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Abstract This article is an exploration of lesbians' and gay men's views about the introduction of civil partnership in the UK. The article draws on 10 in-depth interviews carried out as part of a wider research project examining legal consciousness and sexuality. The focus is to explore some of the more 'critical' views about the effects of legal recognition that were raised by participants in this study. I begin by outlining the theoretical and methodological approaches used in this exploration of lesbians' and gay men's experiences of the introduction of civil partnership. I then move on to analyse participants' views about the legal recognition of same-sex relationships, focusing on two themes: the complex interplays between recognition and regulation; and participants' views about the uneasy relationship between civil partnership and marriage.

Keywords Civil partnership, gay men, governmentality, legal consciousness, lesbians

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The last decade has been a time of extensive change in the legal regulation of lesbian and gay lives in Britain. Almost every area where the law impacts on sexuality has been changed or amended. One of the most significant recent reforms has been the Civil Partnership Act 2004 (CPA), which introduced an opt-in, marriage-like status for same-sex couples.¹ Since the early 1990s the legal recognition of same-sex relationships has emerged as a key site in the struggle for lesbian and gay legal equality (Wintemute, 2001). The prominence of relationship recognition and same-sex marriage in lesbian and gay struggles for legal equality has led to a wealth of academic commentary and debate, and the place, utility and aims of same-sex marriage remain hotly contested.

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The details of this debate have been laid out several times, from various perspectives (see e.g. Clarke and Finlay, 2004; Peel and Harding, 2004). It has been claimed that same-sex marriage is the ultimate equal rights goal of many lesbians and gay men (Eskridge, 2002), and that it is essential to place same-sex marriage at the heart of lesbian and gay politics because the heterosexism of the 'traditional' family serves to displace lesbians and gay men from both the public and private spheres (Calhoun, 2000). Other commentators argue that same-sex marriage is a 'human right' and therefore should be recognized as such in law (Kitzinger and Wilkinson, 2004); that same-sex marriage will help to reduce gay male promiscuity and integrate gays into society (Sullivan, 1996; Rauch, 2004); that civil partnership (or other forms of relationship recognition short of marriage) are simply stepping stones in the direction of same-sex marriage (Waldijk, 2001; Eskridge, 2002); and that same-sex marriage marks the transition for lesbians and gay men from outsiders to full citizens (Josephson, 2005).

On the other 'side' of the debate, commentators argue against the privileging of marriage in lesbian and gay struggles because, for example: marriage is a site of the continued oppression of women (Jeffreys, 2004); the introduction of same-sex marriage may reduce the possibilities for wider-reaching reform of marriage and increase the possibilities of assimilation of same-sex relationships into the heterosexual norm (Auchmuty, 2004); same-sex marriage (and the legal recognition of same-sex relationships more generally) brings with it increased regulation of and reductions in the welfare and social security benefits of lesbians and gay men in the lowest income brackets (Young and Boyd, 2006); same-sex marriage continues the privileging of conjugal relationships over other forms of relationship (Polikoff, 2003); and the inclusion of same-sex couples in the institution of marriage serves to strengthen the power of that institution, further marginalizing those on the outside of the institution (Butler, 2002). This debate is ongoing, even as the legal backdrop to the question of whether the legal recognition of same-sex relationships is an inherently good or bad thing has changed considerably in recent years, as more and more jurisdictions either open up civil marriage to same-sex couples or create other forms of opt-in relationship recognition.

A third dimension to the burgeoning same-sex marriage literature is a growing number of studies exploring the attitudes and experiences of lesbians and gay men to the introduction of legally recognized same-sex relationships. Prior to the widespread availability of forms of legal recognition, studies of lesbian and gay relationships tended to focus on the social meanings of (non-legal) same-sex relationships and commitment ceremonies (e.g. Lewin 1999; Weeks et al., 2001; Shipman and Smart,

2007). More recent studies have, however, begun to focus on the attitudes of lesbians and gay men to legal recognition (e.g. Lannutti, 2005; Harding, 2006; Harding and Peel, 2006; Clarke et al., 2007). This article seeks to add to this growing field of research into lesbian and gay experiences of legal recognition of same-sex relationships, through an exploration of lesbians' and gay men's views about the impact and effects of the introduction of civil partnership on their everyday lives.

In particular, the focus of this article is some of the more critical views about the effects of legal recognition that were raised by participants in this study. I begin by outlining the theoretical and methodological approaches used in my exploration of lesbians' and gay men's experiences of the introduction of civil partnership. I then move on to analyse participants' views about the legal recognition of same-sex relationships, focusing on two themes: the complex interplays between recognition and regulation; and participants' views about the uneasy relationship between civil partnership and marriage. Through this analysis, I argue that there are some interesting gendered differences in these participants' views about the legal recognition of same-sex relationships – particularly that lesbians seem to be more concerned than gay men about the potential assimilatory effects of legal recognition. My aim in this article is to highlight some of the more negative aspects of civil partnership discussed by these participants, specifically the detrimental economic and financial impact of the introduction of legal recognition for lesbians and gay men in lower income brackets, the problematic exclusion of religion from civil partnership and the ways that feminist objections to marriage are expressed by lesbians and gay men in relation to civil partnership.

