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The experience of civil partnership dissolution: *not* 'just like divorce'

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Abstract

Between 2012 and 2014 I interviewed some of the earliest civil partners to dissolve their partnerships about their experience of dissolution. When I presented my findings, most family lawyers responded that dissolution was 'pretty much like divorce'. And so it was, in many respects; but I thought that such comments missed an important difference. This article focuses on the legal understandings of gays and lesbians who have undergone dissolution of their civil partnerships and on their experiences of it. This seemed to me significant for three reasons. First, the experiences of lesbians and gay men have historically been marginalised, pathologised or absent from legal accounts and the dominant legal consciousness. In this research they would be put centre-stage. Second, the institution of civil partnership – transient though it may turn out to be – deserves study as the point of entry into legal recognition and regulation of same-sex couples' relationships in the UK. And, third, it is this precise history that makes it *different from marriage*, and dissolution *different from divorce*, whatever the similarities in legal treatment.

Key words: dissolution; civil partnerships; lesbians; gay men; marriage; property.

In 'Marriage and the data on same-sex couples', Robert Leckey noted how little scholarship had addressed the issue of 'how well the financial frameworks governing marriage and divorce might serve the catchment group of same-sex couples to whom they are henceforth available' (Leckey, 2013, p.179). He pointed out that, while some of the relevant rules governed the union while it subsisted, others only came into effect on its breakdown, and that '[d]ivorce law allocates property in ways other than the parties would do consensually' (pp.180, 187). The present article goes some way towards filling this gap in the data by examining the hypothesis that, in the general enthusiasm for the Civil Partnership Act 2004, many lesbians and gays who availed themselves of their new equality with heterosexuals would fail to understand what legal regulation might mean

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and would be taken aback by the experience of dissolution, particularly but not solely because of what happened to their property.

Before family lawyers rush to tell me that most couples are taken aback by the divorce process, and that same-sex couples are no different from opposite-sex couples in this respect, I wish to clarify this article's approach. When I embarked on the research I started from the assumption that the experience *would* be different for same-sex couples because of their very different socio-legal history and context. As I was to find, this was not entirely the case; but insofar as the reactions of some former civil partners were similar to those of many divorcees, this in itself seemed to me to bear investigation. So this article, and the study on which it is based, proceeds *not* from the idea that heterosexual experience is the norm against which all other experience should be measured, but from the perspective of my lesbian and gay interviewees, for whom the 'norm' might have been – and often (but not always) was – quite different.

The danger of reading lesbian and gay experience against that of opposite-sex couples is that it gets subsumed into heterosexual norms. Instead of seeing what might have been *different* for gays and lesbians, one only sees what is similar to the dominant group. The differences are minimised until they cease to exist; they certainly cease to be important or noteworthy. There is a considerable literature on the idea that 'domestication' of this sort was one of the aims, as well as one of the effects, of legislation effecting civil partnerships/unions and same-sex marriage across the western world (e.g. Stychin, 2003).

Being subsumed into the dominant norm is the common trajectory when marginalised groups are absorbed into mainstream. It is a drawback of equality measures intended to extend privileges to those formerly excluded that the world view and standard against which new entrants are judged remain those of the original, dominant, group. It is also characteristic that those norms are so engrained in the psychology of the dominant group as to render alternatives invisible or impossible to conceive. To this must be added the fact that most research on lesbians and gay men has been consigned to the 'sexuality' domain and, until recently, absent from consideration by most family lawyers – since gays and lesbians were deemed, by legislation and policy, not to constitute real families (indeed, section 28 of the Local Government Act 1988 actually used the words 'pretend families'). Legal discussions of gay life were in the past more likely to appear in the pages of a criminal law textbook than a family law one. Lesbians were never mentioned, of course. What this means is that only those who have specialised in 'sexuality' studies or who have personal experience of life before liberal

acceptance are likely to understand the different ways of being and relating that were developed by lesbians and gay men in the long centuries of invisibility, illegality, or simple non-legitimacy before the liberal turn of the twenty-first century.

These alternative ways have been documented in sociological studies in both the UK and the US. Notable among British sources was the study by Weeks, Heaphy and Donovan, *Same-sex intimacies: Families of choice and other life experiments* (2001), which celebrated the 'new narratives of intimate relationships' (p. 15) enjoyed by gays and lesbians before legal regulation of their relationships became possible.

The history of the past generation has been one of resistance and agency, in which the marginalised have sought to create viable ways of life within their specific circumstances, drawing on the communities of meaning in which they are involved, and rejecting, implicitly or, increasingly, explicitly, the heterosexual assumption (p.43).

When these authors asked respondents whether they were in favour of same-sex marriage, many rejected the idea as too 'heterosexual'. One of the men said: 'to me the whole basis of lesbian and gay relationships is different from heterosexual relationships.... And trying to tailor heterosexual laws and understandings towards gay relationships is bound to fail' (Weeks, Heaphy and Donovan 1999, p.46).

Another important study was Gillian Dunne's *Lesbian lifestyles: Women's work and the politics of sexuality*, which found that lesbian couples consciously worked towards 'equality' in their relationships and rejected gendered roles such as breadwinner and dependant, even where children were present (1997, p.180). 53 of her 60 respondents said that the main way that their relationships differed from heterosexual ones was that it was 'more equal' (p.181).

At the same time there is evidence that these claims of difference were perhaps more aspirational than actual (Heaphy, 2008, para.3.4) or less a matter of ideological conviction than of practical necessity. Christopher Carrington, for example, in his survey of Californian lesbian and gay partnerships noted that most couples were childless and in paid work, and thus more likely to be able to share economic and domestic responsibilities (1999, p.193). Robert Leckey notes research indicating that male same-sex couples with children tend to revert to conventional breadwinner/dependant roles (Leckey, 2014, p.11). This fits with my own impression that the men I interviewed were largely untouched by feminist critiques of the family (such as Barrett and McIntosh, 1982), as indeed were some of the younger women (Auchmuty, 2015) – in other words, that anti-patriarchal ideology played little part in *their* decision-making about partnership roles.

It is nevertheless clear that, before their recent inclusion into heterosexual norms, many (especially older) lesbians and gays prided themselves on their differences from heterosexuals (Auchmuty, 2003). My research therefore captures a moment when these ideals of equality and autonomy were in danger of being destroyed, the price we pay for inclusion on the dominant group's terms.

Until my project, research on civil partnerships (and same-sex marriage) had tended to be framed in the discourses of equality and rights, the reasons why gays and lesbians had (or had not) embraced the new institutions and the psychological difference that legal recognition made (for example, Clarke, Burgoyne and Burns, 2007; Harding, 2006; Harding, 2008; Rolph and Peel, 2011; Shipman and Smart, 2007). Until my project, no one had studied dissolution, and indeed the above literature was often characterised by a reluctance to consider this aspect of the legal regulation of same-sex relationships and (in some cases) an over-casual and over-sanguine approach to both the institution *per se* and the imposition of legal rules on relationships hitherto outside its ambit. For instance, Heaphy, Smart and Einarsdottir (2013) refer to 'legal rights' and the 'technical distinction between civil partnership and marriage' (p.14) without ever explaining what they are.

This article, therefore, focuses on the legal understandings of gays and lesbians who have undergone dissolution of their civil partnerships, and on their experiences of the process. This seemed to me significant for three reasons. First, the lives of lesbians and gay men have historically been marginalised, pathologised or absent from legal accounts and the dominant legal consciousness. In this research they have been put centre-stage. Second, the institution of civil partnership – transient though it may turn out to be – deserves study as the point of entry into legal recognition and regulation of same-sex couples' relationships in the United Kingdom. And, third, it is this precise history that makes it *different from marriage*, and dissolution *different from divorce*, whatever the similarities in legal treatment.

After a description of the study, the article is structured in three parts. The first considers what participants understood at the point of registering their civil partnership, the second the dissolution process; the third offers a discussion and conclusions.

