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## Mixed-Sex Civil Partnerships: A Blank Canvas or Painting by Numbers?

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### **Introduction**

For many couples, marriage represents the gold standard interpersonal relationship. Its development over centuries and its protean nature have enabled it to mature into a modern institution that confers not only an important legal status but also societal imprimatur. Although lawyers can pinpoint readily the legal consequences of marriage, it is much harder to identify these more ephemeral qualities that make marriage deeply personal and meaningful for couples. It is without doubt, as Fineman reminds us, that marriage is more than just a piece of paper.<sup>1</sup>

Other couples think very differently. For them marriage is not the ultimate destination or an institution that deserves any privileging in law. Viewpoints may vary here. Some couples may approach marriage with indifference, believing that it is not an appropriate fit for them, while others may adopt a more principled and ideologically informed stance believing instead that it is patriarchal, heteronormative, or exclusionary. Crucially for this chapter, diverse solutions exist. While some might argue for the (somewhat unrealistic) abolition of marriage<sup>2</sup> or that such couples should marry and reform that institution from within,<sup>3</sup> others might acquiesce to its retention but favour the creation of a second formalised status. According to its proponents this latter approach offers couples access to many, and sometimes all, of the benefits associated

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<sup>1</sup> Martha A Fineman, 'Why Marriage?' (2001) 9 Va J Soc Pol & L 239, 239.

<sup>2</sup> See Sheila Jeffreys, 'The Need to Abolish Marriage' (2004) 14 *Feminism & Psychology* 327 and Clare Chambers, *Against Marriage: An Egalitarian Defence of the Marriage-Free State* (Oxford University Press 2017).

<sup>3</sup> See Jens M Scherpe, 'The Past, Present and Future of Civil Partnerships' in Jens Scherpe and Andy Hayward (eds), *The Future of Registered Partnerships: Family Recognition beyond Marriage?* (Intersentia 2017) 591 and Joanna Miles and Rebecca Probert, 'Civil partnership: ties that (also) bind?' [2019] 31(4) CFLQ 303.

with marriage yet avoids them having to buttress an institution that is not reflective of their values.

This chapter interrogates the desire among certain couples for a second formalised status. Drawing upon comparative law insights and the unique development of this status in England and Wales, it analyses the drivers behind reform and the reception of so-called ‘equal civil partnerships’ that have been lauded by some as ‘a blank canvas’<sup>4</sup> or ‘a blank slate on which people can inscribe their own hopes and dreams’.<sup>5</sup> This chapter offers the first academic critique of mixed-sex civil partnerships since their introduction and asks whether they possess such transformative potential.<sup>6</sup> Indeed, do they challenge or even disrupt traditional understandings of relationships, interdependency, the provision of care, or even intimacy?

This chapter focuses on mixed-sex conjugal couples possessing a choice between marriage and a second formalised status. It will not consider couples, notably those of the same sex, entering a second status because of their inability to access marriage,<sup>7</sup> nor will it evaluate the legal regulation of cohabitants or couples that have chosen, for whatever reason, not to formalise their relationship. The chapter is divided into three parts. The first part sketches the evolution of civil partnerships in England and Wales to understand how the framework developed from a status exclusively for same-sex couples to one accessible by both. The second part evaluates claims advanced justifying the need for mixed-sex civil partnerships and questions how far they can be realised. Noting the limited empirical analysis available and drawing upon media reporting, the third part provides a discourse analysis reflecting upon the early indications as to uptake, ceremonial traditions, and identity of civil partners. This chapter argues that constraints imposed by law severely limit the transformative potential of civil partnerships. However, early signs reveal couples attempting to forge a new ideology and imprinting upon civil partnership their own personalised values.

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<sup>4</sup> Katie Wright and Jennifer Scott, ‘Civil partnerships: “Will you NOT marry me?”’ *BBC News* (2 October 2018).

<sup>5</sup> Rebecca Steinfeld and Charles Keidan, ‘Our fight for right to civil partnership is finally won’ *Evening Standard* (29 November 2019).

<sup>6</sup> There has been a small-scale empirical study with findings discussed in Nikki Hayfield, Bethan Jones, Julia Carter and Adam Jowett, ‘Exploring Civil Partnership From the Perspective of Those in Mixed-Sex Relationships: Embracing a Clean Slate of Equality’ (2023) *Journal of Family Issues* 1 <https://doi.org/10.1177/0192513X231194298> accessed 1 September 2023.