Exploring attitudes to and experiences of law in everyday life

In this article, I am interested in how the relationship between law and everyday life is expressed by people when talking about their views and experiences of the legal recognition of same-sex relationships. My concern is with the stories that people tell of their lives and the ways that law becomes embedded in these accounts – the ways that individuals conceptualize the place of law in everyday life. As such, this study draws on 'legal consciousness studies', a form of socio-legal scholarship that focuses on the place of law in everyday life. In brief, legal consciousness is a methodological and theoretical framework developed within the North American law and society movement, which seeks to explore the place of law in everyday life. In their groundbreaking study of legal consciousness, Patricia Ewick and Susan Silbey (1998) outlined three broad types of legal

consciousness: 'before the law', 'with the law' and 'against the law'. They describe these categories as cultural 'schemas', which are:

part of a reciprocal process in which the meanings given by individuals to their world become patterned, stabilized and objectified. These meanings, once institutionalized, become part of the material and discursive systems that limit and constrain future meaning making. (Ewick and Silbey, 1998: 39)

In essence, then, Ewick and Silbey's version of legal consciousness focuses on consciousness as part of the systems of meaning making which undergird the social world.

Legal consciousness that falls into the category of 'before the law' depicts law as a separate sphere from society – objective, distinct, formally ordered and rational. People who conceptualize law in this way 'tell the law's own story of its own awesome grandeur', but sometimes 'people express frustration . . . about what they perceive as their own powerlessness' (Ewick and Silbey, 1998: 47). 'With the law' legal consciousness, on the other hand, conceptualizes the 'power of law' in a somewhat different way. Here, law is described as a game, where 'the pursuit of self-interest is expected and the skilful and resourceful can make strategic gains', rendering law a process which is not entirely distinct from everyday life, but is 'played' on its own terms (Ewick and Silbey, 1998: 48). The third type of legal consciousness, 'against the law', works in a slightly different way from the first two models. Here, legality is seen as 'something to be avoided' and 'dangerous to invoke' (Ewick and Silbey 1998: 192). Rather than bowing to law's power or playing law's game, those who conceptualize legality in the 'against the law' category resist the law by 'pilfering, violence or threats of violence, tricks, institutional disruptions, foot dragging, humor, storytelling and gossip' (Ewick and Silbey, 2003: 1336).

As I have argued elsewhere (Harding, 2006), legal consciousness studies can help to interrogate the pervasiveness of discourses of formal equality in the ways that lesbians and gay men experience law and legal regulation, but the broad schemas developed in Ewick and Silbey's (1998) study require further development in relation to lesbian and gay experiences of law. To date, legal consciousness studies seem to have conceptualized describing legal consciousness as the end point or conclusion of the research, rather than using insights accessed through a legal consciousness framework as the basis for a critique of law and legal processes, or for drawing out relationships of power and resistance in individuals' stories of law. Throughout this article I therefore not only explore examples of 'legal consciousness', by which I mean the ways that ordinary people approach, use and think about law in everyday life, but also the relationships of power and resistance that are highlighted through these participants' perspectives on the introduction of civil partnership for

same-sex couples. When interrogating broad theoretical concepts such as power and resistance, I take Foucault's approaches to power as a productive force (Foucault, 1998, 2002), and Foucauldian feminist (e.g. Smart, 1989) approaches to law and power as my starting point. I also draw on the concept of governmentality (Foucault, 1991) as a way of interrogating the ways that the 'micro' experiences of relations of power and resistance in the everyday lives of lesbians and gay men are informed by and inform broader structural forces.

In summary, I use the theoretical and conceptual tools offered by combining legal consciousness with a Foucauldian analysis of power, resistance and modes of governmentality. Fusing this set of tools creates a theoretically informed version of legal consciousness that is sympathetic to the nuances of lesbian and gay experiences of law and regulation (see further, Harding, 2008). As a result it allows access to the deeper reaches of socio-legal inquiry and exposes participants' understandings of the operation of concepts such as equality, power and resistance, rendering possible an exploration of the place of law in the everyday lives of lesbians and gay men.

Methodological note

The interview material foregrounding this article concerns lesbians' and gay men's views about, and perceptions and experiences of, the place of law in their everyday lives. The interviews were semi-structured in their approach, with a set of questions which were modified depending on the personal circumstances of the interviewee. Identifying information has been removed and all the participants have been given pseudonyms. Between March and October 2006, 10 lesbians and gay men² were interviewed about their attitudes to and views about civil partnership. As is often the case with sexualities research, attempting to obtain a representative sample is a near-impossibility, as non-heterosexual people make up an undefined and difficult to represent population (Herek and Berrill, 1992; Fish, 1999). As such, I have not attempted to create a representative sample of participants in this study. Rather, participants were recruited through strategic opportunistic sampling through informal networks within lesbian and gay communities. Six interviews were carried out in Edinburgh, two in the Midlands and two in London. The interview participants who spoke to me about their attitudes, views and concerns about civil partnership had a range of demographic characteristics. Six women and four men participated in this interview study, with an age range of between 21 and 45 years. Six of the participants self-identified their class identity as 'middle class', one as 'lower middle class' and the remaining three did not provide any class identification, using phrases such as 'I don't' (Michael) or 'not a chav' (Peter).

