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April 2012

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The legal mechanism by which same-sex relationships are recognised has long been a contentious issue around the world. In many countries, same-sex marriage and civil partnership (CP) have been met with stark opposition emanating from assumptions of heterosexuality and the trope of the heterosexual family. However, these are not the only lines upon which tensions around same-sex relationships have settled. Key differences between CP and same-sex marriage have resulted in tensions among lesbian, gay, bisexual and transgender (LGBT) organisations. This paper seeks to explore these tensions and ambiguities and argues that the weight of heteronormative expectation around same-sex relationship recognition results in the masking of a process that (re)produces societal norms and privileges. Firstly, I explore the emergence of same-sex marriage and CP[1] through the examples of the U.S. and the UK. Secondly, in light of these examples, I turn to the case of Ireland to explore how CP has been received and to examine the politics of how the CP/same-sex marriage divide has been constructed within the LGBT political landscape. Finally, I deconstruct the CP/same-sex marriage binary that exists and assert that this false binary and the dominant 'gay agenda' of marriage (Rohrer 2009) have distracted from a normalising project that sanitises alternatives to the norm of heterosexuality.

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[1] I use the term CP here and throughout the paper as a catch-all term for the various legal structures around same-sex relationships that exist around the world.

Introduction

The legal mechanism by which same-sex relationships are recognised has long been a contentious issue around the world. In many countries, same-sex marriage and CP have been met with stark opposition emanating from assumptions of heterosexuality and the trope of the heterosexual family. However, these are not the only lines upon which tensions around same-sex relationships have settled. Key differences between CP and civil marriage have resulted in tensions among lesbian, gay, bisexual and transgender (LGBT) organisations.

In Ireland, lesbian and gay couples have been registering their relationships and availing of certain rights and entitlements provided by the legislation since April 2011 (*Civil Partnership and Certain Rights and Obligations of Co-Habitants* 2010). Although often misrepresented as 'marriage in all but name', there are many explicit differences between CP and civil marriage legislation in Ireland (Fagan 2011). A tension-filled dichotomy has evolved that has shaped and continues to influence the LGBT political landscape in Ireland. Those who fought for CP adopted the position that it is a stepping stone towards full equality, providing many of the legal rights and entitlements to which lesbian and gay people were previously denied access. Those who advocated for full civil marriage, saw CP as a sell-out, believing that the only route to equal rights for lesbian and gay people would involve gaining access to the institution of marriage in the same manner as heterosexual people.

In 2009, when my attention was first drawn to the possibility of CP in Ireland, I experienced a sense of relief and gratitude for the attempt to provide certain rights and privileges to those of us who do not fit the heterosexual norm. As time went by, I began to educate myself about the detail of the proposed CP legislation and found myself exhausted from conversations that involved the

enunciation of subtleties and the interrogation of assumptions that flattened out differences between civil partnership and marriage. Following much reflection on the positions of the various LGBT groups on CP and same-sex marriage in Ireland, I have been left with some burning questions around same-sex relationship recognition. Am I selling out if I enter a CP? Should I be holding out for the 'gold star' of marriage? Ideologically, are marriage and CP one and the same in their perpetuation of societal norms and privileges? Should I be rejecting both of these forms of relationship recognition because of their narrow and restrictive approach to kinship?

These questions are illustrative of some of the tensions that have dominated recent LGBT politics. This paper argues that the weight of heteronormative expectation around same-sex relationship recognition results in the masking of a process that (re)produces societal norms and privileges. Firstly, I explore the emergence of same-sex marriage and CP through the examples of the U.S. and the UK. Secondly, in light of these examples, I turn to the case of Ireland to explore how CP has been received and to examine the politics of how the CP/same-sex marriage divide has been constructed within the LGBT political landscape. Finally, I deconstruct the CP/same-sex marriage binary and assert that this false binary and the dominant 'gay agenda' of marriage (Rohrer 2009) have distracted from a normalising project that sanitises alternatives to the norm of heterosexuality.

The Emergence of Same-Sex Marriage

Same-sex marriage was first introduced in the Netherlands in 2001and is available in some jurisdictions around the world: South Africa, Canada, Mexico, Argentina, Belgium, Norway, Sweden, Iceland, Spain, Portugal, Mexico city and the US states of Connecticut, Iowa, Massachusetts, Vermont, New York and New Hampshire. Although the institution of marriage has served

to regulate the lives of those within it in the past, the exclusion of groups of people from this powerful institution has also acted as a powerful tool of oppression (Kitzinger and Wilkinson 2004). Same-sex marriage remains a contentious issue in the majority of countries today and the U.S. serves as an example of the tumultuous legal history of this issue.

