages, for medical reasons or for reasons of choice, do not result in children being born – that does not make the marriage any less legitimate than marriages with children. The law requiring parents to look after their children applies whether or not the parents are married. Equally, gay people and straight people can adopt within or outside a civil partnership or marriage. The law permitting same-sex adoption – and therefore allowing a stable gay relationship to include children as part of a stable family unit – actually makes the UK more advanced than was the case in a number of countries when they introduced marriage equality.

The division between religious and civil marriage is an important one and this division would remain under government plans. Opponents of equal marriage who argue that marriage is essentially a religious institution, which is defined in scripture, and the state has no business in altering it, are ignoring the key distinction with civil marriage, the role of the state in overseeing that separate institution, and the limitations of the current proposals, which would leave religious marriage unaffected.

The recent trend between civil and religious marriages, as discussed in Chapter 2, is also important in this context. Since 1992, there have been more civil marriages than religious marriages in each year and this gap has now grown to the extent that last year there were over twice as many civil weddings as religious weddings. The total number of weddings in England and Wales has fallen from just short of 350,000 in 1952 to just over 232,000 in 2009. In the same time period, the number of religious weddings has fallen from 242,531 to 76,492 and the number of civil weddings has increased from 106,777 to 155,950. Figure 2 illustrates the present divide between civil weddings and religious weddings.

Figure 2: Civil marriages and religious marriages in England and Wales in 2009



The government’s proposed reforms are explicitly directed at the civil institution, and the established Church and other denominations do not have any ownership over that institution, or a right of veto over how it might be changed in future.

Equal marriage and religious institutions

“Same-sex couples will be able to have church weddings if David Cameron goes ahead with plans to allow gay marriage, the Church of England indicated yesterday. Its lawyers said that weddings will have to be offered to same-sex couples under any scheme to open the full privileges and title of marriage to gays and lesbians. They suggested that if same-sex couples could marry the Church would no longer be sheltered from equality laws that forbid it from discriminating against homosexuals.”

The Daily Mail, 3rd December 2011

Existing government proposals are purely for civil marriage and will, therefore, have no immediate relevance for religious institutions. Concern has, however, been expressed by a number of opponents of equal marriage that religious institutions will eventually be forced to hold or bless equal marriage against their will. They suggest that, if marriage became available for both heterosexuals and homosexuals, the Church of England or the Catholic Church could eventually be open to legal challenge under the Equalities Act, forcing Churches to hold or consecrate same-sex marriage.

This is clearly an important and a principled objection to equal marriage. Both elements of the scenario suggested by critics would be highly undesirable. Any religious institution being forced to hold same-sex marriage would be an unnecessary and unjustified incursion into religious freedom. Marriage equality

should not impose restrictions on freedom of worship or impose obligations on religious bodies. It is notable that every country that has introduced equal marriage been equally determined not to force religious institutions to hold same-sex marriage against their will.⁷⁷ Equal marriage should not make any imposition on the private actions of religious bodies that offends their faith or belief system.

Equally, such a decision being made by the European Court of Human Rights or a similar court at UK level would represent an unnecessary act of judicial activism and an incursion of unelected judges into the realm of law making. Judges should not be replacing democratically accountable politicians as lawmakers in this sphere.

We would regard both the diminution of religious freedom and the potential future example of undemocratic judicial activism in this scenario to be unacceptable. The government should put safeguards in place to protect freedom of religion with respect to equal marriage. If amending existing legislation or introducing new legislation to introduce equal marriage, the government should introduce explicit safeguards into this legislation which ensures that it is recognised in statute that religious institutions should not be forced to hold same-sex marriages. This seems to be a matter of good drafting, setting out reasonable safeguards, which would subsequently require primary legislation if they were ever to be altered in future.

The legal concerns are twofold. First, that ‘the right to marriage’ in the European Convention would require religious bodies to marry same-sex couples. Second, that if civil marriage is introduced for same-sex couples, the right to freedom of discrimination and the Equality Act 2010 would force religious institutions to marry same-sex couples.

The first argument has been considered and rebutted by The European Court of Human Rights, first in a 2010 case and then also in March 2012. In human Rights law there is no ‘right to marriage’ for gay people as the European Convention on Human Rights makes clear that nation states are expressly allowed to determine their own marriage law. Existing UK law is in accordance with European law.

The second argument is more misunderstood and more complicated. In March, the *Daily Mail* quote a specialist discrimination lawyer, Neil Addison, as saying “If same-sex marriage is legalised in the UK, it will be illegal for the government to prevent such marriages happening in religious premises.” The *Daily Mail*, and later the *Daily Telegraph*, interpreted this as meaning religious institutions would be forced to marry same-sex couples. In doing so they mistakenly equate churches being ‘forced to do something’ with ‘being allowed to do something’.⁷⁸ The Equality Act has in-built protection for religious institutions so they would never be forced to marry gay people, unless primary legislation expressly required that.

Addison is right, however, that it is quite possible that the European Court of Human Rights (ECHR) would take a dim view of a ban on churches being allowed to marry gay people. Once the government has created a legal capacity for gay people to marry, ironically perhaps, it is Article 9 (the right to religious freedom) which would kick in to allow those churches that wanted to marry gay people to be able to do so.

The Law Society also responded to the suggestion that religious institutions would be forced to marry same-sex couples:

⁷⁷ In June 2012, the Danish Parliament legalised same-sex marriage as well as same-sex marriage in churches. Under this legislation, a priest would be able to decline to conduct a same-sex marriage. The authors regard such a solution as imperfect – whether a religious institution conducts a same-sex marriage should be up to that institution, not to political bodies, judges or government.

⁷⁸ Tellingly, the Mail later retracted a sentence from the article, which stated that, “the ruling also says that if gay couples are allowed to marry, any church that offers weddings will be guilty of discrimination if it declines to marry same-sex couples

“So far as the position of the church is concerned, many faiths hold the view that marriage can be between a man and a woman only. This should be respected – to do otherwise would infringe religious freedom under Article 9 of the Human Rights Act.”⁷⁹

On any analysis, it is impossible to envisage the courts, either in the UK or in Strasbourg, forcing religious institutions to perform same-sex marriage. It is difficult to escape the conclusion that certain elements of the press are being disingenuous – at best – in their presentation of the legal position in relation to religious institutions.⁸⁰ Overall opposition to same-sex marriage on the grounds of religion should also be respected. We fully respect the view that religious bodies might find same-sex marriage incompatible with their belief system. It is worth making the point at this juncture, however, that religious objections to same-sex marriage do not mean that all religious bodies are opposed to equal marriage. Three religious bodies – the Quakers, the Unitarians and the Liberal Jews have expressed their support for equal marriage and a number of prominent members of the Church of England have expressed their support for the measure. It is clear, however, that the decision about whether same-sex marriage should be held in religious institutions should be up to that institution – not Parliament or the judiciary. The Synod, not the ECHR, should decide the Church of England’s position on this. However, it is also important to address the question of whether religious institutions should be able to bind the hands of a democratic government acting in the civil sphere. Objecting to equal marriage on religious grounds is a view to be respected, but can it be a reasonable objection to the state taking action on civil marriage – an institution outside of any religious dominion? Freedom of religion is crucial in a free society but it is equally important that major religions should not be allowed to impose their view on the democratically elected government of a largely secular nation or, for that matter, on other religious bodies.

Some of the religious objections also ignore the fact that civil marriages are a long-established institution – first being introduced in 1836. Such a view also suggests that atheists should also not be allowed to marry or that marriages in registry offices or second marriages are somehow less legitimate than Church marriages or first marriages. It ignores the point that law makes no distinction between religious and civil marriages. Religious objections to equal marriage are important and should be respected, but they should not be decisive.