The study

The Civil Partnership Act 2004 came into force in December 2005. The Act grants to same-sex couples who register their partnership more or less the rights and responsibilities of marriage. By the end of 2013 there had been 66,730 registrations in

the UK, of which the majority (especially in the beginning) were male couples, although the gender balance has now been reversed (47% men, 53% women in 2013) (Office for National Statistics, 2015). Civil partnerships remain available but are declining in number, in part because of the enactment of the Marriage (Same Sex Couples) Act 2013 and the possibility, since December 2014, of converting a civil partnership into a same-sex marriage.

The Act provides for dissolution of a civil partnership according to principles which are the same as those for divorce, save for the absence of an adultery ground. The first dissolutions took place in 2007 and by the end of 2011 there had been 1,768 in the UK. A 20 per cent increase in 2012 accounted for 801 further dissolutions in England and Wales and 10 in Northern Ireland and another 20 per cent increase in 2013 for 974 in England and Wales and 10 in Northern Ireland (Office for National Statistics, 2015). Figures for Scotland for these last two years are not available. Women have always dissolved their civil partnerships at a higher rate than men; by the end of 2013, 4.5 per cent of male and 8.4 per cent of female civil partnerships had been dissolved (Office for National Statistics, 2015).

For the purposes of this study, I interviewed 19 people (whom I have referred to here as A to S) who had dissolved or were in the process of dissolving their civil partnerships. They were recruited from a wide range of sources, through solicitors and friends, gay and lesbian organisations and venues, websites, magazines and newsletters. Participants varied in age from 29 to 69. In this article, for simplicity's sake, I refer to those who were born before 1970 as 'older' and those born from 1970 onwards as 'younger': this is because I discerned different attitudes and expectations between the two groups, largely I suspect because of important social and legal changes that took place in the 1960s and 1970s such as the legalisation of gay sex between consenting adult men in 1967 and the Women's Liberation Movement's challenge to gender norms, leading to anti-discrimination and equality legislation in the 1970s. Participants came from all over England, from Eastbourne to Newcastle, with most in London (eight) and the Home Counties (six). All relationships had lasted for at least three years, and some for more than twenty.

Of the 19 interviewees, 14 were women and five were men. I had hoped to find more participants, especially men, but the pool of dissolved civil partners is still relatively small; and I quickly realised that, while people may be happy to talk about their civil partnership while the relationship is alive and well, they are less keen to share unhappy experiences with an academic researcher, even one who shares their sexuality.

On the gender disparity, there were several possible explanations. First, as we have seen, although more men have registered civil partnerships, more women have dissolved them, so one might expect a higher proportion of women to be in a position to talk to me. And the very fact that the proportion of women is higher suggests greater dissatisfaction among women than men with the way legal regulation, or their particular relationship, worked out. Indeed, gay men I approached for contacts repeatedly told me that all their friends were happily married or happily unmarried. There's a striking but unsurprising irony in the contrast between the huge publicity given to celebrity gay male couples who break up and my difficulty in finding any to participate (Allen and Parveen, 2012).

Second, my being a woman could well have accounted for women being more prepared to talk to me, and for my contacts to be greater among lesbians than gay men; perhaps a gay man would have had more success in finding male participants. A third reason could be women's recognised greater articulacy and ability to interrogate their feelings, and their greater interest in doing so for the benefit of others (which was how I advertised the project). I do regret not talking to more men because their expectations and experiences often seem to be different from women's, and this is borne out by statistical data showing, for instance, that men are much more likely than women to take up with a partner who is much older or younger (Ross, Gask and Berrington, 2011, p.7).

I interviewed each of the 19 participants between 2012 and 2014, face-to-face and individually, except for one who wanted to be interviewed with her current partner. Ethics approval was obtained and interviewees signed a consent form. The interviews were recorded and transcribed, all data being anonymised. The interviews were loosely structured and open-ended but I started each one by asking why the interviewee had entered into a civil partnership, as that gave insight into what they had understood about the legal and financial implications at the point of registration. I then explored the process of dissolution, how specific issues about property and children were resolved, and whether anything had come as a surprise. Throughout the study, my focus was less on the outcome – many interviewees were happier now than they had been in the relationship, however gruelling the experience of break-up and dissolution had been – than the process. These discussions quickly took me beyond my original hypothesis, as the ensuing pages will demonstrate.

Registration

The authors of a recent study of young civil partners suggest that, because couples generally live together for some time before formalising their relationships, 'it is less useful to begin with the notion of marriage as a key life transition, or to begin analyses of marriage by focusing on the decision to marry' (Heaphy, Smart and Einarsdottir, 2013, p.87). But of course this is only true if you do not think law makes much difference. Once you shift the focus to dissolution, the need to consider marriage as a 'key life transition' becomes clear. You need to find out what people have in mind when they decide to enter into a civil partnership and, in the case of those who mention legal protections (which for the study referred to above was a minority consideration, but which featured prominently in my own research), to drill down on precisely *what* legal protections participants believe they will obtain from formalising their relationship. This is because dissolution is *all* about law, and if people have not noticed this aspect, or have misunderstood it, they may be very surprised by what happens when the relationship ends.

Public recognition: equality

It is significant that the first reason participants gave for registering a civil partnership was 'public recognition'. This, I found, has two meanings for same-sex couples. For older participants, who had lived through the greatest shifts in public opinion, entering into a civil partnership represented the achievement of 'equality with heterosexuals', as A put it. They were acutely aware of the historical significance of the legislation and wanted to make a public stand: F, for example, who registered her civil partnership on the very day the Act came into force, did so as a matter of 'principle'. C said, 'the ritual was very important and I did want to sign the piece of paper. I did want my relationship in the history books', while E explained that one motivation was 'to show the government through statistics, that lesbian people do form relationships. [...] I wanted to be counted'. Linked to this was a wish to be seen as a role model for others. '[W]e wanted to, I suppose, set like some kind of example,' said D.

Let us pause to consider these findings, which present the clearest evidence that the primary reason this group of individuals entered into a civil partnership was *unique* to gays and lesbians (and therefore different from the reasons heterosexuals give for entering into marriage). So acceptable and 'normal' have same-sex relationships become today, at least in liberal and official circles, that we need to remind ourselves that it was only in 1967 that sexual acts between consenting male adults in private were decriminalised (Sexual Offences Act 1967); only in 2000 that the age of consent was equalised (Sexual Offences (Amendment) Act 2000); only in 2003 that the notorious

Section 28 of the Local Government Act 1988, banning the ‘promotion’ of homosexuality in schools and public services, was repealed in England and Wales (in Scotland it was earlier, 2000); and only in 2007 that discrimination against gays and lesbians in the provision of services made unlawful, under the Equality Act (Sexual Orientation) Regulations. This transition from *criminalisation* to *legal protection* took place within the lifetimes of my older interviewees, and from *permissible discrimination* to *equal treatment* within those of the younger ones. For them, civil partnership (even if they equated it with marriage, as many did) had *an extra layer of meaning*; for those who did not equate it with marriage, it is fair to say that it had *a totally different meaning*. To fail to recognise this and to imagine that civil partnership was just the same as marriage for heterosexuals is to ignore the long and brutal history of the law’s treatment of lesbians and gay men.

Public recognition: commitment

The second meaning of ‘public recognition’ is the public demonstration of commitment in *this* relationship. ‘When your partnership is witnessed by 40 people, with all the vows and promises, I mean, it does change things,’ said C. ‘It did make me feel a little bit more ... validated.’ While this is also a defining feature of heterosexual marriage, for gays and lesbians it has a special significance, for they have endured decades of non-acceptance and invisibility. G wanted her same-sex relationship to be accepted as ‘legitimate [...] to be recognised’.

Earlier studies of civil partnerships found that *family acceptance* (often encouraged or demonstrated by public recognition) was an important impetus for registration (e.g. Shipman and Smart, 2007, para. 4.8). In my sample, however, family was usually out of the picture (dead or estranged) or (especially where younger participants were concerned) already totally supportive, as Heaphy, Smart and Einarsdottir also found in their 2013 study of younger couples (p.82). The fact that it was this group who found greatest acceptance demonstrates the shift in attitudes that the Civil Partnership Act itself evidenced and helped to further.

