

Sexualities

<http://sexualities.sagepub.com/>

Regulation, Resistance, Recognition

Jeffrey Weeks

Sexualities 2008 11: 787

DOI: 10.1177/1363460708096920

The online version of this article can be found at:

<http://sex.sagepub.com/content/11/6/787>

Published by:



<http://www.sagepublications.com>

Additional services and information for *Sexualities* can be found at:

Email Alerts: <http://sex.sagepub.com/cgi/alerts>

Subscriptions: <http://sex.sagepub.com/subscriptions>

Reprints: <http://www.sagepub.com/journalsReprints.nav>

Permissions: <http://www.sagepub.com/journalsPermissions.nav>

Citations: <http://sex.sagepub.com/content/11/6/787.refs.html>

Jeffrey Weeks

London South Bank University, UK

Regulation, Resistance, Recognition

Recognition or regulation?

Since Denmark pioneered the legal recognition of same-sex unions in 1989, most West European countries have followed suit, the majority since the Millennium. Five countries, including Canada and South Africa have recognized same-sex marriage. The only major western democracies without similar laws in place today are Italy, Greece, Ireland and the USA (Kollman, 2007; Descoutures et al., 2008).

This has been a major and unexpected transformation. In the 1970s, with the rise of gay liberation ideas across most western countries, but especially in the USA, few, whether inside or outside the movement, mentioned the possibility of same-sex marriage. It seemed beyond the horizon of possibility, intelligibility or even of desirability in the context of fierce lesbian and gay critiques of the family and heterosexual marriage. As late as the early 1990s, Denmark's initiative, and the parallel efforts to get the Hawaiian Supreme Court to recognize same-sex marriage in the USA, seemed almost quixotic. But by the turn of the Millennium it had become a key issue in the LGBT world, and apparently a priority for progressive governments (and a potent symbolic issue for conservative governments and movements) throughout western democracies. The issue surely signals two important, intertwined but separable shifts: shifting priorities within the LGBT world itself, and important changes within the national cultures that were clearly liberalizing their attitudes and laws. Kollman (2007) sees in these shifts an important political convergence, signalling the rise of a human rights oriented network of LGBT activists committed to the recognition of 'love rights', and of cross-national political elites educated in new rights discourses and prepared to seize the initiative, even in the absence of high profile campaigns. The recent legalization of same-sex marriage in Spain, for example, was pushed through by a modernizing Socialist government despite the lack of a mass agitation for it, and in the teeth of Church opposition.

Sexualities <http://sex.sagepub.com> Copyright © 2008 SAGE Publications
(London, Thousand Oaks, CA, New Delhi, Singapore and Washington DC)

Vol 11(6): 787–792 DOI: 10.1177/1363460708096920

On the surface at least there is something curious about a conjuncture where at times the political elite has seemed to be in advance of grass-roots activism. It feeds into anxieties, apparent in many queer and other critiques of same-sex unions/marriages, that they are complicit with heteronormative values and structures, or little more than adjustments to the imperatives of neo-liberalism, a new form of governance (and self-management) through which, in Rose's (1999) phrase, we are 'forced to be free'. The contributors to this special issue, in fact, take interestingly different positions on both the threat of assimilation and the role of neo-liberalism. There is, as Rosie Harding says in her article, an acute tension between recognition and regulation in the whole debate about the validity of same-sex relationships, and this is reflected in the arguments put forward in these contributions.

None unproblematically endorses the various existing manifestations of legal same-sex unions. None, either, totally renounces the justice of recognizing same-sex relationships, though they are all deeply sceptical of current forms of legal recognition. But there are important differences revealed in these articles that reflect wider debates. At stake are not simply disagreements over methodology or analysis, but real political divides about the nature, relevance, value and prospects for same-sex unions. I will not try to offer an archaeology of these divides, but rather I want to explore two key issues and the types of story circulating around them: stories about agency, and stories about the divergent national cultures in which same-sex unions are legitimized (or not). These lie at the heart of the tension between recognition and regulation.

Agency

When Brian Heaphy, Catherine Donovan and I were researching attitudes to the recognition of same-sex relationships in Britain in the mid-1990s (Weeks et al., 2001) we found a deep ambivalence in the lesbian and gay community. On the one hand there was a strong conviction that LGBT people should have the same right to relationship recognition as the heterosexual majority. On the other hand, there was a feeling of 'why should we want to ape' straights by settling into a heteronormative institution. This ambivalence continues to echo across most jurisdictions where legal unions have become possible: pleasure that it is now possible to get 'married'; anxiety that it posed possible limitations on lesbian and gay freedom of action through new normativities, especially as it has become clear that new forms of economic insecurity might follow as welfare systems began treating the same-sex couple as an entity, balancing the rights and obligations of marital status (see Harding's essay). This has structured the forms of LGBT activism for recognition.