<sup>7</sup> See the chapter by Jens Scherpe in this collection.

## **Introducing Equal Civil Partnership in England and Wales: A Reactionary and Reluctant Reform**

Whenever family law is reformed one would hope such reform would be underpinned by a carefully considered proposal or a rigorous public consultation exercise. Ideally it might be achieved following a proposal by a law reform commission that could evaluate the problem comprehensively and draw upon comparative family law insights. None of those elements existed in the campaign for mixed-sex civil partnerships.

The idea of introducing a second formalised status has existed for some time. Prior to the introduction of same-sex civil partnerships in 2005, several Private Member's Bills had proposed a registration regime for both mixed- and same-sex couples.<sup>8</sup> The logic was that it served two purposes: a formalised status for same-sex couples that were at that time denied access to marriage and an alternative status for mixed-sex couples with reservations as to marriage. Drawing upon regimes operating in other jurisdictions, the Parliamentary debates emphasised the value of formalisation, the benefit of choice for couples and the need for inclusive regulation. Despite support in Parliament, policymakers thought that mixed-sex couples could marry and thus their position was 'significantly different from that of same-sex couples who wish to formalise their relationships but currently are unable to do so'.<sup>9</sup>

Coming into force in December 2005, the Civil Partnership Act 2004 was exclusively available to same-sex couples. While conferring near identical rights to married couples, civil partnerships were not 'gay marriage', and a tremendous amount of effort went into differentiating the regime linguistically and symbolically from marriage. Thus, for some, civil partnerships offered a 'painful compromise between genuine equality and no rights at all'<sup>10</sup> or were 'marriage-lite: same great taste, half the respect of regular marriage'.<sup>11</sup> Civil partnerships did, however, offer important legal acknowledgment of same-sex relationships and many co-opted the language of marriage to explain and signal to the wider community their newly

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<sup>8</sup> See eg *The Relationships (Civil Registration) Bill 2001-2002* introduced into the House of Commons by Jane Griffiths MP and *the Civil Partnerships Bill 2001 – 02* introduced into the House of Lords by Lord Lester of Herne Hill.

<sup>9</sup> Department of Trade and Industry, *Civil Partnership: A Framework for the Legal Recognition of Same-Sex Couples* (DTI, 2003) 8.

<sup>10</sup> Sue Wilkinson and Celia Kitzinger, 'In support of equal marriage: Why civil partnership is not enough' (2006) 8 *Psychology of Women Review* 54, 54.

<sup>11</sup> Rosie Harding, "'Dogs are 'Registered', People Shouldn't Be": Legal Consciousness and Lesbian and Gay Rights' (2006) 15 SLS 511, 524.

acquired status.<sup>12</sup> It is here that we start to see fault lines that shape later discussions on mixed-sex civil partnerships. While same-sex marriage was, at that time, not politically palatable and never a serious option on the table, academics questioned the laborious efforts of devising superficial distinctions for a ‘new’ scheme that was, at its core, a carbon copy of marriage.<sup>13</sup> Similarly, others, like Glennon, were rather disappointed that this progressive reform failed to harness the transformative potential of second regimes.<sup>14</sup> Civil partnerships could have been open to non-conjugal relationships or siblings, as is the case in other jurisdictions. Put differently, without the shackles of religion and restrictions imposed by universally accepted understandings of marriage, civil partnerships had promise but *could* have been far more pioneering.

This early reception to same-sex civil partnerships reveals that there are always two value systems operating whenever a second status is created. On the one hand you have the legal framework that is easy to discern, action-guiding and, in the case of England and Wales, not capable of personalisation by the parties. On the other, there is the ideology where couples draw upon their own perceptions and subjectivities to imprint values upon their status.<sup>15</sup> Resultantly civil partnerships become more than a formality, a piece of paper or a ‘construct of statute’<sup>16</sup>; they possess an important signalling function for the couple themselves by expressing their values towards one another and indicating to the wider community how they view their relationship.