The next step

Several participants saw registration as the logical ‘next step’ in the relationship. This idea was also conceptualised in two distinct fashions. The first group embraced civil partnership as the *next step* because legal recognition had not been available before, and now ‘we could do it’ (P). B had never considered the possibility of marriage; ‘and then, all of a sudden, it became legal, and people started getting married around us and I was like, oh my God, this is really happening!’ Those who had been with their partner for 10

or 20 years saw registering a civil partnership as just formalising an existing relationship: 'It was simply tying the knot with what was already existing' (E).

The other group, mostly younger, spoke of 'the natural progression of things' (H) in a sense that had more in common with traditional heterosexual understandings about relationship trajectories. K, for instance, was keen to have a baby, but wanted 'to get married before we had a child of our own'. Of course 'natural progressions' are not natural at all, but driven by social norms. Peer pressure and the desire to conform played a role in several interviewees' decision to register a civil partnership. Q said that all her friends were registering and kept asking her when she and her partner were planning to 'tie the knot'. For B, 'it became like well, you know, we're in love, it's just ...'

Interviewer: 'It's what people do?'

Interviewee: 'Yeah.'

Interviewer: 'And were your friends doing it as well?'

Interviewee: 'Em, it was amazing how many people did it. Even [...] now, there's been a whole bunch of people I know who've just got engaged.'

That this view is common among younger lesbians and gays was confirmed by Heaphy, Smart and Einarsson (2013, p.93) who found that about half of their sample of 100 young couples saw entering into a civil partnership as a 'natural progression' in their relationship. It is noteworthy too, as both these authors and I found, that this younger group almost uniformly embraced the language of marriage, speaking of wife/husband, wedding, and so on (ibid, p.42), while the older participants generally avoided it.

What marks the one group out from the other was that most of those who viewed civil partnership as a new legal opportunity did not see registration as effecting any essential change in the relationship, while those who saw it as the next stage in their relationship did, often investing the institution with transformative power. B, an example of the latter, declared that 'marriage does change things, marriage changes everything, and actually' (even though her 'marriage' failed), 'I think it does change things for the better'.

For the older group, however, their failure to recognise the difference that entering into a civil partnership made led to much greater disillusionment on dissolution. As A explained, 'after nineteen years in a relationship, you kind of think that nothing's going to change'. There are of course many heterosexuals who imagine that marriage will make no difference to their longstanding relationship, and are subsequently rudely surprised, but this finding in my study, taken in conjunction with 'public recognition' as a prime motivation, suggests that some of my interviewees did

not simply overlook the fact that they were effectively getting married in their joy and delight at achieving legal equality. They actually failed to appreciate that this was what entering into a civil partnership *meant*.

Ruth Gaffney-Rhys notes in an article about extending the civil partnership status to heterosexuals that part of its attraction for (some) heterosexuals is that they ‘may *perceive* marriage and civil partnership to be more diverse than they actually are’ (Gaffney-Rhys, 2014, p.176). My study suggests that this was true for some gays and lesbians, too, especially in the early years of the institution.

Love

In their study of young same-sex couples who had registered civil partnerships, Heaphy, Smart and Einarsdottir found (as did Shipman and Smart in their 2007 study) that ‘decisions to marry were most often cast in the language of love and confirming commitment, with legal rights often a secondary – or in some cases a relatively insignificant consideration’ (2013, p.13). With my sample of both older and younger people, however, commitment and love were downplayed (perhaps unsurprisingly since their relationships had ended). Only one person (R, a man aged 41) gave them as the main reason for registering his own civil partnership; he said, ‘I did feel a kind of lifelong commitment, but I did see it, like most people, as a little piece of paper saying “I love you” really, without the implications’. For others, love was almost incidental, as in ‘we were in love, and also, it wasn’t [...] too long after [...] civil partnerships became available, and we thought it was a [...] good thing’ (D). For older civil partners, motivations for registration of a civil partnership appeared to be more practical than romantic. N emphasised that it was pension rights that prompted the decision rather than ‘Oh, I really love you’.

More significant than simple ‘love’ in my sample was *the desire to please a partner*. Heaphy, Smart and Einarsdottir observed that individuals within a relationship might have different attitudes to registering a civil partnership, with one very keen and the other indifferent or reluctant (2013, p.95). I found this too. A pragmatic reason, such as to allow a foreign national to stay in the UK, was difficult for a partner to resist (‘it forces you to make a decision before you’re ready,’ S admitted); so too was pressure from an older partner with children to provide for, as O found. But even where there was no real pressure, pleasing a partner could provide a powerful incentive to marry. G was aware that her partner had lost her parents and that, for her, the civil partnership made her part of G’s family and created a new one with G. H had been married before and was far from starry-eyed about the institution, but she proposed to her partner ‘because I

thought that would make her happy'. J said yes to her partner for the same reason. These are demonstrations of love, but they also suggest that these interviewees wanted to distance themselves (at least in retrospect) from any notion that they had been blinded by emotion.

Legal and financial protections

Almost all interviewees mentioned that an important motive for registering a civil partnership was to avail themselves of the legal and/or financial protections of marriage. This finding is testimony not only to the specific practical considerations mentioned above but also to a shared understanding that marriage and civil partnerships are *generally* protective of couples' rights. 'My judgement was, you know, we had a life together, we had houses together, we had wills that were connected ... Just getting civil partnered fixed a lot of issues – fixed the houses, the pensions,' explained F. With older participants like F, these comments were underpinned by a consciousness of the historical lack of protection for gays and lesbians in relationships, much publicised by lobbyists like Stonewall in the run-up to the legislation. Older participants were also, of course, more likely to have property or children to protect and to be more concerned about decision-making in hospital or old age. A believed she needed to protect her rights in hospital or going into an 'old folks' home' and her finances when she or her partner died. B, who was from another jurisdiction, was conscious that England had no 'common law marriage' rights as her own country did. '[I]f one of us died, we wanted rights [...] that trumped her family's', she told me. The oldest person I interviewed, N, was not worried about whether his relationship would be recognised in hospital: 'a fairly high percentage of male nurses are gay anyway,' he chuckled (his last two partners had been nurses). But P, who also worked in the health service, was not so sanguine. She had encountered several incidents of homophobia in her working life and believed that the legal force of the civil partnership was important for forcing health-care professionals to recognise same-sex relationships.

O, who had a sick partner from a Jehovah's Witness background, saw the civil partnership as giving her more 'standing if an operation did lead to her having to have a blood transfusion'. But her grasp of actual legal consequences was typically vague, and slipped quickly into financial matters: 'It was just kind of time to get legal situations with sick pay, possible pensions, things like that, so there was a lot of kind of legal ideas behind it'.

E, H, J, O, and P all mentioned reciprocal pension rights, even though the public-sector pensions they referred to will now all pay out to nominated unmarried

cohabitants, including same-sex. But only on a discretionary basis, and this was not sufficient for careful people like E:

It was primarily an economic decision. We wanted to be absolutely sure that we would get each other's pension contributions, which we weren't convinced about – our pension company said, we might give to a long-term partner and we might not.

Older pension schemes do not provide for common-law spouses of any sexuality, and for Q, who was in one of these, one reason for registering a civil partnership was to ensure that her partner got her pension if she died in service – which in her profession (the police force) was a real risk.

Immigration was mentioned specifically by one of the women and three of the men, who registered a civil partnership to allow a foreign national partner to stay in the country. I asked L whether he and his partner would have registered the partnership had that reason been absent: 'No, I don't think we would have done, certainly not then. Maybe things would have changed later on and we would have done it for different reasons, but I don't think we would have done it at that time, no.'

The wish to provide a stable home for children was the main motive for two of the younger women. K's partner had three children by two different fathers: 'let's give them a little bit of stability, so that's why we decided to do it'. There was also a plan for future children, with the feeling that children were better off in a family with clearly defined legal obligations and remedies.