Civil partnerships already exist, so equal marriage is unnecessary

“This isn’t a priority for the gay community, which already won equal rights [with civil partnerships]. We’ve never needed the word ‘marriage,’ and all it’s done now is get a bunch of bishops hot under the collar. We’ve been pragmatic, not making the mistake they have in the U.S., where the gay lobby has banged on about marriage.”⁸¹

Ben Bradshaw MP

“Civil partnerships already provide all the legal benefits of marriage so there’s no need to redefine marriage.”

The Coalition for Marriage

79 Law Society press release, 14th June 2012

80 Of course, there are arguments that the UK should distance itself from the ECHR – a case that Policy Exchange has made in a separate report, *Bringing Rights Back Home*, by Michael Pinto-Duchinsky in 2011: <http://www.policyexchange.org.uk/images/publications/bringing%20rights%20back%20home%20-%20feb%2011.pdf>.

81 http://www.washingtonpost.com/world/british-conservatives-lead-charge-for-gay-marriage/2012/03/29/gIQAzatzjS_story.html

Many might accept the point that marriage has many proven social benefits, but point out that civil partnerships share many of the characteristics of marriage. This leads some observers to suggest that civil partnerships are sufficient and full marriage equality is unnecessary. From a legal point of view, Jacqueline Humphrey, a family law barrister in the UK, argues that civil partnerships are “equivalent to gay marriage.”⁸²

However, as the box below illustrates there are clear legal and technical differences between civil partnerships and marriage. The major difference between the two is that a marriage involves a set of vows, whereas a civil partnership only involves the signing of a document. Some of the existing differences are issues that will be resolved via case law. There are, however, no insuperable differences that would prevent a shift between civil partnerships and marriage:

There are a number of differences between civil partnerships and marriages:

- A civil partnership is entered into by signing the civil partnership document at the invitation of and in the presence of the civil partnership registrar. The civil partnership must also be registered on the civil partnership register.
- A marriage, on the other hand, is entered into by the parties speaking set words in the presence of the registrar and two witnesses. The marriage must then be registered on the marriage register, which also provides evidence that the marriage has been entered into.
- In a civil partnership, both parties do not need to be present at the registration.
- Marriage can only be ended by divorce on grounds of ‘irretrievable breakdown’ which must be proved by at least one of five specific facts: adultery, ‘unreasonable behaviour’, two years’ desertion, two years’ separation plus consent or five years’ separation, or ‘irreconcilable differences’.
- Civil partnerships can be ended in the same way, save that irretrievable breakdown cannot be proved by adultery.⁸³ The termination of a civil partnership is called ‘dissolution’ rather than divorce.
- Non-consummation is not included as a ground for a nullity order in respect of a civil partnership, whereas it is in the case of marriage.
- Suffering from a communicable venereal disease is a ground for annulment in marriage but not for civil partnerships. As venereal diseases can be held without the knowledge of the sufferer, it makes sense not to include this provision.
- The original Civil Partnership Act stipulated that a civil partnership may not be entered into on religious premises. The Equality Act changed this, provisions being introduced by the Coalition in December 2011
- As with civil marriage, no religious service can be used while the civil partnership registrar is officiating at the signing of a civil partnership document. Similarly, marriages that took place in register offices or non-religious ‘approved premises’ are also prohibited from including any religious service.
- The Department for Work and Pensions made amendments to the contracting-out rules to ensure that pension schemes provide survivor benefits for civil partners on the basis of deceased members’ rights accrued from 6 April 1988. This is discussed in further detail in Chapter 6.⁸⁴

⁸² Humphreys, J., *The Civil Partnership Act 2004, same-sex marriage and the Church of England*, Ecclesiastical Law Journal (2005). It is worth noting that Humphreys has not expressed opposition to equal marriage.

⁸³ *Dennis v Dennis (Spillett cited)* [1955] P 153, [1955] 2 All ER 51, CA.

⁸⁴ Humphreys, J., *The Civil Partnership Act 2004, same-sex marriage and the Church of England*, Ecclesiastical Law Journal (2005)

One of the most important differences is that a civil partnership can be purely a legal agreement, whereas a marriage must involve an exchange of vows. A civil partnership can happen without an exchange of vows – a civil marriage cannot. This makes civil partnership a legal contract and marriage an important, socially accepted ceremony. Marriage brings with it hundreds of years of history and a long record of providing stability, it brings with it widely accepted conventions, traditions and norms, including the presence of family and friends at the sharing of vows.

While Humphreys is right in terms of most of the legal benefits afforded by civil partnerships, this underestimates the significance of the word marriage and the symbolism of continued discrimination against gay people. As John Stuart Mill put it: “There is no subject on which there is a greater habitual difference of judgment between a man judging for himself, and the same man judging for other people” as when one looks at a person’s appreciation of their liberty. In other words, marriage might not seem like a big deal to those who can marry. But it has the totemic significance to those who can’t.

A civil partnership may have many of the legal features of marriage but it is not marriage and is deliberately separate from marriage. These similarities serve to throw the major difference – marriage is for straight couples only – into sharp relief. The inference that many gay people draw from the law is that, despite being able to form loving, monogamous, nurturing and permanent relationships to the same extent as heterosexual couples – including the raising of adopted children – gay people are not worthy of marriage.

This brings with it a major difference of perception. Civil partnerships are viewed as being not quite the same as marriage. When introduced in 2005 they were presented as not being the same as marriage. In the House of Lords debate on the Civil Partnership Bill, Lord Filkin, speaking for the then government said:

“I want to put our position very clearly. This is a new legal status that gives rights and responsibilities to people in same-sex committed relationships. We think that that is fundamentally right as part of what a civilised society should do...We do not see it as analogous to marriage.”⁸⁵

The civil partnership is not, like marriage, an organic institution in its own right. It is a halfway-house – a new construct that resulted from a political compromise. One thing proponents and opponents of marriage equality have in common is the recognition that there is a very fundamental difference between marriage and civil partnerships.

Civil partnerships do not have the same social recognition as marriage. The ambiguity is reinforced by the fact that many civil partners describe themselves as “married”, which illustrates the power and societal importance of marriage, as opposed to civil partnerships.

Badgett discovered similar issues in her consideration of the Dutch experience of equal marriage. She suggested that:

“We also see why the word “marriage” matters. The Dutch same-sex couples I interviewed saw their civil union-like status as a ‘bit of nothing’, as one person called it, or as a political compromise that an accountant might invent... One woman I interviewed put it this way: ‘Two-year olds understand marriage. It’s a context and everyone knows what it means.’”⁸⁶

85 HL Deb 12 May 2004
c178–9GC

86 Lisa Belkin, *op. cit.*

American attorney and founder of the Freedom To Marry organisation in the United States, Evan Wolfson, has made clear what he believes to be the difference between civil partnership and marriage:

“When you say, ‘we’re married’, everyone knows who you are in relation to the primary person you’re building your life with. That clarity, security, and dignity – intangible though they may be – is precious and irreplaceable. . . . Marriage, after all, is a civil union... but ‘civil union’ is – deliberately, pointedly – not marriage, with its unique, full dignity and meaning...”⁸⁷

Marriage is so much more than just a collection of legal rights. It is about love, commitment and being part of a widely accepted and universally understood social institution. Although society has generally accepted civil partnerships, there is little acknowledgement that it is the equivalent of marriage. If the name is different and the rituals around the two institutions are different, why would you expect society as a whole to treat them in the same way? Without this societal recognition that comes with marriage, it is unlikely that civil partnerships will provide the same benefits that marriage provides.