In 1996, a Hawaiian court judged that same-sex couples should be allowed to marry under civil law (Mikula et al. 1999). While awaiting judgement on this case, the federal Defence of Marriage Act (*Defence of Marriage Act* 1996) – defining marriage as a legal union between one man and one woman - was signed by President Bill Clinton in 1996. This led to the passing of a state constitutional amendment in Hawaii that reserved marriage for a man and a woman, superseding all previous rulings (Oswald and Kuvalanka 2008). In 2003, the Massachusetts Supreme Judicial Court ruled that the state could not 'deny the protections, benefits and obligations conferred by civil marriage to two individuals of the same sex who wish to marry' (*Goodridge v. Deptartment of Public Health* 2003). However, the 2004 elections saw many states vote to outlaw same-sex marriages and domestic partnerships and by 2006, 45 states had banned same-sex marriage and 17 had outlawed domestic partnerships (Traiman 2008). In 2008, following an equal protection ruling in the Supreme Court of California (*In Re Marriage Cases* 2008), marriage licences were granted to same-sex couples between June and November 2008 until Proposition 8 amended the California constitution to limit marriage to opposite sex couples. The issue of same-sex marriage in California is still continuing through the courts (Marriage Equality 2011) and the campaign for marriage equality continues across the U.S. in the form of campaigns such as The *Human Rights Campaign* and *Marriage Equality USA*. However, the achievement of marriage does not necessarily mean that equal rights and entitlements will flow from the institution. For example, although marriage is accessible for many

lesbian and gay couples in the U.S., the reality remains that the federal government does not recognise marriage between same-sex couples.

The Emergence of Civil Partnership

The origins of same-sex partnership began with the term *domestic partnership* in the city of Berkley following the passing of a sexual orientation non-discrimination ordinance in 1978 (Traiman 2008). The first CP legislation was introduced in Denmark in 1989 and it now exists in a host of countries around the world. However, the legal rights and benefits of the various models vary exponentially from country to country (Harding 2011). Some legal structures provide rights and benefits almost identical to marriage law while others offer fewer legal benefits and are 'treated as something "less than" marriage' (Kitzinger and Wilkinson 2004). This section presents CP in the UK as an example of the how this type of legislation has been received.

The Civil Partnership Act (*Civil Partnership Act* 2004) was passed in the UK in 2004. During the debates leading up to this moment, although there were significant differences between marriage and CP, the government insisted on playing them down and emphasised that CP was being introduced on 'equality grounds' (Harding 2011). It seemed as if an attempt was being made to flatten out the differences at an optimum level that would satisfy the concerns of the LGBT community while not antagonising religious groups with legislation that might be a perceived threat to the sanctity of marriage. This aligns with a neo-liberal approach to equality that protects religion as an aspect of the good life on one hand but on the other, positions it within the private realm (Stychin 2009). Evidence of these approaches lies in the fact that religious exemptions exist in discrimination law all over the world (Sandberg and Doe 2007; Minow 2007). And so, as CP legislation was enacted in the UK, a conflict emerged between sexual orientation anti-discrimination law and the right to act according to

religious beliefs and some civil registrars began objecting to performing CP ceremonies on the grounds that it contradicted their religious faith. More recently, the current prime minister has given a commitment to the introduction of same-sex marriage in the UK. However, it remains to be seen whether the Anglican and Catholic churches - who have united in protest against gay marriage on the basis that it is a threat to the concept of the family and procreation (Kennedy 2012) - will shape future political action on this issue.

Religious rights are not the only concerns in relation to the CP Act in the UK. Barker (2006) identified significant disadvantages for those with lower incomes because of 'cross-subsidisation of middle class married couples with those of lower incomes' (Barker 2006) and the privatisation of financial and social responsibilities within the structure of the family. Glennon (2006) and Stychin (2006) also highlighted the complete absence of sex in the legislation and argued that the lack of clarity on what constitutes sexual activity and the impossibility of dissolution on the grounds of consummation or adultery reinforces the primacy of heterosexual (penetrative) sex and heterosexual marriage. However, putting a positive slant on the legislation, Barker (2006) highlighted its transformative power *because* of its failure to mention sex and puts forward the idea that this 'loophole' may play some role in transgressing and 'transforming the structure and ideology of the legal regulation of relationships, both same sex and different sex (Barker 2006). Similarly, Stychin (2006) points to the potential for resistance and subversion in how lesbian and gay people map onto the various categorisation attempts in the law. Tensions around the reception of the UK CP Act seem to illustrate the points of many commentators who argue that CP is inherently unequal (Wolfson 1998) and reinforces marriage as the definitive, aspirational status (Barker 2006).