In her article in this issue, Kandaswamy suggests that in the USA, where campaigns for same-sex marriage have been most energetic, they are essentially driven by a white, middle-class willingness to be accepted into a privileged and racist form of citizenship. Similarly in South Africa, support for civil unions, Bonthuys suggests, was driven by middle-class preoccupations which ignored the wider possibilities of more traditional indigenous patterns of relationship recognition. The picture offered in such arguments is of minority preoccupations that seized the policy agenda, and persuaded the political elite to act. Certainly, there are elements of this. Johnston illustrates the significance of the debates within the political class in France in the prelude to the enactment of the PACS around such abstruse issues (to pragmatic Anglo-Saxon ears) as 'filiation' and the threat to the 'symbolic order'. In Britain, it was the brilliant lobbying of the Labour government by the Stonewall gay rights group rather than mass mobilization of LGBT people that led to the passing of the Civil Partnership Act, and before that, equal adoption and fostering rights (Weeks, 2007).

This fits in with Kollman's (2007) argument that elite liberalization, influenced by transnational lobbying by groups such as ILGA – Europe played a critical role. Initiatives by the European Parliament and the Council of Europe, judgements of the European Court of Human Rights in favour of same-sex spousal rights, and the pressure for policy harmonization in the EU all played a role in preparing the way for the recognition of same-sex unions across Europe. There is similarly evidence that Canada was influenced by European changes in its move towards same-sex marriage (Kollman, 2007). All this suggests the importance of agency by campaigning groups and the political classes rather than grass-roots activism.

But another argument needs to be put. I have suggested elsewhere (Weeks, 2007) that a defining characteristic of the remaking of sexuality since the 1950s has been those everyday experiments that happen at a grass-roots, sub-political level, often at first outside and beyond the visibility of historians and sociologists. Surely what is striking about the current salience of same-sex relations is that it crept up on commentators and theorists unawares, stimulated above all by the AIDS crisis amongst gay men, and the concern over parental rights especially amongst lesbians. The felt need for same-sex relationship rights grew from the ground upwards. Governmental interventions, influenced as they were by skilful lobbying, were from this perspective a response to changing social realities, not an anticipation of them.

The contributions from Nicol and Smith, and from Smart, illustrate this argument nicely. Smart's work with lesbians and gays in Britain who had taken advantage of commitment ceremonies (prior to the enactment of the Civil Partnership Act) shows how the people she interviewed were

'saturated' with insights about the political nature of their decisions. The ceremonies themselves were the result of intense negotiation between partners and reflected different personal-political styles. The commitment ceremonies were, Smart suggests, forms of social movement activity which were about shaping the kinds of lifestyles the participants wished to endorse and progress.

We can see examples of the same grass-roots everyday experimentation in the article by Nicol and Smith about the USA and Canada. They suggest that the action of same-sex couples to create alternative forms of legality by getting married (in response to local mayors in California and New York unilaterally offering such a possibility in early 2004) created alternative forms of legality, drawing on the power of official law to sanction its subversion. Similarly, the initiative by the Metropolitan Community Church in Toronto in 2001 to offer same-sex marriage provoked a classic symbolic challenge to the status quo. In both examples, Nicol and Smith argue, participation by lesbians and gay men stemmed from the desire to assert the dignity, worth and equality of same-sex relationships – a profoundly political commitment.

Divergence

Whatever the common patterns and underlying trends, however, there are obvious disjunctions between different jurisdictions, which are a result of complexly divergent histories, cultures and political configurations. Each country has taken its own path, reflecting its own cultural bias and political balance (Waldijk, 2001a).

The PACS legislation in France, for instance, followed classic republican traditions by refusing to recognize the separate cultural identities of lesbians and gays (see Johnston). It allowed civil partnership arrangements for heterosexuals and homosexuals alike, and was clearly distinguished from marriage, whose legal status was not affected: the partners remained individualized, no new legal entity was created, and no challenge was offered to the permanence of sexual difference (the 'symbolic order') or the legitimacy of kin relations ('filiation'). It was opposed by conservatives of left and right, but has bedded down as a normalized and widely accepted reform, favoured by heterosexuals as much as by non-heterosexuals. In the Netherlands radical changes came about through what Waldijk (2001b) called the 'law of small changes', an incrementalism which fitted in easily with the tradition of pillarization that assumed the coexistence of different rights claims, and was committed to recognizing them. The legalization of same-sex civil partnerships and then of marriage in the early 2000s therefore seems a logical next step in the Netherlands' famous (if increasingly battered) liberalism.