The over-representation of middle-class perspectives and under-representation of older lesbians and gay men in this data set does, therefore, highlight the problems associated with accessing 'hard to reach' populations, and the limitations of this research in terms of generalizability and representativeness of the sample. In order to ameliorate any concerns these limitations raise, I must make clear that I do not claim that interview accounts are a method of accessing some kind of empirical 'truth' or are a window to some higher 'reality'. Rather, I see the interview as a place where stories are solicited by the interviewer and told by the interviewee – a space where co-constructed accounts of the relationship between law and everyday life are produced. Second, in this study I interviewed a small number of people (10) about their views. I am not looking to people's perceptions of law to expose master narratives of the stories that people tell about law, rather I am interested in individual narratives as texts, the stories that each individual tells of their perspective on the legal regulation of non-normative sexuality.

None of the participants in this study had entered into any opt-in form of legal recognition,³ nor did any of them have specific plans to do so in the near future. Entering into a civil partnership was, however, something that some participants considered doing at some unspecified future time. All of these lesbians and gay men generally supported the introduction of civil partnership for same-sex couples, saying things like: 'I think it's a really good thing for lesbians and gay men and bisexuals' (Tom), 'it's so obviously a good thing' (Kay), and 'after section 28 and all those dreadful things in the 80s I was just absolutely bowled over by it – the fact that it could ever happen [it's] just radical and fantastic, so it's brilliant, really brilliant' (Louise). But these participants' positive attitudes to and perceptions of the legal recognition of same-sex relationships were also complex, contradictory and mediated by concerns about: first, the relationship between recognition and regulation; and second, the difference between civil partnership and marriage. It is these more critical attitudes to the legal recognition (or regulation) of same-sex relationships that are my focus in this article. I explore these themes in turn, drawing out examples of these participants' 'legal consciousness' and the understandings of equality and relations of power and resistance that are highlighted in participants' accounts.

Civil partnership: recognition or regulation?

Concern was expressed by some of these lesbians and gay men that the introduction of legal recognition for same-sex relationships would act as a catalyst for increased legal regulation of lesbian and gay lives. There are three aspects to this theme: first, that the introduction of civil partnership

will increase regulation for all lesbians and gay men; second, the negative financial consequences of increased regulation; and third, the possibility of civil partnership leading to assimilation of lesbians and gay men into heteronormative ways of living.

Increasing regulation of lesbian and gay lives

A major concern expressed by many of these interview participants was a concern that the introduction of civil partnership would dramatically increase the regulation of lesbians and gay men. Madge, for example, commented that civil partnership will not only affect those who choose to enter into a legally recognized relationship, but rather that it will have an impact on everyone:

What civil partnership allows the government to do is to regulate everyone y'know and I guess that's what bothers me about it . . . I mean it's naïve to think that legal recognition only regulates the people who participate in it. It is a form of regulation for all society and for everyone that's in society. (Madge)

As this extract demonstrates, Madge is concerned that there is a negative aspect to legal recognition of same-sex relationships: that the introduction of recognition for some means regulation for others. Similarly, Tom noted that 'when I think of the word regulation and I think of relationships, I don't particularly like the two things together'.

What these participants have highlighted is that recognition and regulation are two sides of the same thing – what constitutes recognition for some (in this case those who opt-in to civil partnership) becomes unwanted regulation for others. This brings to mind governmentality, Foucault's (1991) approach to thinking about the nature of the practice of government, in particular, the ways that (in the modern western practice of government) the aim is both the individualization and totalization of the population. For Foucault, governmentality is concerned with the regulation of '*omnes et singulatum*' – each and all – and the ways in which the exercise of power over the population controls the actions of the population (Foucault, 1991). With respect to the introduction of a legal framework for same-sex relationships, the introduction of state recognition (through an opt-in framework), which allows (predominantly) middle-class or wealthy lesbians and gay men to avoid inheritance tax, also inevitably brings non-registered, unmarried, low-income same-sex couples under the gaze of regulation. It allows the regulation of the *entire* population of non-heterosexual people whether or not they wish to be known by or regulated by government.