The slippery slope argument

“If marriage is redefined once, what is to stop it being redefined to allow polygamy?”

The Coalition For Marriage⁸⁸

“My overriding concern is that if we do indeed as a Parliament change legislation to allow same-sex marriage now, then what will our successors be discussing and have to legislate for in the future?; Polygamy?; Three-way relationships?; Who knows what else?”

Craig Whittaker MP

“If the Supreme Court says that you have the right to consensual sex within your own home, then you have the right to bigamy, you have the right to polygamy, you have the right to incest, you have the right to adultery, you have the right to anything.”

Rick Santorum⁸⁹

Some opponents of equal marriage suggest that it could be a “slippery slope” – that if equal marriage is legalised, this will be followed by the legitimisation, and eventually legalisation of other sexual relations, such as polygamy and incest. This “where will it end” or “PIB”⁹⁰ argument is regularly used as a case against equal marriage. It should be analysed both in terms of the case for equal marriage separately and the strong harm based case against the slippery slope arrangements. The harm principle was first articulated by JS Mill in *On Liberty*, when he said that, “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”

A problem with a “thin end of the wedge” argument is that it avoids the issue at hand – shifting attention to a more sinister threat a few years down the line. Such arguments have been used against important social and political changes through the ages. It also ignores the major argument in favour of equal marriage – that it allows the benefits of an institution that promotes commitment, fidelity and a joint life together between two people – to be extended to lesbian and gay

⁸⁷ Evan Wolfson, *Marriage Makes A Word of Difference, Why We Can't Call it Something Else*, 2004

⁸⁸ <http://c4m.org.uk/>

⁸⁹ Rick Santorum, interview by Associated Press, April 7th 2003

⁹⁰ Polygamy, incest and bestiality

people. As far as equality for gay and lesbian people is concerned, introducing equal marriage will almost be the final destination or the ultimate goal, rather than the beginning of a slippery slope. Societies that have legalised equal marriage have also taken no steps to legalise polygamy.

Equal marriage can also be regarded as being part of the Western marriage tradition – that marriage is an institution between two people that values fidelity, commitment and unconditional vows and promises being made between the two spouses. The Western tradition of marriage has always been based around monogamy and has stood against polygamy. Equal marriage should be seen as a continuation of that Western tradition – that marriage is fundamentally between two people – whereas polygamy would be fundamentally opposed to that Western tradition.

Whilst equal marriage will allow gay and lesbian people to enjoy the benefits of marriage, with potential benefits and no harm to individuals and society, polygamous marriage will harm men, women, children and society as a whole. There is no real equivalence between equal marriage and the potential of polygamy. The monogamy and commitment encouraged by equal marriage could also be beneficial to gay people, because of the benefits of monogamy and monogamous marriage. There are very strong arguments in favour of monogamous marriage and very strong arguments against polygamy. To quote Kaczor:

“In monogamous marriage, spouses give themselves as spouses to each other unreservedly, unconditionally, and entirely... Part of the marriage vow is the promise of sexual fidelity, the bodily manifestation of one’s commitment as spouse entirely to the spouse and to the spouse alone... The polygamous relationship can never attain the mutual and complete self-donation of spouses in monogamous marriage... Marriage understood as a comprehensive union can exist only between two persons. Society, therefore, has good reason not to simply proscribe polygamy, but to endorse monogamy.”⁹¹

Whilst public acceptance for homosexuality is widespread, there is no such acceptance of polygamy, for example. The arguments in favour of equal marriage suggest that it will be good for gay people, good for society as a whole and will have no harm for individuals or society. The same cannot be said for polygamy. Whereas no harm to society or individuals can be said to come from homosexuality, the same cannot be said about polygamy – which has been shown to cause considerable harm to society.

The first ‘harm’ issue with polygamy is articulated by Robert Wright, in *The Moral Animal*, where he points out that a society which enabled one man to take multiple wives would leave many adult males without a ‘mate’ and more likely to engage in risky, status increasing behaviour. He suggests that:

“Monogamy is the only system that, theoretically at least, can provide a mate for just about anyone. But the most powerful reason is that leaving lots of men without wives and children is not just inequalitarian; it’s dangerous... In all cultures, men wreak more violence, including murder, than women... Even when the violence isn’t against a sexual rival, it often boils down to sexual competition... Fortunately, male violence can be dampened by circumstance. And one circumstance is a mate. We would expect womanless men to compete with special

91 Christopher Kaczor, *The Perils of Polygamy, Public Discourse: Ethics, Law and the Common Good*, May 2002

ferocity, and they do. An unmarried man between twenty-four and thirty-five years of age is about three times as likely to murder another male as is a married man of the same age... He [an unmarried man] is also more likely to incur significant risks – committing robbery, for example – to gain the resources that may attract women... This is perhaps the best argument for monogamous marriage, with its egalitarian effects on men: inequality among males is more socially destructive – in ways that harm women and men – than inequality among women. A polygynous nation, in which large numbers of low-income men remain mateless, is not the kind of society we want to live in.”⁹²

Polygamous societies have also been shown to be societies where exploitation and abuse of women is widespread. Whereas monogamous marriage implies equality between the sexes, polygamous marriage implies that there should only be fidelity on the part of the female – fundamentally rebalancing the equality between the sexes. Co-wife conflict is also common in such marriages and polygamous societies are also societies in which women marry and have children at a much earlier stage than in a monogamous society.

The effect of polygamy on children can also be devastating. Children will suffer from having multiple stepmothers involved in ongoing conflict. It would also mean that, “half-siblings must compete for limited resources while having weaker genetic bonds to mitigate the conflict.”⁹³ Having one breadwinner supporting multiple children is also likely to increase the number of children raised in poverty. The benefit of a father investing time in his children is also limited in polygamous societies. In a polygamous marriage, a husband’s resources of time, attention and money may be concentrated on finding new mates, rather than on his existing wife and children. At the same time, the large number of children likely from a polygamous marriage, means that a father may be unable to give each child sufficient time and attention.

Evidence have also shown that polygamy brings with it economic harm. According to Henrich et al:

“When males cannot invest in obtaining more wives (because of imposed monogamy) they invest and save in ways that both generate both reduced population growth and more rapid economic expansion (increasing GDP per capita). Thus... the nearly threefold increase in GDP per capita between comparable monogamous countries and highly polygynous countries is partially caused by legally imposed monogamy.”⁹⁴

As Christopher Kaczor suggests, “recent empirical evidence suggests that, in virtually every respect, polygamy is socially detrimental – to society in general, to men, to women, and children.”⁹⁵

The harm principle applies with even more force to those who argue that equal marriage will somehow lead to incest. Whereas equal marriage will cause no harm, incestuous relationships, never mind marriages, are rightly condemned and made illegal because they are often the product of abusive relationships (removing the consent principle) and are considerably more likely to produce offspring who may suffer from considerable genetic defects. The harm to children and society more generally would be great.

Polygamy and incest both have almost as long a history as heterosexual, monogamous marriage. Given the proven harm caused to individuals and society

92 Robert Wright, *The Moral Animal*, (London: Abacus, 2010), pp100–101.

93 Christopher Kaczor, op. cit

94 Joseph Henrich, Robert Boyd and Peter Richerson, *The Puzzle of Monogamous Marriage*, Philosophical Tractions of the Royal Society, quoted in Kaczor.