As illustrated by the case of the UK and the U.S., tensions exist around the introduction of both CP and same-sex marriage. The protection of heterosexual marriage at all costs appears to be a central driving force. The institution of marriage continues to be protected by law in many countries, warding off attempts of lesbian and gay people to access the rights and entitlements accorded to married people. As an alternative to marriage, the emergence of CP legislation contributes to the formation of a hierarchical relationship structure where primacy is bestowed upon the heterosexual couple and where even the types of terms used for the legal structures around same-sex relationships in many countries - civil partnership, civil union, domestic partnership – are indicative of the power relations at work. Each double-barrelled word presents itself as the complicated and unexplained 'other' to the singular simplicity and instantly recognisable signifier that is marriage. In my own experience, this operates not just at a semiotic level but is continuously played out in everyday lived experience where a couple's announcement of a CP is often met with an air of uncertainty of exactly what that means. Further complications occur in choosing the most appropriate verb to use with the noun: Entering into? Having a? Getting a? Doing a? Celebrating a? The possibilities are endless and often involve settling for 'getting civil partnered' in an attempt to summon up association with the familiarity of the phrase 'getting married'. I suggest that the weight of the need for continuous clarification - somewhat to the despair of many who campaign for marriage equality for lesbian and gay people - often culminates in the conflation of the two terms. However, I also suggest that the word play will not disappear if marriage equality is achieved for lesbian and gay couples. Will it be 'same-sex marriage'? 'Gay marriage'? Or just plain old 'marriage'? Is it naïve to assume that there will not be a new configuration of the relationship hierarchy that somehow results in the primacy of heterosexual marriage once more?

In the following section, I address the case of Ireland to explore how CP has been received and to examine the politics of how the CP/same-sex marriage divide can be read as further evidence of the silent workings of the power of heterosexual marriage.

Civil Partnership in Ireland

In Ireland, the institution of marriage has played a role in the regulation of sexuality and the reproduction of heterosexuality. Foucault (1980) outlined the unit of the family as a cell of enclosure and containment where two dimensions - the husband/wife axis and the parent/children axis – regulated sexuality. In Irish society, this has been epitomised by the idea that the heterosexual, monogamous, married couple and the marital family home comprised the cornerstone of a stable social order. Roman Catholic Canon Law enacted strict regulation (through the surveillance of priests) in relation to sexuality and the institution of marriage was a vehicle for the deployment of the laws governing sexuality (Inglis 2007). Marriage was also seen as salvation for women who were held responsible for encounters with the opposite sex (Inglis 2005). Within this framework, patriarchal heterosexuality and the heterosexual family cell cut across the so-called private and public spheres of Irish society, leaving in its wake those labelled as 'sexual libertine', 'deviant' and 'pervert', those who did not adhere to the norm (Inglis 1997).

The language of the Irish constitution interweaves Catholic and liberal democratic ideology (Whyte 2002) and the constitutional position of marriage has been the basis of political, religious and legal opposition to same-sex marriage. Although the Unfair Dismisaals Act (*Unfair Dismissals Act* 1993) that protects employees from dismissal on the grounds of sexual orientation was encated as far back as 1993, a clause of the Employment Equality Act continues to legislate for dismissal of an employee on the grounds of non-compliance with

the ethos of an institution (*Employment Equality Act* 1998, 2004). Given the Irish Catholic position on homosexuality as 'a disorder and an affliction' (Rose 1994), the seemingly inextricable relationship between church and state poses many challenges for the pursuit of equal rights for lesbin and gay people in Ireland.

CP (*Civil Partnership and Certain Rights and Obligations of Co-Habitants* 2010) was signed into law in Ireland in July 2010, the first registry of a same-sex relationship taking place in April 2011. As the legislation progressed through the various stages toward enactment, many sources of tension emerged. A central voice of opposition came from the Catholic Church in the form of a pamphlet entitled *Why Marriage Matters (Irish Catholic Bishops 2010)* circulated to the parishes of Ireland and warned that the CP Bill

> *"is not compatible with seeing the family based on marriage as the necessary basis of the social order and as indispensable to the welfare of the Nation and the State. Nor does it "guard with special care the institution of Marriage, on which the Family is founded" (Art. 41.3.2O, The Irish Constitution)….. This Bill is an extraordinary and far reaching attack on freedom of conscience and the free practice of religion – which are guaranteed to every citizen under the Constitution."*

The Irish Council of Civil Liberties (ICCL) dismissed the attack from the Bishops' Committee stating that 'it is the on-going absence of full equality for all forms of family in Ireland, and not the Civil Partnership Bill, which brings the existing institution of marriage into disrepute' (Irish Council for Civil Liberties 2010). However, despite the attempt to assert CP as a purely secular issue, the ambiguity surrounding the definition of marriage in the Irish constitution remains a barrier to progress and assertions that the constitution is a 'living' document that should respond to societal changes in a progressive

manner have been unsuccessful thus far (Zappone and Gilligan versus the Revenue Commissioners and Others 2006;O' Sullivan 2009).