Almost everyone, then, was motivated by an understanding that civil partnerships gave couples access to rights that were not available, or were less readily available, outside marriage. The pity of it, from a lawyer's perspective, was that they were so dreadfully vague about what those rights were. A and F, for instance, thought that the civil partnership would protect the careful financial arrangements they had made with their respective partners, only to find that the dissolution overrode them. Most participants did not realise that couples do not have to be married or in a civil partnership to enjoy many of the legal protections they sought in registration: the next-of-kin who decides your fate in the hospital, for instance, does not have to be a blood relative or legal partner. As A remarked ruefully, 'my lawyer explained to me that, actually, I didn't need to get married to have those things'.

Dissolution

I followed up my question about reasons for registering the civil partnership with one about why participants were dissolving or had dissolved it. This sometimes unleashed a

bitter narrative of relationship breakdown that took up most of the interview, even though I was not, strictly speaking, concerned with this. Of course one needs to know something of the cause of the breakdown in order to understand the dissolution process, but my real concern was to see whether (and, if so, how) interviewees distinguished the informal and the formal ending of the relationship and how they responded to the application of the law, which forced them to reframe their experience through the lens of the Civil Partnership Act 2004.

The reasons for relationship breakdown were not readily distinguishable from those of divorce. This very similarity caused heartache to those (older female interviewees in particular) who had expected same-sex unions to be stronger and same-sex partners more reasonable. Infidelity ranked high, as did mental health issues and substance abuse. Other reasons included disagreement about whether or not to have children, career divergence, and simply falling out of love. The reasons for dissolving the civil partnership were also similar to those we see in divorce. The impetus was either some cataclysmic event which finally tipped the scales of tolerance (this is particularly true where mental health issues or substance abuse were involved) or eventual acceptance that a bad situation was not going to be better (for example, a partner was not going to come back).

The grounds for dissolution of a civil partnership are similar to those for divorce. Applicants must demonstrate the irretrievable breakdown of the relationship – s.44 (1) Civil Partnership Act 2004 – in relation to one of several fact situations: unreasonable behaviour – s.44(3)(a); separation for two years with consent – s.44(3)(b); separation for five years without consent – s.44(3)(c); or desertion for two years – s.44(3)(d). The one difference between dissolution of a civil partnership and divorce is that adultery is not a ground for dissolution. This omission astonished several of the women interviewees: ‘I didn’t know I couldn’t sue for adultery – that surprised me, because I thought that was very unequal, given that heterosexual couples can’ (E). ‘I was just gobsmacked!’ (C). ‘I found that really shocking’ (O).

My earlier surmise that one of the reasons why adultery is not a ground for dissolution of a civil partnership is because gay men lobbied the government to leave it out (Auchmuty, 2007, p.95) was borne out by comments from male interviewees: ‘I did have a little chuckle about that actually [laughing], sort of a nod to the gay men’ (M). He explained that he and his civil partner had had an open relationship in the last three years of their marriage. ‘It’s not wrong. It’s ... we’ve agreed it, it’s perfectly normal ... in some straight relationships, but much more common in gays’. But several of the

women had broken up with their partners over whether or not to keep the relationship monogamous, my interviewees all preferring fidelity. After explaining the huge effort needed to make non-monogamy work, C declared: 'I'm too burnt out. I can't do it any more' (see Auchmuty, 2015).

Among the people I interviewed, only three went for two years' separation, and the consensus was that waiting took a lot of the rancour out of the process. By far the commonest ground invoked was unreasonable behaviour. Having to expose, even to exaggerate the unhappy dynamics of the relationship as it crumbled was one of the hardest aspects of the dissolution process, and many wondered why England could not have a genuinely 'no-fault' divorce. As M observed, 'we've got two adults [...] in a civil partnership who are both of sound mind and want to end it, but actually there has to be kind of some big scary story, if you like, to end it'.

While there seems no doubt that there *was* a great deal of what might be characterised as unreasonable behaviour in many of these relationship breakdowns (at least in the one-sided accounts I was getting), what struck many of my informants was the artificiality of much of the evidence adduced to support a claim on this ground. In several cases it seemed that the behaviour which allegedly made life with the petitioner impossible was just as 'constructed' as the adultery that needed to be 'proved' before the Divorce Reform Act 1969. N, for example, told me that his partner was so keen to dissolve the civil partnership that he was prepared to admit to being the guilty party. 'So he said, in his statement, that he'd been to gay saunas and been unfaithful there, which isn't true.' M, another man, allowed his partner to list actions 'some of which had some truth, and some of them just didn't'. He described the lies as 'a means to an end'. D's refusal to accept her partner's shift into polyamory led to the latter initiating dissolution proceedings on the grounds of D's unreasonable behaviour. The allegations against her included mental instability, infidelity, drunkenness in front of one of the children and physical threats. When D protested, her ex said her solicitor told her to write really terrible things!

These behaviours and reactions will be familiar to family lawyers with experience of divorcing parties, so often shocked not simply at the ways in which the fault-finding game is played but just by the fact that it still exists. The very novelty of the process for most gays and lesbians, however, throws this aspect of divorce into even sharper relief: those who had tried so hard and proclaimed so publicly that same-sex relationships would avoid the game-playing associated with heterosexual couples suddenly found themselves drawn into the very same games, for the very same reason.

Process

When considering dissolution, the first port of call for many interviewees was the internet. Today, if you Google 'civil partnership dissolution', the top sites will all be solicitors' firms touting for business. In the early days, however, there was very little information, so links were generally made through personal connections or gay and lesbian networks. A friend directed D to Citizens Advice, which was fortunate for her, as she had been prepared to leave with what she had when her partner threw her out of the house. Three interviewees independently found their way to the same lesbian solicitor, one who was very experienced in dissolutions and in the event enthusiastically praised by all three. A, who ended up going to court, also had a gay male barrister.

I was keen to find out the level of awareness of civil partnerships and the dissolution process displayed by non-specialist lawyers, six to seven years after the Act had come into force; and whether any interviewees had experienced homophobic reactions. O's experience covered the range. Not knowing where to start, she selected a high street solicitor's firm at random, whose 'rather snobby receptionist' told her it would not be worthwhile calling the solicitor down to speak to her: 'You know he charges £180 an hour'. O also sensed there was homophobia: 'as soon as you said "civil partnership" the attitude changed'. O then found another firm around the corner where her experience was the complete opposite. They offered a free consultation for half an hour, during which the woman solicitor explained exactly what she had to do and took her through all the paperwork. By this time the interview had gone long over the allotted time but the solicitor ended by saying that, if she did the work, it would cost £1,200, but if O did it herself, it would only cost £400 – and added that, if O needed help, she could have a phone consultation (which was cheaper than a face-to-face meeting). 'And the thing was,' O concluded, 'because she explained it all to me so clearly, [...] I didn't have to phone her at all. We did the whole thing.'

For some of the solicitors used by my interviewees this was clearly their first professional encounter with dissolution. E was unimpressed by hers, who kept referring to her as 'Mr' and made a lot of mistakes.

It was me, in the end, saying to her, 'No, you can't apply for the decree absolute until so much time has passed,' whereas she was saying, 'Oh, I can get that now'. 'No, you can't.' I'd been to Age Concern and downloaded the documents from them, so I knew what the process was as we were going through it.

At their first consultation, this solicitor told E that the forms were very complicated, and estimated the cost of her dissolution at £1,200. This persuaded E to employ her to do the

work. In the end, it cost twice that and E did not find the documents difficult at all. She ended up feeling she could have done it by herself more cheaply and efficiently.