95 Christopher Kaczor, op. cit

of both polygamy and incest, they have been gradually outlawed. Equal marriage is effectively an unknown, where there is considerable evidence of the 'harm' that polygamy and incest cause, there is no evidence that equal marriage would cause harm.

In trying to link equal marriage with polygamy and incest, opponents of equal marriage have, inadvertently, emphasised the strength of the argument for equal marriage and the strength of the case against other sexual or marital structures. A fundamental part of marriage and equal marriage is the centrality of fidelity to it. By its very nature, you cannot have such fidelity between three people. Whereas equal marriage could bring considerable benefits with no harm, constructs such as polygamy can cause considerable social and personal damage.

6

The International Experience

Marriage equality is a reality in a number of countries around the globe, including several on our doorstep. These provide useful case studies when considering what good or harm is done by equal marriage. This chapter will consider what we can learn from these overseas examples, as well as the UK's own experience with civil partnerships since 2005.

Equal marriage around the world

The Netherlands was the first nation to allow equal marriage in 2001. Since then, equal marriage has been legalised in ten other countries. Same-sex marriage is now also recognised in six US states plus the District of Columbia, but there is no federal recognition for it in the United States.⁹⁶ Box 1 sets out the chronology of marriage equality since 2001:

Box 1: Countries/US states to legalise same-sex marriage

- 2001** – Netherlands
- 2003** – Belgium
- 2004** – Massachusetts
- 2005** – Spain, Canada
- 2006** – South Africa
- 2008** – Connecticut, New Hampshire
- 2009** – Sweden, Norway, Mexico, Vermont, Iowa
- 2010** – Portugal, Iceland, Argentina, Washington DC
- 2011** – New York
- 2012** – Maryland, Denmark

In almost all countries support for marriage equality has increased since the legislation passed to introduce it. In the Netherlands, support for their marriage equality law now stands at some 82%.⁹⁷ In Spain, 62% of voters approved of marriage equality when it was introduced in 2005 – a figure that rose to almost 75% by 2008. Only 18% of Spanish voters want the law to be repealed.⁹⁸ In Canada, support for marriage equality increased from 48% in 2004 to 59% in 2012.⁹⁹ The United States has seen a marked increase in support for marriage equality, despite the real polarisation over the issue that so often dominates US politics. In 2004, only 30% of Americans supported marriage equality. In 2011, that had risen to 53 percent.¹⁰⁰ This shift in public opinion was reflected by

⁹⁶ This is not including Nepal, where marriage equality has been judicially mandated, but not yet legislated

⁹⁷ http://www.angus-reid.com/polls/5787/eight_eu_countries_back_same_sex_marriage/

⁹⁸ http://www.angus-reid.com/polls/30255/spaniards_would_keep_same_sex_marriage_law/

⁹⁹ <http://www.angus-reid.com/polls/44437/australians-support-same-sex-marriage-more-than-americans-and->

¹⁰⁰ <http://www.americanprogress.org/issues/2011/03/snapshot032811.html>; <http://www.gallup.com/poll/117328/marriage.aspx>

President Obama coming out in support of equal marriage in May 2012. Despite changes in the government of five of these countries, the movement towards marriage equality has not been overturned in any of them.¹⁰¹

Although full marriage equality has not been introduced in the UK, it is also notable that support for both civil partnerships and marriage equality has increased since the civil partnership legislation was introduced. In 2004, 52% of respondents to a Gallup poll agreed that “marriage between homosexuals” should be made legal.¹⁰² A poll four years later showed that 55% of respondents believed that “same-sex couples should be allowed to get married.”¹⁰³

A 2009 Populus survey found that 61% of respondents agreed with the statement, “gay couples should have an equal right to get married, not just to have civil partnerships”, with 33% disagreeing. Most in support were the skilled working class (C2) voters (64%), people in the North of England (64%), Liberal Democrat voters (73%) and 25–34 year old voters (78%).¹⁰⁴

A more recent poll by Populus showed that support for equal marriage has increased in the past three years, with 65% of voters now supporting the concept and only 27% being opposed. Highest levels of support are in the North East of England (81%), Yorkshire (70%), the West Midlands and London (both 69%) – strongly suggesting that this is not a position held by a metropolitan liberal elite that is at odds with a majority of voters in the country at large.^{105,106}

Divorce and marriage rates after marriage equality

Some observers suggest that marriage equality will damage the traditional concept of marriage. Although there is clearly no way of accurately testing these predictions, the levels of divorce and overall levels of marriage in countries that have introduced marriage equality still serve as a useful guide.

Marriage equality has made little notable difference in any of the countries where it has been introduced, other than Spain. Figure 3 illustrates the trends in divorce in those European countries where equal marriage has been in place long enough to consider figures as reliable.

The number of divorces after the introduction of marriage equality reduced in the Netherlands and flatlined in Belgium. Canada and South Africa also saw decreased divorce rates. The Spanish example is often quoted by opponents of marriage equality, but a rise in divorce rates there is more likely due to the more liberal divorce laws introduced in 2005, known as the “Express Divorce Bill”.¹⁰⁷ In cases other than Spain, divorce rates have either gone down or been unaffected since marriage equality laws were introduced. Interestingly, the number of divorces in the UK decreased considerably following the introduction of civil partnerships. An analysis of divorce rates in the UK shows that divorce rates increased considerably following the Divorce Reform Act in 1969 and decreased following the introduction of Civil Partnerships in 2005.

101 The sole exception being California, where marriage licences were given to same-sex couples, but this stopped after Proposition 8 – limiting marriage to between a man and a woman was approved in a controversial state wide plebiscite. The debate remains a hugely controversial one in the state.

102 <http://www.gallup.com/poll/13561/gay-rights-us-more-conservative-than-britain-canada.aspx>

