

In support of equal marriage: Why civil partnership is not enough

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IN DECEMBER 2005, THE NEW Civil Partnership Act came into force in Britain. For the first time, same-sex couples are now able, through registering their relationships with the state, to receive virtually all of the rights and benefits of civil marriage. Many individual lesbians and gay men, and activist groups such as Stonewall – which campaigned long and hard for this legislation – are understandably delighted. It is a giant step forward for lesbian and gay rights, making a huge practical difference in our ability to protect our loved ones, and marking the beginning of a new era of acceptance of non-heterosexuality.

But civil partnership is not enough. It is the result of a painful compromise between genuine equality and no rights at all – a fall-back solution which acknowledges that we're entitled to rights, but which continues to withhold the symbolically-charged name of marriage itself. We are committed to equal access to marriage itself for same-sex couples.

Our conviction that only equal access to marriage is good enough is based, in part, on our own experience of marriage and the opportunity we have had to make international comparisons. When Sue was based in Canada for two years during the period that same-sex marriage became legally available there (first in Ontario and British Columbia, then across other provinces and territories, eventually culminating in full federal recognition), we got married. This was largely for practical reasons, since Celia was living in the UK and we were trying to continue our relationship across international boundaries, with all the legal problems of immigration, health care provision, wills, power of attorney, and so on, entailed in this.

Marriage solved, in a 10-minute ceremony and at the cost of around \$200, what would otherwise have taken hours of solicitors' time and thousands of dollars to fix. Having married in Canada, we were outraged to find that our marriage is apparently unlikely to be recognised as legal in the UK. We are legally married in Canada. Any different-sex couple with a legal Canadian marriage has that marriage legally recognised in the UK. This is not equality.

During the initial period in which Celia shuttled between England and Canada to be with Sue, we were struck by the difference between LGBTQ campaigns in the two countries. The starkest difference was this: in Britain the introduction of civil partnerships was widely hailed as a *victory*, whereas in Canada it would have been seen as a *defeat*. The campaigning platform in Canada was always equal marriage, and it was the right-wing and religious fundamentalist *opponents* of lesbian and gay rights who argued for civil partnerships as a compromise solution. It was truly extraordinary to hear, in Canada, conservative politicians and evangelical Christians arguing for the introduction of civil partnerships for same-sex couples (as a way to avoid granting us marriage rights).

Marriage may have seemed a step too far for Stonewall, but for Egale (its Canadian equivalent), it was the non-negotiable hallmark of true equality:

Any 'alternative status' that nonetheless provides for the same financial benefits as marriage in and of itself amounts to segregation. This case is about access to a deeply meaningful institution – it is about equal participation in the activity, expression, security and integrity of marriage. Any 'alternative' to marriage,

in my opinion, simply offers the insult of formal equivalency without the [Canadian Charter's] promise of substantive equality. (Justice LaForme's landmark Ontario decision, quoted in Egale (n.d.).)

While Stonewall limited its campaigns to a call for equal citizenship, Egale campaigned for equal human rights. In seeking equal marriage, rather than registered civil partnerships, it drew explicit and powerful comparisons with other forms of social injustice, such the bans on inter-racial marriage in the southern US states, or the prohibition of marriages between 'Aryans' and 'non-Aryans' in Nazi Germany:

Registered partnerships are no substitute for equal marriage. Imagine if the federal government prohibited interracial couples or Jewish couples from marrying, but said we'll let you register your partnership instead. The very idea is offensive and demeaning. (Egale, 2003)

Civil partnerships are an enormous advance for same-sex couples, but they represent a compromise solution. We think that Stonewall underestimated the sea-change in recognition of LGBTQ rights underway across the world. Same-sex marriage is now legal not only in Canada but in several European countries (Belgium, the Netherlands and Spain, with Switzerland and Sweden currently considering new legislation), and in the US state of Massachusetts. Recent opinion polls suggest that in countries where same-sex marriage is already legal (Canada, Spain), it is supported by a majority of the population, especially younger people; and even in the US, around a quarter of the population are now reportedly in favour, according to three different surveys conducted in 2005 (www.glaad.org/media/newsops_detail.php?id=3800). The first African country (South Africa) will introduce equal marriage legislation in 2006, and there are reports that the first Asian country (Taiwan) may also be moving in this direction. Overseas same-sex couples legally married in Canada are now seeking recogni-

tion of their marriages in their home countries across the world. Our own case is matched by cases in Ireland, Israel and Hong Kong (see list of web references below). In the international context of increasing recognition of same sex marriage, Britain's (belated) decision to introduce civil partnership legislation (and – unlike, for example, France and New Zealand – to restrict it to same-sex couples only) is too little, too late.