Financial implications of civil partnership

Nicola's story about how the introduction of civil partnership has affected her life brings this issue sharply into focus:

Along with that has come the change in the law that living together, that if you're unmarried or not in a civil partnership, that it affects all your money and all your benefits and all of that . . . I'm a total casualty – I'm like, not supposed to be claiming any money now . . . and I do, because we – I didn't actually realize and the law changed. I think it changed last December the terms for the benefits and everything. So previously I was treated as a single person and now I would be treated as if I'm living as a civil partner. And I'm not in a position to be honest about that . . . because materially – if I – well, if my money were to be stopped, we wouldn't be able to afford to pay the rent, for example. Huge. Phenomenal. A phenomenally huge impact. Huge. Scary. Worries me all the time. (Nicola)

In Nicola's account, the introduction of recognition for same-sex relationships has had the effect of a drastic change in the level of regulation in her life. She describes how, prior to the introduction of civil partnership, her same-sex partner was ignored by the benefits agency and so she was able to claim benefits as a single person. After civil partnership was introduced, her relationship suddenly became relevant to the state, because one of the legal reforms associated with the CPA was that same-sex couples who were living together and claiming state benefits (even if they are not in a civil partnership) changed from being assessed as individuals to being assessed as a couple.⁴ According to government information (Department of Work and Pensions, 2005), same-sex couples in this situation were supposed to contact their benefits office and simply accept that they were no longer entitled to receive any social security benefits. Nicola did not do this – and she therefore resisted the introduction of this form of regulation into her life.

Nicola's resistance arose not because she particularly wanted to avoid state regulation, nor because she disagreed that same-sex couples should be treated 'equally' in law, but because if she did 'confess' to the benefits agency, she would not be able to afford to pay her rent. In some respects, Nicola's story is a classic example of 'against the law' legal consciousness (Ewick and Silbey, 1998) – she is a marginalized individual (because she relies on social security benefits) and she is avoiding legal regulation through small deceptions (not contacting the benefits office). But she says she is scared, scared of being found out; she knows that she is 'breaking the law' by committing 'benefit fraud' and it is a cause of daily worry for her. Even though Nicola has resisted the regulation of her life as a result of the introduction of civil partnership, she also spoke of law as powerful, frightening, and worrisome.

The financial impact of the introduction of civil partnership for Nicola (and other lesbians and gay men in similar situations) is not an unexpected result of the introduction of civil partnership, rather it is reminiscent of the fears of feminist scholars that the neo-liberal privatization effects of the formal legal recognition of same-sex relationships will be experienced most strongly by those who are already socially or economically disadvantaged, for example by gender, class or race (Cossman, 2002; Young and Boyd, 2006). In reference to the major changes in the recognition of same-sex relationships in Canada, Claire Young and Susan Boyd argue that extending spousal status to lesbians and gay men reinforces the neo-liberal privatization of economic responsibility, by placing it on family members, rather than the state (Young and Boyd, 2006). Similarly, Brenda Cossman (2002) argued that 'family law is becoming a more important regulatory instrument for the enforcement of private support obligations for economically dependant family members' (2002: 169). Interestingly, just as these critiques of the neo-liberal privatization of the family and the differential impact on those who are already disadvantaged through the operation of class or gender norms have been predominantly expressed by feminist scholars, reference to the potential or actual negative economic consequences of same-sex relationship recognition was only made by lesbian participants in this study.

Concerns about assimilation

A third issue concerning the relationship between recognition and regulation of same-sex relationships through civil partnership was alluded to by Kay:

I suppose that's one of the things I quite like about gay relationships is that they can sometimes be seen as a bit under the radar or not something that's fixed and that they don't have a framework and you are kinda making it up as you go along whereas with a civil partnership it's more a fixing of things really and again putting it in that broader framework. (Kay)

The creation of an opt-in framework for the legal recognition/regulation of same-sex relationships is seen by Kay as a way of 'fixing things' rather than people in same-sex relationships being able to make things up as they go along. This again goes back to the idea of the legal recognition of same-sex relationships as a technique of government – a way of bringing lesbians and gay men under the control of law. The creation of a legal framework for same-sex relationships becomes a mapping out of how things are supposed to go – two people meet, fall in love, enter into a civil partnership, become more emotionally mature, become financially dependent on each other, and so on – mirroring heteronormative discourse around societal expectations of marriage and life.

The solidification of same-sex relationships is not the only way that these participants thought that civil partnership could work. There is an alternative to this framework, as Peter points out:

Well, it depends how it pans out really . . . it might be that over the next little while we see that civil partnerships actually become viewed as a means to an end in terms of the benefits that they bring to people and that there's no stigma about getting in and out of them at short notice and people don't think 'oh, you've been divorced, oh dear' (laughs) and [doesn't have] the same constructs around it as marriage has . . . I'd probably call it gay wedding and gay marriage, but it's gay marriage, it's not marriage, it's still essentially a different thing. (Peter)

This excerpt suggests that the creation of civil partnership for lesbians and gay men does not necessarily have to act on lesbians and gay men in the same way as marriage does on individuals within heterosexual culture. Whilst the creation of civil partnership can be seen as technique of governance, there still exists within the framework of civil partnership possibilities for individual agency, and possibilities for lesbians and gay men to resist the neo-liberal privatization of same-sex relationships. This conceptualization of civil partnership highlights that the regulatory effects of civil partnership could not be as problematic as some of these participants fear.