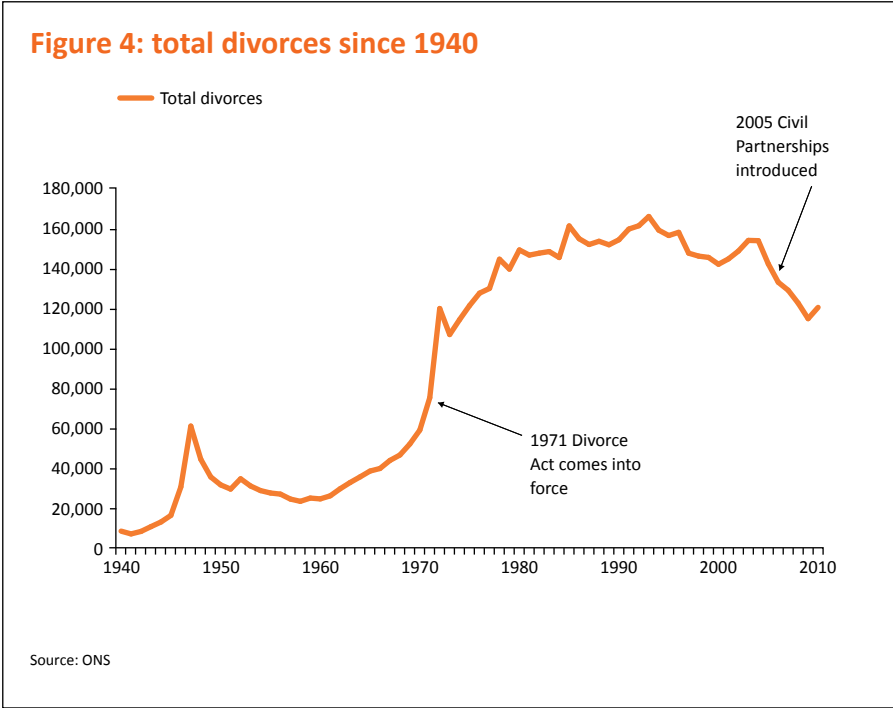
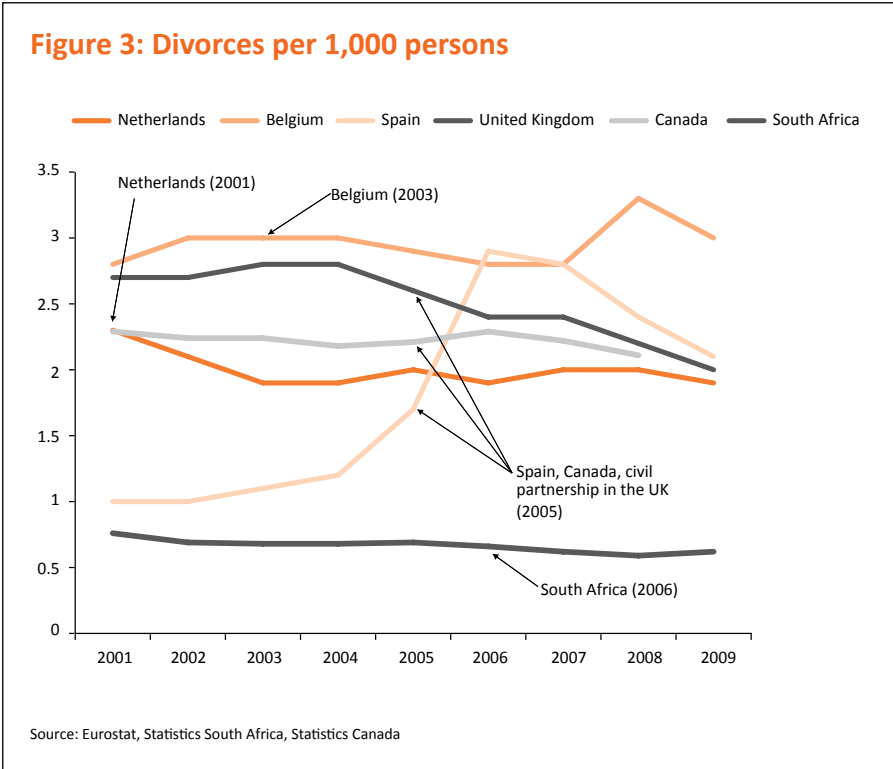
103 <http://www.guardian.co.uk/lifeandstyle/2008/oct/26/relationships>; http://www.icmresearch.com/pdfs/2008_nov_observer_sex_survey.pdf

104 http://www.populus.co.uk/uploads/download_pdf-100609-The-Times-The-Times-Gay-Britain-Poll.pdf The poll also says that 12% of voters would be less likely to support a political party if they were led by a gay person, 2% say that it would make them more likely and 84% that it would make no difference either way.

105 Populus ‘Gay Britain’ poll, March 2012, http://www.populus.co.uk/uploads/OmGay_Rights.pdf

106 It is worth noting a caveat that some of these regional ‘cross breaks’ were based on a relatively small sample size.

107 *Spain's divorce rate soars after rules relaxed*, The Guardian, 17th November 2007. Before the introduction of the new laws, “Spanish divorce”, with couples living apart but not having formal divorce proceedings, was common due to the legal and financial obstacles to seeking a full scale divorce.

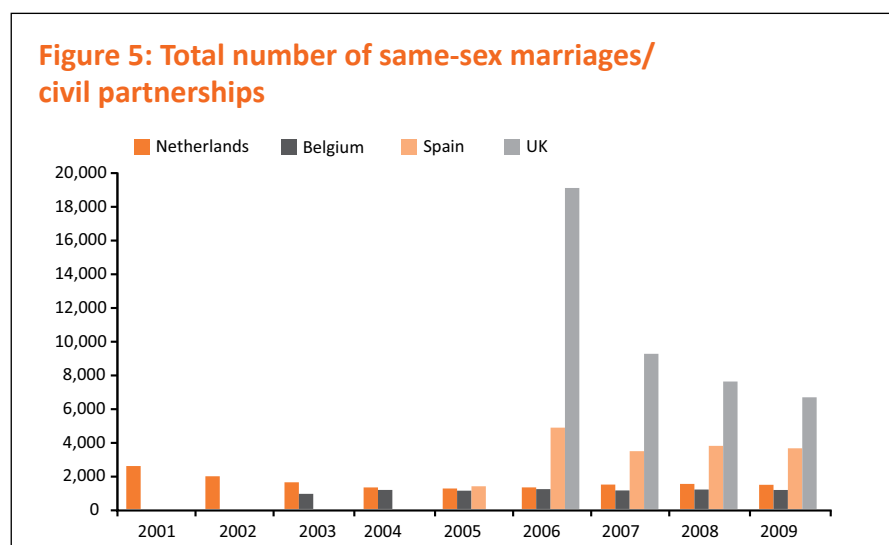


Evidence about the total number of marriages entered into since the introduction of marriage equality laws is also mixed. In the Netherlands, the annual number of marriages fell slightly, while falling fairly considerably in Spain and rising slightly in Belgium. There is little evidence that there is any direct correlation between marriage equality and the status of traditional marriage,

with the fall in the number of marriages in Spain, particularly, being put down to the waning influence of the Catholic Church. The reduction in the number of marriages has been a long-term trend across Europe and cannot be said to be related to the introduction of equal marriage.

Potential take up of marriage amongst gay and lesbian people

It is useful to consider what the take-up has been of same-sex marriage in other countries and consider what the level of take-up might be in the UK. Figure 5 shows the level of take up of marriage amongst same-sex couples in countries where marriage equality has been introduced. It also shows the number of civil partnerships in the UK since their introduction in 2005.



In the first two years of marriage equality in the Netherlands, 2,414 and 1,838 marriages between same-sex couples were introduced. Since then, the annual number has stabilised to between 1,210 and 1,499. At its peak the number of marriages of same-sex couples only accounted for 0.03% of the total number of marriages in the Netherlands. Similarly, in other countries, the number of marriages/civil partnerships has reached its peak two years after the introduction of marriage equality, before stabilising in later years. In each country, marriage between same-sex couples has only represented a tiny proportion of total marriages in that year.

Shifting from civil partnerships to marriage equality

The international experience also provides lessons on how to introduce marriage equality. The UK is not the only country to have discussed moving from a half way house of civil partnerships to full marriage equality. That step has already been taken in other countries. Some countries, including Argentina and South Africa have separate civil partnerships and civil unions, which are available to both straight and gay couples.¹⁰⁸ The Netherlands has “registered partnerships”, available to both straight and gay couples as an alternative to marriage.¹⁰⁹

Some states in the US have simply replaced civil unions with full marriage.

108 <http://www.bbc.co.uk/news/10630683>; <http://news.bbc.co.uk/1/hi/world/africa/6159991.stm>

109 <http://www.dutchembassyuk.org/consular/index.php?i=53>

Connecticut, for example, adopted civil unions in 2005 and in 2009 legislated for full marriage equality.¹¹⁰ Initially, civil unions remained in force and civil partners could “upgrade” to marriage voluntarily. In October 2010, however, all existing civil unions were changed automatically to marriage. New Hampshire has also converted previous civil unions into full marriages following the introduction of marriage equality in 2010.