Others, however, commented on the complexity and opacity of the paperwork. O, undertaking her own dissolution with the help of her new partner, revealed that they had to do a lot of Googling of the legal terminology and still found it difficult, even though, 'as teachers, we're used to a lot of jargon'. M was particularly critical of his dealings with court officials over the paperwork. He and his partner chose to deal directly with the court because the dissolution was amicable, there was no property and no children, and so there seemed no reason to waste money on a lawyer. 'But there was basically a form in kind of legal jargon [...], with a whole load of sections that weren't applicable, just crossed out and stamped'. He was surprised that 'they hadn't even gone to the process of actually we'll print you out a document that's just full and correct - we'll just use a standard one, photocopy it, and cross it out'. He added that there was no information about the process or how long it would take. 'I had to ring them and said, you know, "When can I expect ...?" "Oh, well, maybe three months, maybe six months, we don't know," all these sorts of things.' He was indignant that he was paying £400, and found the whole process offensive and patronising. 'I'm not a stupid person. I'm not a lawyer, but I'm not stupid, and [...] it wasn't an easy process at all.' He ended up getting into a row with the supervisor and, even allowing that the office was probably overworked and understaffed (as he freely acknowledged), concluded that 'it wasn't really the best service'.

Other interviewees viewed the cost of dissolution, even without legal fees, as exorbitant; it cost a great deal more, as one or two commented wryly, than registering the civil partnership in the first place (though somewhat less than acquiring British citizenship, as two others remarked). But for some the cost was irrelevant; they could not recall what they had paid, and B declared: 'I don't think I even cared. [...] I would have paid anything to end it.'

Property

Since there were no disputes over children in my sample (though children from earlier relationships were often present), I will pass over the arrangements made by participants for their welfare and also those for pets who, while legally 'property', are often fought over like children when couples break up. Property, however, deserves separate consideration since the ancillary relief provisions of the Civil Partnership Act represent perhaps the greatest change for same-sex couples whose relationships end. As Katherine Franke warned in the US context,

To be sure, marriage brings with it a bundle of rights and responsibilities, not to mention social respect and dignity, which many in the gay community yearn for deeply. But getting married also means living by the rules of marriage and divorce: ending a relationship will no longer be a privately negotiated affair.

Though pensions and other transfers were present in some settlements, the couple's home usually represented their most significant asset, so I focused on this in my interviews. Only five participants had lived in rented property. They were the ones who described the dissolution (not the break-up) as relatively painless, because there was no property to divide.

Eleven participants had owned their family homes jointly with their partner before the dissolution; indeed, those who had been in the relationship for many years, like E and F, had co-owned a series of properties. Tellingly, every one of them was able to say whether they had held the property as joint tenants or tenants in common (though they did not always remember the exact expression), bearing out my hypothesis that gays and lesbians, being hitherto outside the 'protection' of family law, were more likely to have made informed decisions about home ownership, in contrast to the heterosexual cohabitants studied by investigators like Barlow et al (2005), who imagined themselves protected by a common-law marriage status (p.28). F, H and K, for various reasons including inequality of contribution and the existence of children from a former relationship, had elected to have unequal shares under a tenancy in common. For them, then, any court's assumption of 'equal sharing' on dissolution would be misplaced. On the other hand, those who had chosen a beneficial joint tenancy had done so fully recognising its implications. Q, for example, brought considerably more equity to the home that she and her partner bought together, but opted for a joint tenancy to demonstrate 'integrity' and 'equality' in their relationship.

The home is not only the couple's largest financial asset, it is often the *only* asset with significant capital value. This meant that, in almost all cases, it had to be sold on dissolution. Some participants came to an amicable agreement about division and in other cases it was furiously contested. So far, so similar to divorce; but, while the problem for most divorcing couples is that they have usually never thought about what might happen if they break up, for wealthier interviewees such as A and F the problem was, rather, that they had made clear arrangements but had not realised that entering into a civil partnership would open them up for challenge on dissolution.

It goes without saying that the interviewees who were most disgruntled about their property division on dissolution were those with most property to lose. But even for them, the gripe was not so much that they had to share their wealth – they had

expected that – as that their ex-partner was able to take *more* than the parties had agreed in happier days. And there was no question, as there is with prenuptial agreements, of that agreement having been obtained under pressure, since the parties were not at that time entering into a contract (on the problems associated with prenuptial agreements, see Thompson, 2015). A, for example, who was self-employed, was angry because she had to relinquish the property intended to fund her retirement to an ex-partner already in possession of a good final salary pension. This meant she would have to go on working while her ex could retire comfortably.

D and R, on the other hand, each lived in property belonging to their partner, and they exemplified the kinds of people for whom family law is genuinely more protective than property law. D's partner owned several properties but D's name was on none of them. When they split up, she had been prepared just to walk away: 'I never thought. I was just, like, everything is hers – I have to go, that's it.' Then someone mentioned the possibility of financial relief, and she sought legal advice. Of all the participants in my study, D was the one who stood to gain most from the civil partnership legislation, for she would have had difficulty establishing an interest in the home. She grasped the philosophy behind the law: 'You're the one who's much better off. I need to start my life now again somewhere else. You, em, as the person who's decided you no longer want that contract in the same way, need to give me something to help me out.'

R's situation was more typical of the voluminous case law on implied trusts of the family home. R's story was that his partner had kept his name off the title of their flat by saying that he was 'not eligible', presumably because he was not British (which, of course, does not disqualify a person from ownership, but R did not know this). R paid money towards the mortgage which his partner called 'rent' and did substantial work on the flat: 'I was laying down oak flooring. I put up ceilings.' When they split up, had they not been in a civil partnership, he would have had a classic constructive trust claim of the 'excuse' variety (*Grant v Edwards* [1986] 2 All ER 426) and, had he had the means to pursue this, would certainly have been entitled to a share in the value of the flat based at the very least on his contributions 'in cash and in kind', as Lady Hale explained in *Stack v Dowden* [2007] 2 AC 432. As a dissolving civil partner, however, he was entitled to financial provision in family law, a much simpler and cheaper process.

Finally, as with many divorcing heterosexuals, some interviewees succeeded in clinging to their assets by persuading their ex-partners to settle for less than they might have been entitled to. S got away with a property division which seemed fair to him (he gave his younger, financially dependent ex-partner a house in the latter's home country

and paid off his gambling debts) but fell somewhat short of what the latter might have been awarded by a court. Legally knowledgeable himself, he told me that his great fear was that his ex 'would meet a gay family lawyer [...] who would say, "Hey, wow, let's go – let's demand 50 per cent of the pension, 50 per cent of the flat ...'

Discussion

The central hypothesis of my research was that couples who register a civil partnership might have an imperfect understanding of the legal consequences of doing so. Thus, while welcoming the fact that the institution gave them equal status with heterosexual couples and access to the legal and financial 'rights' and benefits of marriage, they might not fully grasp what this equality meant. Almost universally the participants in my study confirmed this hypothesis. 'I don't think I ever understood the dynamic of actually changing the status of the relationship,' A admitted. Why was this so?

Ignorance of the law

Several years ago I wrote, in an article on civil partnerships, 'Does anyone really understand this law?' (Auchmuty, 2007, p.94). It seems clear that many participants in my study did not, and for the very reasons I identified then. First, a major problem for couples who entered into a civil partnership soon after the legislation came into force was that there was so little information on dissolution. Campaigners were too busy celebrating the achievement of equality to take note of the detail of the law: Stonewall's advice booklet, 'Get Hitched! A Guide to Civil Partnerships' (2005) had exactly one line on dissolution. O noticed that there was a lot of information on the internet about divorce, but nothing on dissolution. This was true even of the government site: 'pages and pages on divorce ... civil partnerships, so little'. This deficiency, I suggest, was due not simply to the novelty of the institution but also to the marginal status of lesbians and gays in society and the tendency to subsume them into heterosexual norms.