The unique relationship between church and state in Ireland has played a significant part in the progression of CP in Ireland. In 2005, the Minister for Justice, Equality and Law Reform set up a working group on domestic partnership. While marriage was the goal for the LGBT activists involved, the report outlined that same-sex marriage or CP would pose constitutional difficulties if it was modelled too closely on marriage (Colley 2006). As in the UK, the might of the institution of marriage, in which the Catholic church is so heavily invested, is so formidable that even CP legislation that falls far short of marriage is perceived as a threat to its sanctity. However, debates around CP in Ireland have not merely been characterised by religious hostility. Further tensions have developed among organisations that deal with LGBT issues in Ireland. The Gay and Lesbian Equality Network (GLEN) became the central organisation that attempted to shape CP legislation that would be as close to marriage as possible. This organisation now celebrates the fact that our current CP legislation provides a broad range of rights and entitlements that lesbian and gay people were previously unable to access. It continues to use CP as a springboard to work towards guardianship rights and full equality for lesbian and gay people. On the other side of the divide, the central goal of organisations such as *Marriage Equality* and one of the main aims of organisations such as the National Lesbian and Gay Federation (NLGF) and *LGBT Noise* has been to achieve full marriage equality for lesbian and gay couples. As CP progressed through the various stages, these organisations became vocal about the deficiencies of the legislation particularly around guardianship and children's rights. The NLGF report *Burning Issues* (Denyer et al. 2009) identified marriage as the third highest priority (behind rights at work and personal security) of lesbian and gay people in Ireland. *Marriage Equality* has continued

to campaign for same-sex marriage and in 2011 produced a report entitled *Missing Pieces* (Fagan 2011) highlighting the 169 differences between the CP and civil marriage legislation. Thus, CP became a wedge between organisations and a source of great tension in LGBT politics in Ireland. The concepts of CP and marriage were pitted against one another as if there was a detrimental conflict of interest.

Given the patchwork of legal structures that now surround relationship recognition across the globe (Stychin 2006), it is unsurprising that tensions have begun to emerge around the concepts of same same-sex marriage, CP and their relationship to one another. The divide among organisations in Ireland is just one example of the fall-out from the two-tier systems of partnership that is created when separate relationship legislation is enacted for same-sex couples. However, the seemingly polemic positions of CP and marriage are not the only source of conflict among LGBT people. It is also clear that there is an ideological divide between those who take an integrative stance to LGBT politics and those who hold the more radical desire to reform the social structures that surround relationship recognition in general. From this perspective, it could be argued that CP and marriage are more closely ideologically aligned than recent literature or the position of LGBT organisations portray.

Deconstructing the Civil Partnership/Same-sex Marriage Binary

In this final section, I seek to deconstruct the binary of CP/same-sex marriage through highlighting their close ideological alignment and by beginning to disrupt the heteronormative power present in the notion of modelling of legal structures of same-sex relationship on heterosexual marriage.

Proponents of CP legislation generally position it as a stepping-stone (Ettelbrick 2001) or a 'middle-course agenda' (Glennon 2006) that can 'pave the way' (Eskridge 2002) towards the full rights and entitlements accorded by marriage. Viewing CP in this way, as modelled on the conservative ideology of marriage (Kitzinger and Wilkinson 2004), firmly positions both CP and marriage on one spectrum, both taking an integrative approach to LGBT politics and both aiming at the same goal of marriage as the 'gold standard' in relationship recognition' (Clarke 2003). From this perspective, the clear divisions - so firmly established in many LGBT political landscapes - begin to blur at the edges.