Religious institutions and marriage equality around the world

Much of the opposition to marriage equality around the world has been led by religious bodies. The most bitter clash occurred in Argentina, where the opposition of the Catholic Church led to Argentina’s President to suggest its language was “really reminiscent of the times of the Inquisition.”¹¹¹

In almost all countries that have introduced some form of equality, however, religious institutions have the right to opt out of allowing same-sex marriage on their property if they wish. There are no examples of religious bodies being compelled to conduct ceremonies for same-sex marriage on their property. The Danish Parliament recently legislated for equal marriage, with same-sex marriage also being allowed in church and priests being allowed not to take a service if same-sex marriage offends their belief system. As we will make clear, the authors do not believe that any form of compulsion for religious bodies would be acceptable.

In the Netherlands the Protestant Church of the Netherlands has decided that individual churches should decide whether or not to bless a same-sex marriage and, in practice, a number do. In Spain, it is up to individual faiths and many have chosen not to carry out ceremonies.¹¹²

The Swedish example is noteworthy as individual churches there are given the ability to opt out of rather than opting in to the ability to perform ceremonies around same-sex marriage. The Church of Sweden has voted to allow gay marriage in its churches, although the Swedish Catholic church remains opposed.¹¹³

In Canada, religious groups are given the right to refuse to marry same-sex couples. There is also no element of compulsion in any of the American states that have legalised gay marriage.

Conclusion

The global experience of marriage equality is illustrative for a number of reasons. Many of the bleaker warnings of opponents of marriage equality are certainly not borne out by international examples. Traditional marriage has not been damaged. Indeed, in some cases it has been strengthened. There has been no real element of compulsion on religious bodies and where it has been legalised, marriage equality has become increasingly popular. There has also been no move to legalise polygamy in those countries that have legalised equal marriage, and not even a serious debate about it as a prospect. If the public are the only legitimate guardians of marriage, the international experience suggests the more they know about equal marriage, the happier they are to allow it.

110 <http://www.glad.org/uploads/docs/publications/ct-civil-union.pdf>

111 Time Magazine, July 15th 2010, <http://www.time.com/time/world/article/0,8599,2004036,00.html>

112 <http://pewresearch.org/pubs/541/gay-marriage>

113 <http://www.thelocal.se/22810/20091022/>

7

The Practical Implications of Equal Marriage

Recommendations

This report makes five major recommendations, which are listed below:

- **Recommendation 1:** Same-sex couples should be allowed to marry, and given the same benefits of marriage as heterosexual couples.
- **Recommendation 2:** Religious bodies or institutions should not be forced to undertake same-sex marriages on their premises.
- **Recommendation 3:** Religious bodies should be allowed to opt in to conduct same-sex marriage on their premises. There should be absolutely no compulsion on religious bodies to do this.
- **Recommendation 4:** A fast-track should be provided for existing civil partners who wish to transfer to full marriage.
- **Recommendation 5:** Once equal marriage has been introduced, no new civil partnerships should be created.

Introducing equal marriage

We have evaluated the cases for equal marriage in this document and the arguments against. Some of the arguments against are important and can be dealt with. Others seem less substantial. As long as the more solid objections (particularly around religious liberty) can be dealt with the remaining arguments are not substantial enough to perpetuate a notable inequality. This is especially the case as the arguments in favour stack up in a way that suggests that the benefits of equal marriage could be considerable and the potential harm minimal.

We are clear that the introduction of marriage equality would, on balance, be the right thing to do. The institution of marriage would be strengthened, as would society more generally. Our study of the social and economic benefits of marriage, as well as the introduction of marriage equality in a number of other countries around the globe, should reassure people that the institution of marriage will not be weakened by this measure. Some of the concerns expressed about equal marriage are also valid, however. But they can be adequately dealt with by ensuring that the correct safeguards are in place, rather than taking them as arguments for not going ahead with the reform at all.

Recommendation 1: Same-sex couples should be allowed to marry, and given the same benefits of marriage as heterosexual couples

A straightforward change to legislation should be made to remove the description of marriage as solely between a man and a woman. There is little justifiable reason for continued discrimination based on sexuality and it is right that discrimination around marriage is removed from the statute book.

That, of course, is a relatively straightforward part of the public policy equation. A more difficult element is around what marriage equality means for religious freedom, existing civil partnerships and pension rights. The remainder of this chapter will consider these, more technical, issues around marriage equality.

Legislative amendments needed

Delete Section 11(c) from the Matrimonial Causes Act and allow religious institutions to make their own decisions about who to marry.

The only legal obstacle to marriage equality is s11(c) of the Matrimonial Causes Act, which voids a marriage if the “parties are not respectively male and female”. Delete this clause and gay people may marry.

Most of the amendments necessary to the Matrimonial Causes Act are relating to divorce, not marriage. It would be necessary to add to the existing language in a small number of cases. This would mean adding ‘husband and husband’ and ‘wife and wife’ to ‘husband and wife’.

A clarification clause is not legally necessary, but it might make the legal changes more palatable to opponents to have a clause in the Matrimonial Causes Act and the Marriage Act 1949 that “for the avoidance of doubt” that there is no obligation for religious institutions to marry gay people or to solemnise their marriage.

A safeguard already exists in the Matrimonial Causes Act to ensure that marriage is only defined as between two people.

Preserving religious freedom

Many opponents of marriage equality base their opposition on the threat that they believe is posed to religious freedom. Opponents have generally expressed a concern that religious institutions will be forced to conduct marriage services that go against their core beliefs. We fundamentally believe that religious bodies should, categorically, not be forced to undertake same-sex marriage ceremonies.

Forcing religious bodies to undertake ceremonies would be wrong and is something that we thoroughly oppose. It would be an illiberal and retrograde step. There is no point correcting a proven wrong if it creates another unfairness. It is noteworthy that there has been no case of religious institutions being compelled to undertake same-sex marriages in any of the geographies in which marriage equality has been introduced.

We believe strongly in the importance of religious freedom, within a broader framework of rights. Religious institutions should be able to practise their faith in the way that they see fit, provided they do not harm others. It is not for the state to impose its will from without.

Recommendation 2: Religious bodies or institutions should not be forced to undertake same-sex marriages on their premises

Religious bodies should not be forced to undertake same-sex marriage. However, that is only one half of the story. The existing proposals from the government could have the unintended consequence of acting as an impediment on religious freedom. The legislation being consulted on is for purely 'civil marriage' and suggests that religious institutions will not be able to have same-sex marriages on their premises even if they wish this to happen.

This should not be for government to decide. It should be up to the individual religious institutions. Despite the opposition of many religious leaders, the Quakers, Liberal Jews and Unitarians have made clear that they wish to undertake same-sex marriages. It is important to avoid defining Christians as a single group of people with one view on this issue. We should be in no doubt that most significant opponents of equal marriage do so out of religious belief, but this is not an argument between those who believe and those who don't. Many supporters of equal marriage are religious, many religious institutions support equal marriage and many religious institutions who previously opposed equal marriage in other countries now support the concept.

It is also the case that other religious institutions are also divided about equal marriage. Whilst the Archbishop of York has made clear that he is opposed to equal marriage, a number of other leading Church of England figures recently made clear in a letter to *The Times* that they support the changes. They suggested that, "we believe the Church has nothing to fear from... civil marriage for same-sex couples" and described marriage as a "robust institution which has adapted much over the centuries."¹¹⁴ Whether the Church of England chooses to bless equal marriage should be a matter for the Synod, not government or the courts.