Many commentators find nothing strange about this. As one reader observed about an earlier draft of this article, 'More neutrally put, there is nothing legal to say about dissolution except that it's pretty much like divorce.' This assessment nicely bears out my concerns about starting from the heterosexual norm. For a start, the law is *not* the same; the absence of an adultery ground for dissolution was a source of surprise and dismay to many of my interviewees. Further, saying that dissolution is 'pretty much like divorce' blurs the boundary between identical and non-identical treatment (how do I know that this provision applies to me?) in the same way that feminists identified in descriptions of 'men' in law. (Are we talking about women, too?) (See, for example, the

long line of ‘persons’ cases discussed in Sachs and Wilson, 1978.) It also establishes the second-class or after-thought status of the not-quite-included group. You never see ‘heterosexuals are to be treated just like homosexuals’. Finally, what about those civil partners who simply did not realise that civil partnership was so similar to marriage? It might not occur to them to look for details on dissolution under the heading of ‘divorce’. O told me how surprised her friends had been when she explained about hers. “Oh, do you have to have a divorce then?” they asked, as if the civil partnership didn’t matter, as if it was just a formality and [...] there was no legal [effect]’. And of course in those early days, as H noted, civil partnerships were so new that most participants knew no one else who had had a dissolution.

Second, a good deal of misinformation was circulating – and still circulates – about the legal significance of marriage itself, and many people, as we have seen, were vague about the precise implications of the ‘equality’ they were about to embrace. L, for example, said he had thought about the legal consequences of registering: ‘Obviously, you know that everything became joint,’ he said. As readers of this journal will know, this is quite wrong: community of property is not part of English law. L’s excuse for his recklessness in going ahead with only a partial grasp of the consequences was that the couple had no property to worry about: ‘if I’d owned a house, or had got 40 grand in the bank or something like that, then I’d have been a bit more cautious’. But many couples get together when they have nothing. By the time they break up years later, the financial situation may be quite different.

R thought, ‘I would just walk out with probably what I put into the place or just write everything off [...] I’m annoyed with myself for not doing enough research.’ K and her partner, with three children, made wills when they first lived together, even going so far as to include a trust for the children. But K did not know until I told her that registering the civil partnership invalidated those wills. Many married people do not know this, either; but I wonder how many of *them* will have gone to such lengths to regularise their legal affairs outside of marriage. Solicitor Richard Hogwood noted in 2007:

In the author’s experience, far more same-sex couples appear to have put in place wills than heterosexual couples, albeit this can prove to be something of a mixed blessing.... What many same- and opposite-sex couples are ignorant of, though, is the revocation of a Will upon marriage or registration of a civil partnership (unless a contrary intention is expressed in the Will) (Hogwood, 2007, p.302).

A third explanation is that some people recognised that legal regulation might have an impact but decided to go ahead anyway, either because they were convinced

they would never break up, or because the preparations for the event were so far advanced they did not feel they could alter their plans. These are of course experiences shared by heterosexuals (Baker and Emery, 1993). E was one of the former group: 'it didn't cross our minds at all'. And she was someone who had done considerable research in the field – but 'I was concentrating on the process for getting married'. J was an example of the latter. She told me that she looked up the dissolution process on the government website after she and her partner had a row three weeks before the wedding.

Back then, I'm thinking, well, is this the right thing to do, but it seemed too late not to do it. That seems a really bad reason for getting married, isn't it, but we had the venue booked, and everybody had bought their new clothes, and the invites had gone out ...

Perhaps the most striking illustration of someone who really believed she was well-informed about the law, yet still got caught out by dissolution, was F. She and her partner had been together for more than 20 years, had co-owned a series of homes and made wills providing for each other. Because they kept their finances separate and their financial circumstances had evolved differently, they made agreements about property and money, long before civil partnerships became legal, and got a lawyer to set these down in a form of cohabitation agreement.

The document that we'd written really was very clear. It was clear about paying for the mortgage, [...] how we [...] paid for things, how things were going to be separated, so it was a very good attempt by a lawyer at the time, when there were no legal rights, to get as close as we could to having an unbreakable agreement.

When civil partnerships came along, F went online and found out as much as she could, even consulting the paragraph on 'so what happens if it goes wrong?' But she did not imagine that registration would make much difference to her relationship. Specifically, she did not realise that the ceremony would void all the previous agreements. 'But of course, the minute that [my ex] went to a lawyer they told her that she could get half, because she was married to me, and of course the length of the relationship did suggest ...' [trails off]. The irony of having campaigned for legal rights that came to be used against her was not lost on F, who observed with chagrin that, where most of the same-sex couples she knew gave no thought to their legal arrangements, she had actually been 'massively well-organised': '[Y]ou know that I'm reasonably legally orientated, reasonably corporately orientated, and that [my ex] and I had spent many years actually campaigning for this. ... So ... if we didn't understand it, I think no one understood it.'

Let down by the law

Was she surprised by the dissolution process, I asked F. ‘Yeah, I was surprised. I was horrified, shocked and betrayed.’ It was not just a personal betrayal; F felt that the law, which she had tried to understand and work with, had let her down by permitting – indeed, encouraging – her partner to demand more from her: ‘in essence, we had an absolutely binding agreement and she tried to break it, *because she could*’ (my emphasis).

For lesbians in longstanding relationships like A, E and F there was an additional injustice. This was that the dissolution provisions of the Civil Partnership Act 2004 were being applied to relationships which had subsisted for years – decades, even – under a different set of rules and understandings. As H, herself a lawyer, explained:

Say somebody who had a civil partnership in 2006, might have been together for 20 years, [...] but all the previous 15 years, they would have been together never knowing, never understanding, or even if they’d checked legally, that there could be any claim other than the ones under equity and trust etc. And all of a sudden, the law is being applied retrospectively.

The problem was exacerbated by the fact that the length of the whole relationship is taken into account when making financial provision on dissolution, not simply the period since the registration. Alone of the participants in my study, H understood exactly what she was doing in terms of the law ‘and as soon as I read the *Lawrence v Gallagher* case, I always knew that would happen’.

Lawrence v Gallagher [2012] 1 FCR 557 was heard in the High Court in 2011 and appealed to the Court of Appeal in March 2012. Because it was a ‘big money’ case, the sum of the couple’s assets being over £4 million, and because the parties were men, it bore little resemblance to the general run of dissolutions. The Court of Appeal made it clear at paragraph 2 that financial provision on the dissolution of a civil partnership was to be treated in exactly the same way as on divorce since the language of Schedule 5 of the Civil Partnership Act 2004 was identical to the language of section 25 of the Matrimonial Causes Act 1973. Family lawyers know well that the interpretation of that language and the principles developed through case law have not been consistent nor the court’s approach predictable (Miles, 2008; Diduck, 2011), but (in this admittedly short-lived relationship) the judgment focused less on the way the couple lived out their relationship – no reference was made to domestic contributions, for example – and more on the individuals’ financial resources and needs. As Charlotte Bendall observes, ‘The underlying assumption is one of an inability to perceive two men as living interdependently’ (2014, p.272. See also Bendall, 2013).

For A, the only one of my interviewees who went to court, the experience was quite different. Hers had been a long relationship – 19 years – and A’s problem was not

so much that the judge did not treat her civil partnership like a marriage as that she *did*. A's view was that civil partnerships, especially long-term unions that had existed for many years before legal regulation was possible or even contemplated, were *not* the same as marriage, and that the roles of husband and wife could not and should not be mapped on to two women or two men. In particular, she resented the assumption of breadwinner and dependant made by the judge in her case, where both partners worked full-time but one (A) earned considerably more:

Because the lawyers are basing it on heterosexual law rather than, you know, homosexual law, there is a different understanding of finances. When we were together, you know, 25 years ago, [we] always kept separate finances. We even bought separate items of furniture because there was always the understanding that what was yours is yours, and [pointing] what was *yours* is yours. What the law did was to go...what's yours is mine, and what's mine is me own, and that's what they use to get their pound of flesh.