Peter's perspective highlights the potential for civil partnership to be developed by ordinary lesbians and gay men in ways that were not intended by either the government, with their focus on the privatization of caring responsibilities in the family (see Women and Equality Unit, 2003) or lesbian and gay pressure groups like Stonewall, whose focus in the civil partnership debates was one of formal equality and recognition rights (Stonewall, 2003). It is too soon to tell whether the assimilatory and normalizing aspects of civil partnership (as a 'gay' version of marriage) will be ascendant or whether civil partnership will actually mean something different to marriage for lesbians and gay men. In Peter's account, the fact that civil partnership is not called marriage, and is perceived as something different from heterosexual marriage opens up the possibility of it not having the 'same constructs around it' as marriage. That governmental actors were reluctant to afford same-sex relationships 'equal' status to different sex relationships arguably allows lesbians and gay men the opportunity to do something different with this new legal institution than simply accept is as a 'gay' version of marriage. Civil partnership could, potentially, be a substantively different form of organizing relationships, even though it has been modelled on marriage and in many respects legally mirrors marriage law (Peel and Harding, 2004).

In summary, some of these participants were concerned about the potential for the introduction of civil partnership to increase state

regulation of same-sex couples, highlighting that recognition and regulation are inextricably linked when thinking of the family in society. Perhaps most interesting in this theme, however, is that whereas the gay male participants were generally more concerned about the formal equality aspects and the financial and practical benefits of civil partnership, the lesbians who participated in this study seemed to have a different approach. Most of the women interviewed in this study seemed to be aware of the potentially damaging effects of civil partnership on lesbians and gay lives, through the potential for assimilation of same-sex relationships into dominant (heterosexual) societal norms. The concern here is that such assimilation will shift social censure onto those lesbians and gay men who choose not to enter into a civil partnership, and compound the financial problems faced by same-sex couples at the lower end of the socio-economic spectrum. Two of the male participants also stated during their interviews that they could only speak as/for gay men: 'I speak obviously as a gay man and not a woman' (Michael); 'I cannot speak for lesbians because they are a whole other kettle of fish, so to speak', (Peter), but none of the women I interviewed felt that they could not speak about the situation for gay men. This is also an interesting gendered difference, because it suggests that whilst gay male culture (as the dominant non-heterosexual culture) seems fairly understandable and open to lesbians, lesbian culture seems somewhat elusive or incomprehensible to some of these gay male respondents.

The uneasy relationship between civil partnership and marriage

The second broad theme that arose in these participants' stories is the uneasy interaction of civil partnership and marriage. Alongside the potential for civil partnership to become something very different from marriage, these participants also noted the difficulties associated with the creation of 'not-marriage' for same-sex couples. The uneasy relationship between civil partnership and marriage was approached in three distinct ways: first, the difficulties of reconciling civil partnership with an understanding of equality as formal equality; second, these participants had reservations about the relationship between civil partnership, marriage and religion; and third, some participants objected to the whole idea of marriage, and were grateful for civil partnership as an alternative.

Civil partnership and formal equality

The difficulties in reconciling the creation of civil partnership with a belief in formal equality was described by Angus, who spoke of his dislike of the way civil partnership was being 'sold' to the public as gay marriage:

My problem with it is that it is being sold to folk as gay marriage and it's not . . . ultimately, [my partner] and I are no different to the bloke and the girl in the next block . . . who aren't married but who live together, so if we want to go and have a civil partnership, well that's fine but if they want to have a civil partnership, they can't, they have to go and get married. So in a way I think it's iniquitous. If you really want equality, then everyone should have the same thing, and this isn't the same thing, it's like I said . . . buying a car and running a car is not the same as inventing something that runs on petrol and has four wheels but is called a gar or a par; it's a car, whether you call it something different it's still a car. (Angus)

There is an element of contradiction in Angus' attitude towards civil partnership – he says that everyone should have access to the same institution(s), but also that inventing something that is essentially the same but called something different is nonsense – so in essence civil partnership and marriage *are* the same thing with different names. His view seems to be that civil partnership is a form of inequality enshrined in law, not just because same-sex couples are still excluded from the legal institution of marriage, but also because different sex couples are excluded from civil partnership. His understanding of equality seems to have no space for different legal treatment of same and different sex couples.

This way of viewing the legal regulation of same-sex relationships has elements of a 'before the law' legal consciousness, but is not fully explained by this descriptive category. Ewick and Silbey's (1998) category of 'before the law' focuses heavily on the impartiality and objectivity of law, the way that law is 'blind' to difference. Lesbians' and gay men's perceptions of legal equality seem to see objective, impartial law as an ideal, but do not necessarily see this reflected in the ways that they are treated in law (Harding, 2006). In the foregoing excerpt, Angus speaks of civil partnership as unjust, unequal and unfair and alludes to the creation of it as making a mockery of the objectivity of law – inventing something that is the same as marriage but has a different name for same-sex couples is therefore in direct conflict with his conceptualization of what equality means.