At their Yearly Meeting in York in 2009, Quakers in Britain sought a change in the law so that:

*"...same-sex marriages can be prepared, celebrated, witnessed, reported to the state, and recognised as legally valid, without further process, in the same way as opposite sex marriages are celebrated in Quaker meetings. Quakers consider that they should be able to follow the insights of their membership in celebrating life-long committed relationships between a man and a man, or a woman and a woman, in exactly the same way as they currently recognise the marriage of opposite sex couples."*¹¹⁵

Following the publication of the consultation paper, the Quakers suggested that:

*"Quakers believe marriage is a celebration of the committed union of two people who have found love for each other. We can see no reason, religious or otherwise, why marriage and civil partnership should not be equally available to all our couples who wish to register their commitment in Quaker meeting houses."*¹¹⁶

By preventing bodies such as the Quakers from undertaking same-sex marriage on their premises, the present legislation, and indeed the government's proposals to introduce only civil marriage for gay couples, is placing a perverse barrier to genuine religious freedom. When equal marriage was introduced in many other

¹¹⁴ <http://www.bbc.co.uk/news/uk-17796511>

¹¹⁵ <http://www.bbc.co.uk/news/uk-17796511>

¹¹⁶ <http://www.quaker.org.uk/news/quakers-liberal-judaism-and-unitarians-welcome-equal-marriage-consultation>

countries, religious institutions were given the ability to ‘opt in’ if they wish too. We see little reason that such a system shouldn’t exist in the UK.

In order to reassure religious institutions, consideration should be given to expressly exempting them from the law permitting equal marriage in the reform legislation, such that any change to this in future would require primary legislation to effect it.

Recommendation 3: Religious bodies should be allowed to opt in to conduct same-sex marriage on their premises. There should be absolutely no compulsion on religious bodies to do this

Legislative changes needed

Insert a clause into the Equality Act with the effect that religious institutions may discriminate on sexuality when it comes to marriage. There is already wording along these lines but it could be explicitly stated with reference to marriage for further clarification and protection of religious interests.

What should happen to civil partnerships?

Civil partnerships have proven to be a popular institution since their introduction in 2005. Civil partnerships were part of a suite of social reforms that the Labour government under Tony Blair should be commended for and led David Cameron to suggest that the UK was “*more open at home and more compassionate abroad and that is something we should all be grateful for.*”¹¹⁷ Between 2006 and 2010, there were around 43,000 civil partnerships in the UK. Civil partnerships have proven to be popular among the general population. More and more people know same-sex couples who have been civilly partnered and civil partners are featured in many of the most popular television drama series.¹¹⁸

The success of civil partnerships has undoubtedly advanced the debate around equal marriage. It has also, ironically, provided an added complication to the debate around equal marriage. Namely, what becomes of existing civil partnerships and what should become of civil partnerships as an institution once equal marriage is introduced?

On the first issue, it would seem only fair to provide a ‘fast-track’ for existing civil partners who wish to convert their civil partnership to a full marriage and do not wish to go through the ceremony or bureaucracy of a full marriage application. In other jurisdictions where equal marriage has been introduced it has been made easy for civil partnerships to be transferred to full marriage. Places such as Connecticut have even made the transfer from civil union to marriage automatic.

While we don’t think it necessary to automatically transfer existing civil partnerships to marriage, we believe it is important to develop a speedy, low cost mechanism for existing civil partners to transfer their civil partnership to full marriage if they wish. Government should work with registrars to ensure that this is done in as straightforward and non-bureaucratic a way as possible.

¹¹⁷ <http://www.number10.gov.uk/news/david-camerons-speech-outside-10-downing-street-as-prime-minister/>

¹¹⁸ Helen Ross, Karen Gask, Ann Berrington, *Civil Partnerships Five Years On*, Population Trends 145, Autumn 2011

Recommendation 4: A fast track registration process should be provided for existing civil partners who wish to transfer to full marriage

Legislative changes necessary

Currently a marriage is void if either party already has a marriage or civil partnership, under the Matrimonial Causes Act s11(b). Wording is needed to clarify that this does not prohibit a civil partnership from being converted into a marriage.

A new clause 55A in to the Marriage Act 1949 which requires a system to be created to allow civil partnership to be registered as marriage, and requires the registrar to keep a record of such converted civil partnerships.

S75(3) of the Marriage Act 1949 creates offences if registration or solemnisation of a marriage are not in accordance with the Act. A clause should be inserted to ensure that no offence occurs under this section if a civil partnership is converted to a marriage.

Should civil partnerships be extended to heterosexuals?

The more complex part of the civil partnerships debate is the issue of what should happen to the institution of civil partnerships once equal marriage has been introduced. Some argue that civil partnerships should be extended as an institution, so that straight people are also able to have a civil partnership. This is the case in some countries with equal marriage and would provide greater equality to the institution.

The argument in favour of such a move is straightforward. Part of the case in favour of equal marriage is that it is unfair to lock out gay people from an institution such as marriage. If equal marriage is introduced, as we suggest it should be, then it would be equally unfair to exclude heterosexuals from civil partnerships.

However, as we set out below, we do not believe that new civil partnerships should be created after the introduction of equal marriage. As we argued in the initial chapter the institution of marriage would be strengthened by accepting gay and lesbian people into it. However, we believe that it would be weakened if an option of an intermediate institution short of marriage became available for all people. Extending civil partnerships could harm traditional marriage in a way that equal marriage would not. We would caution against such a move.

Should civil partnerships remain in place for gay people?

As Andrew Sullivan argues:

“Most important for conservatives, the concept of domestic partnership chips away at the prestige of traditional relationships and undermines the priority we give them. Society, after all, has good reasons to extend legal advantages to heterosexuals who choose the formal sanction of marriage over simply living together. They make a deeper commitment to one another and to society; in exchange, society extends certain benefits to them. Marriage provides an anchor, if an arbitrary and a weak one, in the maelstrom of sex and relationships to which we are all prone. It provides a mechanism for emotional stability and economic security. We rig the law in its favour not because we disparage all forms of relationship other than the nuclear family,

but because we recognise that not to promote marriage would be to ask too much of human virtue... There are virtually no conservative arguments either for preferring no social incentives for gay relationships or for preferring a second class relationship, such as domestic partnership, which really does provide an incentive for the decline of traditional marriage.¹¹⁹

Civil partnerships were introduced to allow same-sex couples the ability to publicly commit themselves to each other. As discussed earlier in this paper, they were introduced as a kind of “marriage lite” – short of marriage but with many similarities to marriage. The fundamental point is that they would not have had to be introduced if there wasn’t a previous inequality in the system and there will be no real need for them if equal marriage was introduced.

Civil partnerships were the result of a certain need at a certain time. That need has now passed. As long as government sets out a clear and straightforward way to convert civil partnerships to marriage, there is little real reason for new civil partnerships to be created once equal marriage is available to all. Existing civil partnerships should be allowed to continue if the couple wish them to. This is a simple and elegant proposal in principle. Having two near-identical institutions on the statute book seems unnecessary.

Recommendation 5: Once equal marriage has been introduced, no new civil partnerships should be created

Legislative changes needed

Preventing civil partnerships from being entered into would require an amendment to the Civil Partnership Act, inserting a simply worded clause to that effect.

The financial implications of equal marriage

A major financial issue around equal marriage could be that of whether married gay and lesbian people should have the same survivor’s pension rights as heterosexual couples. The government’s consultation sets out the issues around survivor’s pension rights:

“Because civil partnerships only became available in 2005, where an occupational pension scheme provides discretionary survivor benefits, the Equality Act 2010 allows schemes to only take into account rights accrued from the date the Civil Partnership Act 2004 came into force... retrospective rights may remain an issue when equal civil marriage is introduced, but the Department for Work and Pensions is currently considering whether this provision in the Equality Act 2010 should be retained, and the impacts of its removal or modification.”¹²⁰

Following the introduction of civil partnerships, civil partners had the same rights to survivor’s pensions as married couples. These changes to pensions were not initially retrospective, but changes to the initial civil partnership legislation meant that benefits for some pension schemes were calculated based on service since 1988.