From the perspective of the heterosexual norm, A sounds just like all those divorcing men who baulk at having to share their greater means with their less affluent ex-wives. From the perspective of gays and lesbians of her generation, however, A's description of the relationship's financial arrangements rings true. Dunne found that the lesbians in her 1990s study valued economic independence as a means of ensuring autonomy and avoiding the inequality of power that dependence engendered; she noted that they usually had separate bank accounts (1997, pp.189, 192). Weeks, Heaphy and Donovan quoted a gay man who, when asked if he and his partner had joint bank accounts, replied: 'No. No. That was too heterosexual' (1999, p.49). Kenneth Norrie contended in an article on same-sex marriage in 2000 that same-sex couples 'tend to avoid the economic inter-dependence on each other that so often characterises opposite sex couples' (Norrie, 2000, p.366). As late as 2011 Burgoyne, Clarke and Burns published the results of a major study of money management patterns by non-heterosexuals in which they found considerably less merging of finances among those in same-sex relationships than was typical among heterosexual couples (Burgoyne, Clarke and Burns, 2011 p.685). Underlying this arrangement was the ideal of individual autonomy perfectly applicable in situations where, as in A's case, the lower-earning partner did not suffer disadvantage during the relationship by furthering the other's interests. A's work did not interfere with her ex's equally successful but less well remunerated career; there were no children, and A did not leave the bulk of the household chores to her 'wife', as is common in heterosexual relationships.

A's approach to the dissolution would thus have been closer to that of the Court of Appeal in *Lawrence v Gallagher*, suggesting that this might actually be more appropriate

for many gays and lesbians. Indeed, for all the attempts by Lady Hale (in, for example, *Stack v Dowden* [2007] 2 AC 432 and *Radmacher v Granatino* [2010] UKSC 42) and academic scholars (see Wong, 2012, and Hale herself, 2011) to inject into these disputes more emphasis on commitment and interdependence, and less on economic factors, it would seem that some couples actually choose a high level of independence, and that this applies particularly to those who have consciously rejected the gendered norms that underpin marriage.

As Katherine Franke explains, ‘Modern rules of support within marriage and rules of distribution upon divorce are designed to correct the underlying structural gender inequality that left wives penniless and husbands well-off after divorce’ (Franke, 2014). And Robert Leckey notes that the rules of divorce law ‘have accrued over time, ... on the basis of assumptions about family life grounded more or less in evidence’ of *heterosexual behaviour*, not that of same-sex couples (Leckey, 2014, p.17). For that reason, he suggests, ‘access to marriage on the existing terms’ (and by implication also divorce) might not be the best remedy for the ‘long-term legal neglect’ of same-sex couples (p.6).

Different for younger people?

As my hypothesis indicates, I had anticipated these outcomes and reactions. What I had not anticipated was that younger interviewees might experience dissolution rather differently. While distressed about the break-up (though, because their relationships had been shorter, the sense of betrayal was not always quite so strongly felt), they seemed less surprised by the dissolution process. These were not, I must emphasise, people without property or children to fight over – many had both. Nevertheless, notwithstanding criticisms of particular aspects – the lack of an adultery ground for dissolution, a particular lawyer’s ignorance or inefficiency, the cost – they were less taken aback by the legal consequences *per se*, even where they had not understood them initially. ‘I was surprised by how emotive the whole thing was,’ commented G. But ‘[i]n terms of the technicalities of it, there wasn’t really anything that came as a surprise.’ This must surely be because the younger participants, having grown up in an era of ‘equality’, were less influenced by feminist concerns about role-playing and dependence and more inclined to emphasise their ‘normality’ and sameness to heterosexuals (Heaphy, Smart and Einarsdottir, 2013, p.4). They regarded their civil partnership as a marriage, which meant they saw dissolution as divorce, with all the shared understandings about divorce today, including the fact that it is fairly common and can be nasty and expensive.

Conclusions

‘Pretty much like divorce?’ Yes, my study suggests that civil partnership dissolution is pretty much like divorce in many respects and that the individuals who have undergone it exhibit a similar range of feelings and behaviours. But this article is about a *new institution*, as experienced by a *new legal coupling*; it is the story of lesbians and gay men, and for them this experience is novel and has not been described before. Insofar as it resembles that of divorcing couples, this may be due as much to a law (fault-based divorce) which encourages certain responses as to the universality of human behaviour. Insofar as it is different, the obvious cause is the baseline from which they started.

In their 1990s study, Weeks, Heaphy and Donovan concluded that:

For many respondents, then, the question of partnership recognition is essentially a pragmatic question: ensuring legal rights and protection, without surrendering what is seen as the real core of non-heterosexual relationships – the possibilities of more democratic relationships, and the possibility of creating something different (1999, p.51).

My interviewees entered into civil partnerships with this goal in mind. If they were like many married people in hoping that their relationships would be different and better than the norm, they were *unlike* married people in having a heritage of alternative models in practice and in theory on which to base their hopes.

Many of my interviewees regarded themselves as having crafted aware, egalitarian relationships in which roles, if any, were self-chosen and not imposed by gender, and differences were talked through and accommodated. Outside legal recognition for so long, they had informed themselves about property and financial arrangements. Burgoyne, Clarke and Burns’s study of non-heterosexual couples’ money management found that more than half of their 386 interviewees had taken steps to protect their own or their partner’s financial interests by making a will, nominating a partner as beneficiary of a pension or jointly owning the home (2011, p.685). Many of my interviewees, too, had given legal form to their negotiations by buying homes as joint tenants and making mutually agreed wills and trusts for children. So what made the breakdown of a relationship particularly painful for these participants was the knowledge that, before civil partnerships became possible, they had made every effort to preserve the autonomy of their partners and respect their mutual wishes, and to negotiate what they considered to be a fair distribution of resources – in contrast to the great majority of heterosexual couples. Had they remained outside family law protection, their carefully agreed arrangements would have been honoured.

My interviewees were not unlike many married people in failing to anticipate the ending of their relationship. But there is less excuse for the married, with divorce stories commonplace in the press and divorce statistics well-known even to those who never dream they will one day join their ranks. For the participants in my study, who all registered their civil partnership in the first five years of the Act, a legally-recognised same-sex partnership was a completely new experience, and dissolution an unknown quantity. There was no common understanding about what dissolution might entail or how it would feel, such as there is about divorce.

Moreover, optimistic as most couples embarking on marriage are, it is arguable that these pioneer civil partners were even more optimistic. First, in the beginning there were no statistics or gloomy models of failure. Second, gays and lesbians, fresh from campaigning for their rights, saw themselves as in the vanguard of equality issues. They were so sure they would get this right! 'You think you're in fucking fairyland when you have a civil partnership because, finally, you can,' declared D. Then she added: 'and it is fairyland, because [...] there's no kind of special fairy-dust on it that says it's not going to break up just because you're gay and finally you can get married.' This was corroborated by B when I put it to her that the pain she was describing was simply the pain of a relationship ending, not necessarily of a divorce. No, she said.

When you break up with someone normally, you just lose that relationship, you lose a few friends, maybe you lose a bit of reputation if it's been particularly bad [laughing], but, you know, [...] you've put so much thought into being married [...] you've done something that ... you were never supposed to have done.

A third difference lies in the reaction of shock and dismay at the legal process itself, which encourages exaggeration of fault and financial need and makes a bitter parting worse. Heterosexuals feel this too, but for gays and lesbians accustomed to regulating their own finances and living arrangements of necessity outside family law, the loss of control hits particularly hard. As A said bitterly:

I think the law provides a...an instrument for vengeful people. Previously, without that, they might have stalked you or bunny-boiled you or something else, but they would not have been able to use the force of the law to get to you, and what they really did was just to use the law to get their pound of flesh, and I think that's a really bad thing.

For many lesbians, in addition, there was a perhaps unacknowledged expectation that women would behave well – better than men, anyway – even in the stressful circumstances of a dissolution. An analysis of marriage based on male power could lead one to this assumption. Some of my interviewees undoubtedly did behave well: E, for instance, who, in answer to my comment that her dissolution arrangements were 'very

selfless’, responded ‘It’s what you do, isn’t it?’ But several interviewees had previously been married and made a pointed contrast between their (heterosexual) divorce and the dissolution of their civil partnership. A recalled that her earlier divorce had been ‘amicable’.

[H]e said, ‘Well, if you want the divorce, you go ahead and just do it,’ and it went through the courts, just bits of paper, em, we went away with our own stuff, our own things, our own separate bank accounts, the whole thing, and I never heard from him again. And it was smooth and easy, despite the fact that he ... he was actually quite handy with his fists. And I had the complete opposite with a woman.