The experience of the UK shows another variant. For a long time, it was classically hesitant in pursuing the legalization of same-sex partnerships – or indeed any liberalization of attitudes towards homosexuality. Yet within a very short period at the beginning of the new Millennium a bundle of legal reforms belatedly modernized British sexual law, culminating in the Civil Partnership Act in 2004. From notoriously in the 1950s having the most authoritarian legal regulation, and moral censure, of sexual unorthodoxy in the western world, by 2005 it had amongst the most liberal laws and attitudes. Yet the approach adopted by the Labour government by-passed many of the controversies that arose elsewhere. Instead of a principled debate about the merits of marriage, the UK simply reproduced marriage law wholesale but called it something else, thus avoiding much religious opposition. It was a classic case of ‘liberalization by stealth’, and a very British compromise (Weeks, 2008).

But it is the USA that has become the epicentre of controversy about the politics of same-sex marriage. As the most neo-liberal of cultures, it has also produced the most fervent and fundamentalist opposition amongst western democracies. As the society with the most affirmative LGBT identities and communities, it has also produced the most sustained criticisms of same-sex marriage from the heart of those communities. Kandaswamy’s article puts race, intertwined with class, at the heart of her sharply critical analysis of the centrality given to same-sex marriage by LGBT activists, arguing that they ignore the concerns of people of colour by making claims to racially constructed ideas of sexual respectability and upon the naturalization of a racially stratified welfare state (cf. Brandzel, 2005).

The USA, it is worth remembering, is also the most religious of western societies. That largely explains the degree of opposition to same-sex marriage from conservative Christians. It might also help explain the fervour with which LGBT activists in the USA stand out for full recognition of same-sex marriage, compared to the more secular British or Scandinavians. Where religion is in decline, the LGBT population seems likely to be satisfied with less than marriage, because marriage itself is less sanctified. In contrast, where religion traditions remain strong, as in Spain, it is more likely to strive for full marriage rights when same-sex unions are recognized.

The importance of being ordinary

Same-sex unions touch powerful chords in their national cultures, which is why the common strands of the LGBT world have to be knitted into local languages. The complexity of this is nicely illustrated in a quotation in Nicol and Smith’s article, from one of their interviewees, Lisa Jackson:

'It's validating that we can have a family, and that we can have the same traditional values that anyone else can have'. Here we have ample evidence to feed the fears of queer critics that what same sex-unions are all about is assimilation into the status quo ('the same traditional values'). But at a deeper level surely, what we see here is the wish for recognition for what you are and want to be, for validation, not absorption, a voting with our feet for the ordinary virtues of care, love, mutual responsibility. We should never underestimate the importance of being ordinary. It has helped transform the LGBT and the wider world.

References

- Brandzel, A. L. (2005) 'Queering Citizenship? Same-Sex Marriage and the State', *GLQ: A Journal of Lesbian and Gay Studies* 11(2): 171–204.
- Descoutures, V., Digoix, M., Fassin, E., Rault, W. (eds) (2008) *Marriages et Homosexualités dans le Monde*. Paris: Editions Autrement.
- Kollman, K. (2007) 'Same-Sex Unions: The Globalization of an Idea', *International Studies Quarterly* 51(2): 329–57.
- Rose, N. (1999) *Governing the Soul: The Shaping of the Private Self*. London and New York: Free Association Books.
- Waldijk, K. (2001a) 'Towards the Recognition of Same-Sex Partners in European Union Law: Expectations Based on Trends in National Law', in Wintemute and Andenæs (eds) *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law*, pp. 635–52. Oxford and Portland, OR: Hart Publishing.
- Waldijk, K. (2001b) 'Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands', in Wintemute and Andenæs (eds) *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law*, pp. 437–64. Oxford and Portland, OR: Hart Publishing.
- Weeks, J. (2007) *The World We Have Won: The Remaking of Erotic and Intimate Life since 1945*. London and New York: Routledge.
- Weeks, J. (2008) 'Le Partenariat Civil, Un Compromis tres British', in V. Descoutures, M. Digoix, E. Fassin and W. Rault (eds) *Marriages et Homosexualités dans le Monde*, pp. 45–61. Paris: Editions Autrement.
- Weeks, J., Heaphy, B. and Donovan, C. (2001) *Same Sex Intimacies: Families of Choice and other Life Experiments*. London: Routledge.

Biographical Note

Jeffrey Weeks is Emeritus Professor of Sociology and University Director of Research at London South Bank University, London, UK. *Address*: London South Bank University, 103 Borough Road, London, SE1 0AA. [email: weeksj@lsbu.ac.uk]