However, holding the ultimate goal of marriage inevitably invokes feminist and queer critiques. Marriage rests upon assumptions of heterosexuality and the nuclear, heterosexual family (Fraser 1989); it is one of the foundations of patriarchy (Ettelbrick 1997;Walters 2001); it defines a woman's social and political relations (McClintock 1993;Cott 1998) and is held up as having 'redemptive power' for single mothers in order to privatise dependency (Rohrer 2009). Many of those involved in marriage equality campaigns across the globe, although aware of the oppressive history of marriage, have set aside the potential risks of mobilising the normalising forces of marriage (Ettelbrick 2001;Baird and Rosenbaum 1997;Warner 1999;Young and Boyd 2006) because of a staunch certainty that no institution should exist solely for one group of people in society (Bolte 1998;Eskridge 2002;Calhoun 2000;Kitzinger and Wilkinson 2004) and that the inclusion of lesbian, gay, bisexual and transgender (LGBT) people in marriage will de-stabilise and transform the traditional and oppressive institutions of marriage and the family (Calhoun 2000;Stoddard 1997). Butler (2004) suggests a historical explanation for the ability to set aside feminist and queer concerns around marriage. She notes that as soon as the HIV/AIDS crisis was declared 'over', human rights' campaigns sought to leave

behind the 'promiscuous' unstable and 'irresponsible' connotations for a more bourgeois model to sanitise the public image of LGBT people.

Judy Rohrer's (2009) chapter 'The Marrying Kind' provides us with an alternative perspective. She reflexively positions herself on the borderlands of gay marriage, feeling like a 'bad lesbian', disappointing straight allies and gay friends by being disinterested in the notion of marriage. She reflects on being told to 'get with the program' and support gay marriage or the Right will destroy all hopes for gay liberation. She is 'neither 'them' – homophobes who see gay marriage as the apocalypse, nor 'us' – gays and lesbians whole-heartedly fighting for marriage' (Rohrer 2009). She compels us to notice how same-sex marriage flattens out gendered differences between lesbians and gay men, how it is often seen as a white, affluent person's issue and how it serves to silence those who do not fit within the lesbian/gay man binary (Rohrer 2009). Rohrer's position has prompted me to assert the possibility that the weight of heteronormative expectation in society has caused the divide or false dichotomy between CP and same-sex marriage. This, in turn, distracts attention from the idea that 'equality' is being mobilised in the success of a normalising project that sanitises alternatives to the norm.

However, this is not to ignore the significant legal and practical differences that CP makes to the everyday lives of many lesbian and gay people, the feelings of empowerment and confidence that may flow from the legitimacy it provides or the potential transformative power that CP may have as a basis for reconceptualising new forms of kinship (Barker 2006; Stychin 2006). Nor is it to discount the notion that opening up marriage to gay and lesbian people will have equalising and potentially transformative forces. But it does inspire us to think about the implications of taking an integrative approach instead of a radical approach to LGBT politics. In working to achieve equality within

current systems, heterosexual marriage remains a privileged caste and the problematic binaries on which legislation modelled on marriage is based (such as marriage/not marriage, sex/no sex, contract/relationship) does little in the way of addressing those who live post-modern and queer lives outside of the 'conjugal frame' (Butler 2004; Stychin 2006). There is a missed opportunity for wider reform that might provide a framework where all types of close personal relationships - irrespective of sexual orientation, gender, gender identity, class or citizenship status – could be given recognition and support (Law Commission of Canada 2001). A position from the margins such as Rohrer's (Rohrer 2009) also invites us to explore the intersectional implications of positioning the legal structures of same-sex relationships as the dominant 'gay agenda'. In many countries, same-sex marriage has been elevated as the LGBT movement's 'leading goal' (Warner 1999) where once one agrees to answer the question 'Are you for or against gay marriage?', one is already trapped (Butler 2004). The dominant agenda causes an 'amnesia' about prior political commitments and as a result, many issues such as violence against queer youth and the concerns of transgender people have received less attention (Butler 2004). It follows that we should pause to reflect on the possibility that fighting for lesbian and gay people to be integrated fully into the systems of society (eg marriage) ignores the idea that the systems themselves are exclusionary and perpetuate the privilege of the few rather than the many.

Conclusion

It is clear that tensions surround the emergence of CP and same-sex marriage in many countries and that the process of same-sex relationship recognition is a complex, multifaceted issue. It is also clear that the complexity of this process is an indication of the difficulties and challenges that face LGBT people in everyday life as 'other' to society's consistently affirmed heterosexual norm. Although the shared goal among proponents of CP and same-sex marriage is

one of desire for equality of access to the mechanisms of relationship recognition that are in place for heterosexual people, questions must be raised about the structures of the existing social institutions. Adopting a position from the margins, from outside of the current dominant 'gay agenda' might be a starting point to think about how these institutions might be broadened to create more diverse and inclusive forms of kinship. Answering these questions may not be a straightforward task and will certainly involve a reflexive acknowledgement of privileges that serve to exclude and oppress others. However, it is clear that engaging with such spaces of tension and ambiguity is integral to the pursuit of equal opportunity for all people.

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