Thus, however much the lesbians and gays who entered into civil partnerships seemed ‘just like us’ (i.e. the heterosexual majority), *they were coming from a different place* from heterosexuals embarking on marriage. Even those who had themselves been in prior heterosexual relationships – indeed, *especially* these individuals – were conscious of lesbians’ and gays’ very different history of engagement with law and the discourses around relationships and practical arrangements for organising their family life that had developed, perforce, outside the law in the closing years of the twentieth century.

This research captures a particular moment in history, not simply because the institution of civil partnership may soon disappear or change its form, but because couples will increasingly enter into legal unions without personal experience or even knowledge of lesbian and gay oppression or lesbian and gay experiments in different ways of relating – and opposite-sex unions (and the law’s expectations of them) will change too, I hope. At best, the differences I emphasise will cease to matter because sexuality and gender will cease to matter in the way they have mattered in my lifetime. At worst, what we may see (and my findings suggest are already seeing) is same-sex couples behaving ‘just like’ heterosexuals because these are the only spaces they can occupy that will be recognised and protected by law. As Charlotte Bendall observes, ‘The current state of the law might be considered objectionable on the basis that, in consistently drawing upon notions of the traditional gender binary, the courts are ultimately helping to reproduce patterns of expected roles’ (2014, p.261). With the advent of same-sex marriage in Britain, and in the face of overwhelming pressure to conform to marital norms and rely on marriage law’s ‘protection’, there will be less talk in future of ‘making a difference’, and less potential for lesbians and gays to show the world how autonomous, egalitarian relationships might work.

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References

- Allen, V. and Parveen, N. (2012). The millionaire banker, his actor lover and their landmark £1.7 million 'divorce' settlement. *Daily Mail*, 8 March 2012.
- Auchmuty, R. (2003). When equality is not equity: Homosexual inclusion in undue influence law. *Feminist Legal Studies* 11, 163-190.
- Auchmuty, R. (2007). Out of the shadows: Feminist silence and liberal law. In V. Munro and C. Stychin (Eds.), *Sexuality and the law: Feminist engagements*, pp.91-124. London: Glasshouse Press.
- Auchmuty, R. (2015). Dissolution or disillusion: The unravelling of civil partnerships. In N. Barker and D. Monk (Eds.), *From civil partnerships to same-sex marriage 2004-2014: Interdisciplinary reflections*, pp.203-233. Basingstoke: Routledge.
- Baker, L.A. and Emery, R.E. (1993). When every relationship is above average: Perceptions and expectations of divorce at the time of marriage. *Law and Human Behavior*, 17, 439-450.
- Barlow, A., Duncan, S., James, G. and Park, A. (2005). *Cohabitation, marriage and the law*. Oxford: Hart Publishing.
- Barrett, M. and McIntosh, M. (1982). *The anti-social family*. London: Verso.
- Bendall, C. (2013). A break away from the (hetero)norm? *Lawrence v Gallagher*. *Feminist Legal Studies*, 21, 303-310.
- Bendall, C. (2014). Some are more "equal" than others: Heteronormativity in the post-White era of financial remedies. *Journal of Social Welfare and Family Law* 36, 260-275.
- Burgoyne, C., Clarke, V., and Burns, M. (2011). Money management and views of civil partnership of same-sex couples: Results from a UK survey of non-heterosexuals. *The Sociological Review*, 59, 685-706.

- Carrington, C. (1999). *No place like home: Relationships and family life among lesbians and gay men*. Chicago: Chicago University Press.
- Clarke, V., Burgoyne, C., and Burns, M. (2007). Romance, rights, recognition, responsibilities and radicalism: Same-sex couples' views on civil partnership and marriage. In V. Clark and E. Peel (Eds.), *Out in psychology: Lesbian, gay, bisexual, trans and queer perspectives*, pp.173-194. Chichester: Wiley.
- Diduck, A. (2011). What is family law for? *Current Legal Problems* 64, 287-314.
- Dunne, G. (1997). *Lesbian Lifestyles: Women's Work and the Politics of Sexuality*. Basingstoke: Macmillan.
- Franke, K. (2013). Lesbian Husbands and Gay Wives: The Gendering of Gay Divorce. *The Nation*, 5 July 2013. Retrieved from http://www.huffingtonpost.com/katherine-franke/gay-divorce_b_3550127.html, (accessed 25 July 2014).
- Gaffney-Rhys, R. (2014). Same-sex marriage but not mixed-sex partnerships: Should the Civil Partnership Act 2004 be extended to opposite-sex couples? *Child and Family Law Quarterly*, 26, 173-195.
- Hale, B. (2011). Equality and autonomy in family law. *Journal of Social Welfare and Family Law*, 33, 3-14.
- Harding, R. (2006). 'Dogs are "registered", people shouldn't be': Legal consciousness and lesbian and gay rights. *Social and Legal Studies* 15, 511-533.
- Harding, R. (2008). Recognizing (and resisting) regulation: Attitudes to the introduction of civil partnership. *Sexualities* 11, 740-760.
- Heaphy, B. (2008). The sociology of lesbian and gay reflexivity or reflexive sociology. *Sociological Research Online*, 21 March. Retrieved from <http://www.socresonline.org.uk/13/1/9.html>, accessed 21 March 2015.
- Heaphy, B., Smart, C., and Einarsdottir, A. (2013). *Same-sex marriages: New generations, new relationships*. Basingstoke: Palgrave Macmillan.
- Hogwood, R. (2007). Civil partnerships beyond *The Archers*: Formation, dissolution and the consequences for children, inheritances and asset protection. *Private Client Business*, 299-306.
- Leckey, R (2013). Marriage and the data on same-sex couples. *Journal of Social Welfare and Family Law*, 35, 179-191.
- Leckey, R. (2014). Must equal mean identical? Same-sex couples and marriage. *International Journal of Law in Context*, 10, 5-25.

- Miles, J. (2008). *Charman v Charman (No 4)* – making sense of need, compensation and equal sharing. *Child and Family Law Quarterly* 20, 378-394.
- Norrie, K. (2000). Marriage is for heterosexuals: may the rest of us be saved from it. *Child and Family Law Quarterly*, 12, 363-369.
- Office for National Statistics, Civil partnerships in the UK 2013 (Feb. 2015). Retrieved from <http://www.ons.gov.uk/ons/rel/vsob2/civil-partnership-statistics-united-kingdom/index.html>, accessed 12 Feb 2015.
- Rolfe, A. and Peel, E (2011). 'It's a double-edged thing': The paradox of civil partnership and why some couples are choosing not to have one. *Feminism and Psychology* 21, 317-336.
- Ross, H., Gask, K. and Berrington, A. (2011). 'Civil partnerships five years on'. *Population Trends*, 145, 1-31.
- Sachs, A. and Wilson, J.H. (1978). *Sexism and the law: A study of male beliefs and judicial bias*. Oxford, Martin Robertson.
- Shipman, B., and Smart, C. (2007). 'It's made a huge difference': Recognition, rights and the personal significance of civil partnership. *Sociological Research Online*, 12. Retrieved from <http://www.socresonline.org.uk/12/1/shipman.html>, accessed 21 March 2015.
- Stychin, C. (2003). *Governing sexuality: The changing politics of citizenship and law reform*. Oxford: Hart Publishing.
- Thompson, S. (2015). *Prenuptial agreements and the presumption of free choice*. London: Hart Publishing.
- Weeks, J., Heaphy, B., and Donovan, C. (1999). Partnership rites: Commitment and rituals in non-heterosexual relationships. In J. Seymour and P. Bagguley (Eds.), *Relating intimacies: Power and resistance*, pp.43-63. Basingstoke: Macmillan.
- Weeks, J., Heaphy, B., and Donovan, C (2001). *Same-sex intimacies: Families of choice and other life experiments*. London: Routledge.
- Wong, S. (2012). Shared commitment, interdependency and property relations: A socio-legal project for cohabitation. *Child and Family Law Quarterly* 24, 60-76.