Other participants also spoke of resistance to civil partnership – this new legal framework constructed especially for same-sex relationships. Tom, for example, said:

I don't particularly like the word marriage, and I don't like all the values that necessarily people assume, I think, when you say the word marriage. But then again I don't particularly like the fact that we're being denied marriage, because I don't think they've given us civil partnership in some kind of radical 'let's give you something different' kind of way, but that they've done it because they don't want us to have marriage. (Tom)

In contrast to Angus, Tom does see the potential for civil partnership to be something different from marriage, but again sees the continuing exclusion of same-sex couples from marriage as problematic. He expresses a desire for a different way of regulating relationships, but doesn't see civil partnership as a real alternative to the marriage model:

I know that heterosexuals complain that they don't have access to it, and siblings do too, and sometimes I feel that's kinda drawing attention away from lesbian and gay relationship recognition, but at the same time I think that there is a case for it being a lot more open to things like that and perhaps being widened away from just the couple relationship. (Tom)

Tom's views about civil partnership and marriage seem, in some respects, more complex than Angus' perception that unless everyone has access to the same things, then there is inequality. By acknowledging that 'there is a case' for the de-privileging of the conjugal couple model of relationship recognition through extending the option of opting-in to a legally recognized relationship to heterosexual people, siblings, and for recognition to be 'widened away' from the couple, Tom draws attention to the ways that he envisages that civil partnership could have been more 'radical' and therefore a better alternative to marriage.

Gillian, on the other hand, whilst supporting the introduction of civil partnership sees a lack or 'gap' in the creation of a separate but equal status:

I think it's a good thing in a way, it's a step in the right direction um I mean obviously there's still a distinction between it and marriage as defined by church and state or whatever, but I think it's definitely a step in the right direction. (Gillian)

This perception of civil partnership as a 'step in the right direction' recalls the arguments of scholars such as Kees Waaldijk (2001) and William Eskridge (2002) who argue that civil partnership is part of an identifiable sequence of events starting with the decriminalization of same-sex sexual activity that will, eventually, lead to same-sex marriage (Waaldijk, 2001). Eskridge (2002) argues that civil partnership or civil union are 'stepping stones' and 'equality practice' – a method of testing and training the general (heterosexual) public to treat lesbians and gay men equally, before same-sex marriage can be achieved. There is a certain appeal to these arguments, but the idea that there is always a forward march of 'progress', which will eventually lead to 'equality' seems a little simplistic, as it does not accommodate some of the more complex societal barriers to same-sex marriage.

Civil partnership, marriage and religion

One of the more complex barriers to same-sex marriage is the problematic relationship between organized religion and lesbian and gay equality

struggles. There were, undoubtedly, particular political concerns embedded in the decision to create civil partnership, rather than allowing same-sex couples to marry, one of which was the possibility of sustained opposition from religious organizations, and an out and out battle along the frontiers of a conflict of rights. Civil partnership does, however, in almost all respects, exactly mirror the procedures for civil marriage.⁵ The primary differences are in relation to presumptions of parenthood, grounds for dissolution and the exclusion of same-sex couples from religious marriage.⁶ For some of these participants, the relationship between marriage as a religious concept and civil partnership as a specifically secular institution was a cause for concern.

I did think it was really wrong actually that the government should specifically say that you can't have it in a religious place, and it kinda says that being gay and being religious is incompatible, which I don't think is their right to talk about. I mean obviously if they weren't to say that then religious organizations wouldn't have been forced to do them anyway – the Church of England wouldn't have been forced to perform them, but the very fact that the government is saying 'you cannot' I think is wrong, especially as other religious organizations would perhaps be more open to it. (Tom)

For Tom, the specific exclusion of civil partnership from anything religious is, therefore, a flawed facet of civil partnership. Similarly, Nicola also described the exclusion of religion from civil partnership as a negative aspect of the legislation:

I don't think it's good that you can't have a marriage and a religious ceremony if you want one – I think that's bad, and I think that it's bad how there's all the (och) priests and people who're refusing to . . . so I don't like that, I don't think that's very nice. (Nicola)

Likewise, Madge points out that whilst she is not a religious person herself, she thinks that the exclusion of religion from civil partnership could be problematic for those lesbians and gay men for whom religion is a part of their lives:

I know that if you are religious that one of the most important things about relationship recognition is having a form of recognition that is wedded to religion – to be poetic about language, because marriage is, you know, in a religious context, is a religious practice and so even though I'm not religious, and I think religion is in general a pile of poo, it feels very discriminatory for lesbians and gay men and bisexuals in a same-sex relationship who are Christian or Muslim or Jewish and they cannot have that dimension as part of their relationship. (Madge)

The forced separation of same-sex relationship recognition and religion contained within civil partnership highlights the difficulties with imagining civil partnership as a stepping stone on the way to full (formal) equality for same-sex couples. The concern expressed by Tom and Madge, however,

seems to be that by specifically excluding religious ceremonies and the use of religious premises, the government has assumed that the right to freedom of religion does not apply to lesbians and gay men. As Tom pointed out, there are a number of religious organizations that do not discriminate against lesbian, gay or bisexual people, and places of worship which would have been more than happy to conduct civil partnership ceremonies, or have them conducted by a registrar on their premises.

