

Recognition and regulation of same-sex couples in the United Kingdom: an exploratory study of civil partnership.

Mike Thomas

School of Social Sciences, Cardiff University, Wales, UK

Email: ThomasMJ2@cardiff.ac.uk

Abstract

This paper offers an exploratory analysis of civil partnership as a form of legal recognition for lesbian and gay couples in the United Kingdom. Although presented by the UK Government as a matter of equality and fairness, civil partnership carries a number of apparently contradictory messages around control, discipline and the promotion of highly normative behaviours and attitudes.

A Foucauldian theoretical framework, drawing upon concepts of sexuality, governmentality, surveillance and the confessional, makes clear that civil partnership submits same-sex couples to unprecedented levels of state intervention and social scrutiny. This theoretical framework is applied to government documents and to data gathered through interviews with seventeen same-sex couples, offering an engagement between government objectives and couples' own motivation in seeking official recognition. Narrative analysis of interview data suggests that lesbian and gay couples are aware of the numerous and contradictory themes within civil partnership and are able to demonstrate both acceptance and resistance with regard to disciplinary discourses.

A Foucauldian policy critique combined with narrative analysis of qualitative data presents a highly nuanced examination of civil partnership as a form of social regulation, which implies moral responsibility as well as financial and legal entitlements. With the number of countries offering same-sex marriage and other forms of recognition increasing year on year, the findings of this research offer a timely and highly relevant assessment of a number of contradictory and unforeseen aspects of recognition as applied in the United Kingdom.

This research was carried out as part of ESRC-funded PhD studies in the School of Social Sciences at Cardiff University.

Introduction

This paper presents an analysis of civil partnership as a form of legal and social recognition available to lesbian and gay couples in the UK. Although civil partnership has been framed by the UK government as a matter of equality and fairness, this paper draws on a Foucauldian framework to highlight contradictory messages around control, discipline and heteronormativity.

Section 28 of the Local Government Act 1988 defined homosexuality as “a pretended family relationship.” This notorious piece of legislation gave a clear message to lesbian and gay couples and families that they were not considered part of mainstream society and did not qualify for particular aspects of citizenship.

Less than 20 years later there has been a complete reversal of government policy. The Civil Partnership Act 2004 offers positive recognition to lesbian and gay couples and extends a package of rights and responsibilities with regard to financial maintenance, taxation and benefits, family law, immigration and next of kin rights. These rights are more or less identical to those available to heterosexual couples in the UK through civil marriage.

The government has set out very ambitious policy goals for civil partnership. In sharp contrast to Section 28, civil partnership is seen as, “underlining the inherent value of same-sex relationships and supporting stable families.” Since becoming available in late 2005, some 34,000 couples have entered into civil partnerships. This level of take-up is above government forecasts, though numbers have been on a downward trend year on year since 2005.

Theoretical framework and methodology

My research has drawn upon a Foucauldian framework in developing a critical analysis of civil partnership as a policy intervention. In particular, Foucault's work on sexuality, discourse and discipline offer alternative perspectives on civil partnership and recognition for same-sex couples as an element of public policy.

Taking these in turn, the first volume of Foucault's *History of Sexuality* (19 presents a critique of modern notions of sexuality as a fixed identity. Foucault traces this discovery of homosexual identities back to the nineteenth century and sees this as a means of exercising control, through the criminalisation of homosexual acts and the promotion of heterosexual models of family life. This idea of sexuality as a form of oppression might appear incongruous in an era of lesbian and gay pride. But if we look at the history of criminalization and marginalization of LGBT people in the UK, this has been made possible by the framing of sexuality as a personal characteristic and a matter of legitimate government interest, recalling Foucault's work on governmentality.

Civil partnership means that same-sex couples have suddenly become both visible and identifiable. And in fact, civil partnership can be seen as a highly moral, normative instrument of public policy; it is intended for permanent relationships and civil partners are required to perform caring roles and to provide for each other financially.

Foucault also highlighted the role of discourse, or language practices, in cementing new truths and extending power into new areas of social life. In terms of civil

partnership, this new form of recognition can be seen as enabling a range of new discourses, or “regimes of truth” about what it is to be gay or lesbian in twenty-first century Britain. In policy terms, civil partnership defines what it means to be a good, caring, monogamous, financially independent same-sex couple. This of course leaves another important question unanswered in terms of the public policy response to the needs of same-sex couples and families who do not fit this model.