The arguments in favour of equal marriage in South Africa – a country with a long history of racial discrimination – are particularly instructive. In July 2004 the Lesbian and Gay Equality Project filed an application in the Johannesburg High Court challenging the laws that prevent two people of the same sex from entering into a legally recognised marriage, and in November 2004 the South African Supreme Court of Appeal declared that the common law definition of marriage must be changed to include partners of the same sex. The government appealed, but in December 2005 the Constitutional Court ruled in favour of marriage equality and gave parliament one year to make the necessary legislative changes. Black lesbian activists, including Wendy Isaack, Coordinator of the Legal Advice Centre of the Lesbian and Gay Equality Project in Johannesburg (see Isaack, 2005) make explicit links between the racist oppression of the segregationist apartheid policy and the heterosexist oppression of the segregationist civil partnership policy:

this 'separate but "equal"' approach to same sex marriage will not fulfil our obligation to full equality for lesbian and gay people in South Africa. [...] Apartheid was pinned on the notion of "separate development" [...] A deceptive discourse was created around all races being "separate but equal" [...] Keeping same-sex relationships institutionally separate only serves to perpetuate discrimination and segregation and needs to be eradicated from our democracy. (Judge & Vilakazi, 2004)

Our arguments in support of equal marriage are not so much pro-marriage as pro-equality. We are – of course – well aware of feminist and LGBTQ critiques of the institution of marriage (see, most recently, Finlay, Clarke & Wilkinson, 2003; Clarke, Finlay & Wilkinson, 2004); and we have written elsewhere (Kitzinger & Wilkinson, 2004) of our reservations about increased state regulation of our relationships and continued prioritising of presumed-sexual relationships over other models of human caring. However, we have also pointed out that such arguments apply equally to civil partnerships as to marriage. And when marriage is universally understood as the key social imprimatur of the couple relationship, it is fundamentally unjust to introduce a parallel system of relationship recognition for same-sex couples. Whatever we think of marriage, access to it is a fundamental issue of equality. As long as marriage is open only to heterosexuals, and civil partnerships only to lesbians and gay men, the British government is maintaining a symbolic separation of straights and gays, and sending out the clear message that our relationships are of less value to society than heterosexual ones. This is insulting, demeaning, and profoundly discriminatory: an affront to social justice and human rights. The Green Party, the first UK political party to support the campaign for gay civil marriage, calls for an end to ‘sexual apartheid’ (www.pinkuk.com/community/newsArticle.asp?id=66). And Peter Tatchell, leading gay human rights campaigner and founder of OutRage!, says:

The Civil Partnership Bill creates a form of sexual apartheid, with one law for heterosexuals and another for gays. Same-sex couples are excluded from marriage and opposite-sex partners are excluded from civil partnerships. This is not equality. It reinforces and perpetuates discrimination. (Tatchell, 2005)

What is the way forward? With the support of Liberty (2005) and OutRage! (2005), we have applied to the High Court for a declaration of the validity of our marriage in

Britain. The case will be heard in June 2006. It is an important test case for equal marriage. Our lawyers will argue that any failure to recognise our marriage – as a marriage – is a breach of our human rights under Articles 8 (right to respect for private and family life), 12 (right to marry) and 14 (prohibition of discrimination), taken together with Article 8 and/or 12, of the European Convention on Human Rights, which is incorporated into domestic law by the Human Rights Act 1998.

The social change in progress is not just legislative, but represents a major shift in public opinion and social attitudes. Media coverage of our case has been overwhelmingly positive (see our webpages – which will be regularly updated – for a selection of articles) and we have been heartened, and often moved, by the letters and e-mails of support and thanks we have received from lesbians and gay men across the country (and beyond). A 70-year-old gay man wrote about the difference it would have made if he had been able to marry his life partner of 50 years, while a 20-something lesbian planning a civil partnership told us how upset she was that her parents did not understand its significance, and saw it (at best) as ‘a substitute for the real thing’. We have been stunned by the change in attitudes even in the seven years since we were involved in setting up the BPS Lesbian and Gay Psychology Section, and received a substantial amount of hate mail (see Wilkinson, 1999); and for Celia, who came out as lesbian in the early 1970s (see Kitzinger, 2004), this sea-change is extraordinary.

We would like to see the British government build on the achievement of civil partnership in three ways:

1. Extend civil partnerships to different-sex couples who are seeking legal recognition of and protection for their relationships, but who (for whatever reason) do not want to get married. Civil partnerships are open to both same-sex and different-sex couples in France and in New Zealand.

2. Extend marriage to same-sex couples, as a basic principle of equality.
3. Continue to develop social policies and legal frameworks to support other kinds of committed and caring relationships that don't depend either on presumed-sexual relationships, or on presumed-exclusive coupledness.

The feminist and LGBTQ communities are well-placed to take the lead in offering new visions of relating, and in proposing new social structures to support the relationships we envisage - among them, equal marriage.

References

Same-sex marriage cases in:

UK (our own case):

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www.york.ac.uk/depts/soci/s_kitz.html

Ireland:

www.gaycitynews.com/gcn_346/firstroundwin.html

Israel:

www.samesexmarriage.ca/advocacy/rdeb070505.htm

Hong Kong:

www.fridae.com/newsfeatures/article.php?articleid=1288&viewarticle=1

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