Importantly, not all of these participants saw the exclusion of religion from civil partnership in a negative way, some were happy that civil partnership does not have the religious undertones of marriage, and view this as a positive aspect of civil partnership. Louise, for example, described her view that the lack of religious history is a positive feature of civil partnership:

It's always been very important to me that we don't kinda 'ape' the heterosexual model. I think that for me, my identity as a lesbian is a different identity to a heterosexual woman and so therefore when I make a commitment to my partner I don't make the same commitment as a marriage. I also, personally, don't want something that had a religious history, so therefore for me that's also important, so the difference for me, that's fundamental for me. If it were marriage I wouldn't want it, although I'd be pleased for the people who did. But I wouldn't want it personally. (Louise)

This perspective, that the separation of religion and the legal recognition of same-sex relationships is a positive move seems to show a willingness and desire from (some) lesbians and gay men to retain some sort of distinction between same and different sex relationships. The issue of religion and lesbian and gay identity is a very complex one, and there is not the space in this article to do it justice. My concern with this aspect of the uneasy relationship between civil partnership and marriage is that it seems to be related to the resistance expressed by some of these participants to the assimilation of same-sex relationships into heteronormative models of relationships. The move from being 'against the law' to inclusion within it is seen by these participants as a difficult road – one where it is important to retain the distinctive features of same-sex relationships, especially in the face of the neo-liberal privatization of same-sex relationships and the blurring of lines of difference between same and different sex couples.

Feminist objections to marriage

A final example of resistance to the naming of same-sex relationships as marriage comes through feminist objections to the institution of marriage. Madge, for example, objects to marriage because:

The patriarchal heritage of marriage, the fact that marriage stems from a society where women are property and chattel, that marriage is structured around

inequality and oppression, that marriage is a site of violence and abuse and degradation both for women and for children, that marriage represents a very normative and restrictive and repressive way of organizing relational and family and domestic space, um that there's a hierarchy within society around different forms of relationships and marriage sets the tone and is at the pinnacle, that marriage also reinforces the organization of society around 'the couple' so that 'the couple' become privileged above all other forms of relationship. (Madge)

And yet Madge had previously described civil partnership as an 'amazing transformation', and agreed that equality for same-sex couples is reflected in the opening up of marriage to same-sex couples. This, I would argue is an example of the complexity and contradiction in lesbian and gay attitudes to the introduction of civil partnership, because it includes all three of Ewick and Silbey's (1998) types of legal consciousness, 'before the law', 'with the law' and 'against the law'. A 'before the law' perspective emerges through Madge's perception of the introduction of civil partnership as an 'amazing transformation' – law has the power to transform the lives of lesbians and gay men and to transform wider societal attitudes to same-sex relationships. 'With the law' legal consciousness is evidenced through her reasoning around why law should be involved in people's relationships:

Society is about money and economy, and even though relationships might be about love and romance, they are also about money and economy. Because as individuals we own property, and some of us are fortunate enough to earn salaries that are big enough to accumulate savings and assets and they are fundamentally part of relationships then for that reason the law should impinge and regulate. (Madge)

Madge's reasoning for law being involved in people's relationships – that it is necessary to have rules about money, property and economy – highlights that legal recognition of relationships includes protective measures to prevent individuals being harmed financially as well as emotionally if a relationship breaks down. So Madge displays a 'with the law' legal consciousness in that she believes legal regulation is the best way to protect financial interests in relationships, and she also hints at the need for law to regulate and tax higher earners. But 'against the law' legal consciousness is also evident in Madge's account:

Marriage law doesn't say you have to live together, marriage law doesn't say you have to organize your finances in a particular way it, it is suggestive of particular forms of organization but you can resist that. But I think the problem is that the law becomes to be seen, y'know, in order to get married you should be living together, you should be monogamous, you should conform to these particular sets of norms which in many ways have got nothing to do with marriage law as I understand it. (Madge)

So, for Madge, the more insidious effects of legal recognition, those related to the normalization of relationships, can and should be resisted. Rather than same-sex marriage or civil partnership necessarily involving assimilation or normalization of same-sex relationships into heteronormative ways of living, or resulting in what Kay called the 'creeping suburbanization' of lesbians and gay men, the introduction of the legal recognition of same-sex relationships could also leave room for wider transformative effects in society.

Conclusion

Whilst the issue of lesbian and gay relationship recognition is one that has been the subject of an exponential increase in academic attention in recent years, much of this literature has been concerned with arguing for the recognition of same-sex relationships (e.g. Calhoun, 2000; Eskridge, 2002; Kitinger and Wilkinson, 2004), or academic commentary highlighting the oppressive nature of the institution of marriage (e.g. Polikoff, 2003; Jeffreys, 2004). Much of this literature predates the introduction of civil partnership in the UK, and therefore the arguments conceive of same-sex marriage or civil partnership as an abstract possibility. The introduction of civil partnership into legal reality in the UK has, however, allowed for a different approach to this issue. In this article, I have argued that perspectives from lesbians and gay men on the introduction of civil partnership highlight two complex tensions in the legal recognition of same-sex relationships. First, that civil partnership can be seen as a technique of governance, allowing the state to increase regulation of lesbian and gay lives; and second, that the conceptualization of civil partnership as an 'equality' measure conceals tensions in the ways that (in)equality is understood by lesbians and gay men.