This leads on to Foucault’s exploration of the disciplinary society. Foucault suggests that the exercise of absolute, monarchical authority, with power over life and death, has become both impractical and untenable. Instead, Foucault conceives of a modern form of disciplinary power achieved through surveillance, or rather the possibility of surveillance. Foucault reasons that an awareness of being under the gaze of others is a sufficiently powerful tool of control as to instill self-discipline. In the contemporary context, this is perhaps most clearly illustrated by the role of CCTV in public spaces. The rationale for the presence of these cameras is that if people think they’re being watched, they will refrain from criminal activity. This of course is irrespective of whether or not they *are* being watched; it is the possibility of surveillance that instills discipline.

In terms of applying this disciplinary analysis, civil partnership can be seen as raising the visibility of same-sex couples to unprecedented levels. This visibility is created through the public ceremony and inclusion on official databases and is maintained by the mundane disclosure of one’s relationship status. This visibility is accompanied by clear moral messages about the conduct expected of same-sex civil partners. So same-sex couples are to be made more visible and subject to surveillance from others.

The moral characteristics of this new legal relationship suggest that although the state's response to homosexuality can no longer be expressed through physical punishment or medical intervention, the creation of state-sanctioned, 'acceptable' homosexual identities may serve to establish an equally powerful regime of control.

In terms of an application of this critique, I carried out in-depth, qualitative interviews with eighteen lesbian and gay couples in the UK during 2007 and 2008. One of these couples was about to have their civil partnership ceremony and all the other participants were already civil partners. My analysis followed Labov, 1972, in focusing on narratives and highlighting the meanings that couples themselves attached to their experience of civil partnership.

I now want to turn to apply these themes around regulation, discipline and control to the research data, drawn from in-depth qualitative interviews with same-sex couples. All of the couples were in civil partnerships apart from one, who were due to have their civil partnership the following week.

Extract 1

Bella: That was a funny experience. I thought it was hilarious, that whole thing about waiting. And also I felt really self-conscious about being in the waiting room. And because a lot of people were there to register births and deaths and marriages, I felt like I was the only gay person and then everyone can hear, you know, when you go up to the desk. I remember feeling really self-conscious. And it unleashed this stuff about, how open are we going to be.

Mary: And I felt a bit differently actually. I felt, wow, this is amazing that I can come into this place and say, you know, we'd like to (.) make an appointment about being civil partnered. I can pick up a brochure and say, look, there's a brochure about it, it

really is ok.

In this first extract, Bella and Mary are discussing their visit to the register office at the town hall to arrange their civil partnership. They present two very different narratives about being there as a same-sex couple. Although Bella recalls this experience as being hilarious, there is a clear sense of discomfort at being in the straight space of the register office; a feeling of difference and a sense of unease at a new and particular kind of visibility. Bella makes it clear that she feels a loss of control in disclosing her sexuality in this context and being marked out as different.

Mary responds with her own narrative that seems to be more positive about being in the register office. She seems to relish going into the register office as a lesbian woman and sees this as a form of empowerment. Mary's comment about the brochure is particularly interesting. In terms of Foucault's analysis of discourse, the brochure that Mary refers to can be seen as setting out a new truth; that same-sex couples can achieve formal recognition and a new social status. For Mary there appears to be a sense of legitimation here, and it is almost that the brochure is bringing same-sex couples into being in some way; as if this form of recognition extends them a kind of permission to exist. Recalling the moral aspects of civil partnership around the qualities that civil partners are required to display, this new regime of truth has clearly disciplinary overtones.

The moral aspect of these disciplinary overtones can be seen in this next narrative.

Extract 2

Peter: Most of our friends really are straight (.) men, straight women and we're completely open with them. And (..) the acceptance there is that I think we've broken the stereotypical model they had of a gay man or a gay couple.

Martin: I think so.

Peter: And what our friends have witnessed or have been getting to know over the years is that actually we're just like everybody else. At the end of the day, the fact that I'm waking up next to a man and not waking up next to a woman, you know, our activities are no different from anybody else.

Here, Peter is talking about the impact of his civil partnership within his largely heterosexual social network. Civil partnership appears to be a vehicle for tackling homophobic stereotypes around promiscuity. When Peter speaks of acceptance, this seems to be defined by conformity with particular norms. And in the context of civil partnership, these are straight norms. There is a particular implication here that acceptance is something that is earned by rejecting stereotypical behaviour- this is narrowing the definition of what it means to be a 'good' gay couple and this definition, these norms, appear to reflect Peter's own view of his relationship with his partner.

At the same time, he seems to express a desire to be seen as being like everyone else. This assimilation appears so total that Peter maintains that there is no difference between him and his partner's relationship and a straight relationship. This kind of erasing of the sexuality and the gayness of their relationship is once again a response to moral norms that appear to rule out sexual diversity and narrow the parameters of acceptable behaviour.