119 Andrew Sullivan, *Virtually Normal*, p182

120 Government Equalities Office, *Equal Civil Marriage: A Consultation*, p16

The Pensions Advisory Service set out the impact of civil partnerships on pensions:

- registered partners will become eligible for survivors' benefits (e.g. spouse's pensions) based on pensionable service from 5 December 2005.
- registered partners of members of contracted out schemes will in addition to the above be eligible for survivor's benefits based on contracted out rights earned by service from 6 April 1988.
- pension sharing orders will be available on dissolution of civil partnerships.
- civil partners will be able to claim and inherit state pension rights the same as married couples from 5 December 2005.
- partners will be able to have an unlimited insurable interest in each other's lives for effecting life assurance.¹²¹

The main difference between civil partner's pension rights and married people's pension rights is around some private pension schemes, which do not give survivor's pension rights to civil partners in respect of pension rights accrued before 5 December 2005. The Civil Partnerships Act contained an exemption allowing employers and pension funds to exclude civil partners from spousal benefits attributable to service prior to 5 December 2005. This exemption is now contained in paragraph 18(1) of Schedule 9 of the Equality Act 2010. Traditionally, occupational pension schemes state that when a member dies his or her spouse is entitled to 50% of the value of the pension for the rest of his or her life, regardless of when the couple married.

The impact of equal marriage on pension rights is clearly an issue of some concern to both business and to government. However, it should be noted that the potential impact is relatively small – in total there are only 45,000 civil partnerships in the UK – compare that to the 277,000 new marriages in the UK in one year alone. There is no evidence that there will be a large surge of gay people getting married after equal marriage is introduced and even a moderate surge would only be equivalent of a small increase in heterosexual marriage. Some firms already provide retrospective survivor benefits for civil partners.

There would seem to be two realistic options for government in terms of survivor's pension rights:

- Maintaining the status quo, with the exemption for employers and pension funds contained in the Equalities Act; or
- Giving the same survivor's pension rights to married gay couples that heterosexual spouses would receive.

Clearly the latter option would fit most with the spirit of equal marriage and it is worth noting that the number of same-sex marriages is likely to be relatively small. However, it is also important not to add new costs on to business at a time of economic difficulty. Government needs to work with the private pension providers and other interested parties to ensure a reasonable and affordable solution for all parties.

¹²¹ <http://www.pensionsadvisoryservice.org.uk/workplace-pension-schemes/final-salary-schemes/same-sex-partners>

Conclusion

This report has assessed the major arguments both for and against equal marriage. Balancing the pros and cons of equal marriage, it seems clear that a compelling case exists for change. It is also clear, however, that some of the arguments against have validity and that safeguards should be in place to protect religious institutions.

Our analysis of the argument has illustrated that marriage brings real benefits to married individuals, as well as acting to bind together families, communities and society as a whole. The benefits of marriage are clear and proven and there is not a compelling reason to shut out gay and lesbian people from the benefits that marriage provides.

Even if there was no case for marriage as an institution, there is still a case for equality before the law. It is not right for one person – or the state – to impose his or her beliefs or ideas on another unless identifiable harm is caused to other individuals or society. The current definition of marriage in the Matrimonial Causes Act represents ongoing and unnecessary interference by the state.

In this report, we are proposing practical steps to extend marriage to people currently excluded from marriage because of their sexuality, which is natural and fixed. We do not believe that somebody's sexuality is a justifiable reason to prevent them from marrying the person they love.

The proposed reform is not about changing the institution of marriage. That institution in law would remain a partnership between two people. We are proposing the reform because we fundamentally respect the institution of marriage and believe that it should be extended. We believe that gay and lesbian people should be allowed to participate in marriage, not change it. The proposed reform is a traditional, not a radical one and emphasises the values that advocates of marriage have always advanced and that marriage is uniquely placed to provide.

Equal marriage would be an important and decisive step to fully integrating gay and lesbian people as members of a society, with the same rights, the same responsibilities and the same day to day concerns as heterosexual people – sending an important signal, especially to young people, that being gay is an accepted condition that in no way prevents people from the same aspirations to have a stable, married partnership in adult life as everyone else.

There are also legitimate reasons for people on the centre-right to support equal marriage. It would strengthen marriage rather than weaken it. People from the conservative tradition who, correctly, talk about the benefits of social institutions and social incentives (which are incorporated in marriage as an institution), should see the value of extending marriage to gay and lesbian people. It is perverse that some of the traditional proponents of marriage are so willing to limit its scope and influence. It is difficult to imagine how one person's love restricts or inhibits another's, and quite simple to see how the warm embrace of social acceptance would do a lot of good for individuals and society.

The statistical evidence from other countries shows no link between marriage equality and damage to the institution: divorce rates do not go up, marriage rates do not go down.

Sincerely held concerns about religious freedom in connection with these proposals ought to be addressed. Policy-makers should be quite clear that they have no right to interfere in the affairs of individual religious institutions. Religious institutions should not be forced by the state to hold a same-sex marriage ceremony on their premises. Religious institutions that do wish to marry two men or two women should not be prevented from doing so by the law.

On balance, we believe the continuance of civil partnerships post equal marriage would be unnecessary. They were introduced because of a unique inequity that will no longer exist once marriage equality has been introduced. Their continuation in current form would create an unjustified two-tier system for gay people, and if civil partnerships were simultaneously reformed to admit heterosexual couples, then the institution of civil marriage would be threatened by a secondary institution that fell short of full marriage but was open to all.

The changes proposed in this paper are elegant in principle and common sense in practice, requiring minimal legislative interference. The law is relatively easy and inexpensive to change in this area and legislation should be drafted in such a way as to provide explicit reassurance for religious groups.

The arguments in favour of marriage as an institution are strong and the arguments in favour of allowing gay and lesbian people to benefit from the institution of marriage are equally strong. Full equality would bring the final symbolic acceptance to a group only recently invited in from the cold. It would serve to fully welcome gay people in to the mainstream of society. This is the ultimate goal of marriage equality.

The Government's proposals to introduce civil marriage for same-sex couples have provoked controversy and a wide-scale debate. The public consultation, which concluded in June sparked more responses than almost any other Government consultation. The debate has, in many ways, been more diverse, impassioned and wide-ranging than previous debates around 'gay rights'. In particular, a 'conservative case' in favour of reform has emerged.

Supporters of equal marriage suggest that allowing same-sex people to marry would be an important act to ensure that gay and lesbian people have equal rights under the law. It's also suggested that marriage is a beneficial institution, encouraging commitment and stability and that these benefits should not be denied to gay people, with some suggesting that marriage could be particularly beneficial to gay people.

Opponents argue that the change would redefine the nature of marriage and weaken the institution as a whole. They also argue that it could lead to a 'slippery slope' that could see the likes of polygamous marriage legalised at some point in the future. Concerns have also been expressed by opponents that the changes could be detrimental to religious freedom.

This report adopts an evidence-based analysis of the arguments around marriage equality to consider whether there is a compelling argument to reform the law. It pursues a reasoned analysis of the equal marriage concept and its practical implications and evaluates the arguments on both sides of the divide. It also explores the experience of other countries where marriage equality is already a reality.

£10.00
ISBN: 978-1-907689-24-6

Policy Exchange
Clutha House
10 Storey's Gate
London SW1P 3AY

www.policyexchange.org.uk