In the first section of the analysis, I exposed the ways that the introduction of civil partnership can be thought of as a technique of governance. The utilization of a 'legal consciousness' standpoint demonstrated that legal recognition is capable of being conceived as an increase in regulation of lesbian and gay lives, one that can work to position lesbians and gay men as 'against the law', even as it seeks to include lesbians and gay men within the law through legal recognition. This increased regulation has resulted in the introduction of civil partnership being experienced by some lesbians and gay men as having a negative impact, reflecting the concerns of feminist scholars about arguing for 'gay marriage' (e.g. Cossman, 2002; Young and Boyd, 2006). In this analysis, I highlighted three aspects of this recognition/regulation dyad which were experienced as problematic by these participants: the potential assimilationist tendencies of legal recognition, the prospect of increased regulation of

lesbian and gay lives, and the negative financial implications for those lesbians and gay men in receipt of state benefits.

The second section of the analysis exposed the contingency and complexity of the relationship between civil partnership and marriage. The primary tension in this relationship is the problematic way that 'equality' is embedded in the creation of civil partnership. The understandings of 'equality' in these lesbians and gay men's accounts highlighted the problematic of introducing an 'unequal' framework as an 'equality' move. The use of a legal consciousness analysis drew attention to the complexities of lesbian and gay experience of law and legal change, and the ways that individuals can experience legal change as both positive and negative, and the introduction of civil partnership as providing both equality and inequality.

In conclusion, these participants understood the introduction of civil partnership in complex and sometimes contradictory ways. Whilst all being generally in favour of the recognition of same-sex relationships, they also drew attention to the regulatory dimensions of civil partnership. Their perspectives remind us that there are problems associated with the introduction of civil partnership, especially for those at the lower end of the socio-economic scale. These participants also highlighted the difficulties that religion presents to the whole issue of the legal recognition of same-sex relationships. Finally, feminist objections to marriage and the privatization of economic responsibility were also evident in these participants' accounts. As these participants' perspectives show, legal change impacts upon lesbians and gay men in different ways, depending on their personal circumstances, and people respond in different ways to the effects of law and power in their lives. Through strategies of resistance to the regulatory and disciplinary effects of marriage and civil partnership, and the legacy of different relationship forms within non-heterosexual communities, these participants also stressed that space can be created within the disciplinary mechanisms of power for resistance to the negative, assimilatory potential of civil partnership.

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Notes

1. Other reforms include: changes in adoption legislation allowing same-sex couples to adopt children jointly and to adopt the children of their civil

partner; the introduction of anti-discrimination protection in employment and the provision of goods, facilities and services; changes to sexual offences legislation, the repeal of the infamous section 28, and the incorporation of human rights protections into domestic law through the Human Rights Act 1998.

2. I use the term 'lesbian and gay' throughout this article, as although some of these interviewees were reluctant to claim a specifically 'lesbian' or 'gay' identity, the issues I am concerned with are those which form a part of the wider struggles for 'lesbian and gay' rights. An alternative (and possibly more inclusive) formulation of the people interviewed in this research could be 'non-heterosexual' people, but this term is problematic in a number of ways, not least in that it presents lesbian and gay sexuality as a negative identity category, rather than a positive one.
3. Civil partnership has been available in the UK since December 2005. None of the 10 interviewees had entered into a civil partnership at the time they were interviewed, though this option was available to them. Four of the interviewees were living with their partner in Scotland, and would therefore be automatically covered by the provisions relating to financial provision on the breakdown of cohabiting relationships introduced by the Family Law (Scotland) Act 2006. Interestingly, none of these participants mentioned this legislation, or noted that they had any specific rights and/or responsibilities as cohabitants.
4. The legal invisibility of lesbian and gay couples prior to the CPA had meant that they were treated as individuals for social security purposes while cohabiting different sex couples were assessed as financially interdependent. Paradoxically, this change to the benefits system for same-sex couples was therefore an 'equalizing' measure, bringing cohabiting same-sex couples into line with the way that cohabiting different sex couples are assessed for social security benefits.
5. In the Civil Partnership Act 2004, it is specifically stated that 'no religious service is to be used while the civil partnership registrar is officiating at the signing of a civil partnership document' (s. 2[5]) and that the place where civil partnership registration can take place 'must not be in religious premises' (s. 6[1][b]). This mirrors the language in the Marriage Act 1949 s. 45.
6. In English law there are two distinct ways of getting married; a heterosexual couple can choose to have either a religious marriage, with a religious ceremony (in a religious building), or a register office ceremony, officiated at by a registrar. See the Marriage Act 1949, Part II for regulations relating to Church of England marriage, and Part III for regulations concerning marriage by a registrar and by the customs of other religions.

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