Whereas Peter accepts and appears to welcome inclusion within the mainstream, another couple in the research sample were much more critical of this aspect of civil partnership. Turning to the next extract,

Extract 3

Sue: It was quite an opportunity for some people, I think, to say 'I'm fine about it.'

Jane: To say 'we're not like that, we're really fine about it, we know about you and we're really OK about it.' Which was really, really quite lovely actually. People falling over themselves to be thrilled for us. Yes, you're really not so different from us, are you, really. And we're like, YES WE ARE. (laughs). We're really different. But you know, yeah. (...) It was lovely, really."

This extract really brings out the seductive nature of recognition and acceptance for couples who've been excluded and marginalised for so long. Here, Sue acknowledges that their civil partnership was an opportunity for affirmation. But Jane interrupts, apparently seeing a potentially negative side to this kind of affirmation, and appears quite critical of civil partnership.

Despite Jane's critique of apparently assimilationist aspects of civil partnership and the erasing or negating of the couple's lesbian identity, it is clear that the affirmation which civil partnership implies is seductive and hard to resist.

This is another key strand of civil partnership in terms of being drawn closer into the straight world. Although Sue and Jane appear to be aware of some of the identity risks associated with civil partnership, and are prepared to resist them, this kind of assimilatory process is clearly a powerful force.

And at the end of this extract, Jane appears to give in and concede that it was lovely to get this kind of affirmation from within their social network.

As I have implied, the disciplinary aspects of civil partnership extends to sexual behaviour. This last exchange betrays a number of apparently contradictory statements.

Extract 4

Mark: We just want to turn up on the day, get it done and over with, I mean, there's certain things we're not going to do on the day. We're not going to kiss on the day because of Joe's parents, because (.) you know,

Joe: I think my mother always knew, but initially (.) they, you know, they want me to be happy and [addressing Mark] they accept you. I think that's more us, probably out of respect for them, not wanting to do that. My parents are quite traditional and you don't talk about that, you know, that kind of aspect of the relationship. But I don't think, I don't think they'd be shocked by it at all.

Mark: Yeah.

Joe: And I don't think that comes into it, I think that's more us, probably out of respect.

Mark: Mmm. I just think (.) it would purely be the embarrassment factor.

Joe: Yeah.

Mark and Joe appear to have ruled out a kiss at the end of their ceremony, even a peck on the cheek, for fear of causing offence to others.

This exchange reveals that the taboo on lesbian and gay sexuality in the public sphere, even to the extent of showing physical affection, remains a powerful one. In this context, the couple's civil partnership ceremony is a social occasion that accommodates homophobia, reinforces heteronormativity and reminds the couple of their secondary status as gay men.

Joe and Mark appear to be aware of the limits of the acceptability of their sexuality. Even within the context of their civil partnership ceremony, physical contact that might betray sexuality is seen as disrespectful to others. This is perhaps hard to reconcile for Joe and Mark, talking about their big day, the affirmation that the ceremony will bring.

Here, there is no suggestion that this discipline is being imposed by others, for example Joe's parents are not calling the shots, or at least not explicitly. Indeed, Joe and Mark are using their understanding of acceptable conduct to restrict their own behaviour. They are therefore disciplining themselves; as of course same-sex couples often do in public spaces. This exchange recalls Foucault's understanding of the disciplinary society, where just being under the gaze of others is enough to provoke a disciplinary reaction, and that this is a particularly effective example of disciplinary power.

Conclusion

In conclusion, my research so far on civil partnership suggests that recognition for same-sex couples presents a number of ambiguities.

Although civil partnership has been presented as an instrument of equality and recognition, it is clear that civil partnership is equally a focal point for control and disciplinary behaviours. There are highly moral expectations about the roles and responsibilities attached to civil partnership in terms of caring, financial provision and the stability of relationships as a shorthand for monogamy.

These expectations are made clear to civil partners through government documents aimed specifically at lesbian and gay couples and are reiterated through the civil partnership ceremony, through the making of commitments witnessed by family and friends. This awareness of lesbian and gay couples' new status as civil partners is reinforced constantly in daily life through social interaction with colleagues, friends and family and in their dealings with public and commercial service providers.

Although offering a kind of recognition and social affirmation, couples in the research sample highlighted the process of entering into a civil partnership as an occasion that brought heteronormativity and homophobia to the fore. This suggests that recognition offers an uneasy, contested form of citizenship and that same-sex couples are only at the start of negotiating this process with the state, public and private service providers and within their social networks involving family, friends, work colleagues and others.