Calls for equal civil partnerships intensified in the campaign for same-sex marriage. While some believed that same-sex civil partnerships should be phased out once the prize of marriage had been achieved,<sup>17</sup> others saw the potential of civil partnerships to offer an alternative vision and purpose for formalisation.<sup>18</sup> The path chosen was to leave civil partnerships exclusively

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<sup>12</sup> See Adam Jowett and Elizabeth Peel, “‘Seismic culture change?’ Media representations of same-sex “marriage”” (2010) 33 *Women’s Studies International Forum* 206.

<sup>13</sup> Nicholas Bamforth, ‘The benefits of Marriage in all but name: Same-sex couples and the Civil Partnership Act 2004’ [2007] 19 *CFLQ* 133.

<sup>14</sup> See Lisa Glennon, ‘Displacing the ‘Conjugal Family’ in Legal Policy: A Progressive Move?’ [2005] 17 *CFLQ* 141 and Carl Stychin, ‘Not (Quite) a Horse and Carriage: The Civil Partnership Act 2004’ (2006) 14 *Fem LS* 79.

<sup>15</sup> See eg Nicola Barker, *Not the Marrying Kind: A Feminist Critique of Same-Sex Marriage* (Palgrave Macmillan 2012).

<sup>16</sup> *R v Bala and others* [2016] EWCA Crim 560 [38] (Davies LJ).

<sup>17</sup> See Jens M Scherpe, ‘Quo Vadis, civil partnership?’ (2015) 46 *VUWLR* 755.

<sup>18</sup> See Andy Hayward, ‘The Future of Civil Partnerships in England and Wales’ in Scherpe and Hayward (n 3) 527.

available to same-sex couples while conferring on them the ability to marry via the Marriage (Same Sex Couples) Act 2013. This asymmetrical, and discriminatory, position prompted the human rights challenge in *Steinfeld*.<sup>19</sup> That case provides insights when interrogating the demand for an alternative status to marriage. *Steinfeld* concerned a mixed-sex couple with an ideological opposition to marriage who wanted to register a civil partnership on the basis that it better reflected their own relationship values. Their legal challenge was part of a broader activism spearheaded by the Equal Civil Partnerships campaign.<sup>20</sup> The couple's claim using Articles 8 and 14 of the European Convention on Human Rights was initially unsuccessful in the High Court with Andrews J stating that the only obstacle was their conscience. They did not suffer humiliation and had the possibility of civil marriage open to them. While this was an incorrect reading of the ECHR, especially on the point concerning whether their claim fell within the ambit of Article 8, Andrews J's reasoning certainly echoed views of the popular press at the time. One reporter branded this a 'non-existent grievance' and that the couple should 'thank their lucky stars that, in this cruel and unjust world, they've suffered nothing more serious to make a fuss about'.<sup>21</sup>

The couple's appeal was also unsuccessful, albeit this time only narrowly. In a 2:1 majority the Court of Appeal accepted that there was discrimination, but that it was presently (albeit not indefinitely) justifiable. A measure of discretion was to be afforded to the government to determine the future of civil partnerships by reference to their uptake following same-sex marriage. This reasoning is difficult to defend. Statistical data on the number of same-sex couples registering civil partnerships, after they had the option of marriage, has absolutely no bearing on the discrimination faced by mixed-sex couples.<sup>22</sup>

A unanimous decision of the Supreme Court found the position incompatible with Articles 8 and 14 of the ECHR and, unlike the Court of Appeal, determined that no justification was present. Lord Kerr reasoned that 'to create a situation of inequality and then ask for the indulgence of time – in this case several years – as to how that inequality is to be cured is, to

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<sup>19</sup> *R (on the application of Steinfeld and Keidan) v Secretary of State for the International Development (in substitution for the Home Secretary and the Education Secretary)* [2018] UKSC 32.

<sup>20</sup> See the Equal Civil Partnerships website: <http://equalcivilpartnerships.org.uk>

<sup>21</sup> Tom Utley, 'A straight couple whining because they can't have a civil partnership? Give me strength!' *The Daily Mail* (5 December 2014).

<sup>22</sup> See Andy Hayward, 'Justifiable Discrimination – The Case of Opposite-Sex Civil Partnerships' (2017) 76 CLJ 243.

say the least, less obviously deserving of a margin of discretion'.<sup>23</sup> In a bold and, at times, acerbic judgment Lord Kerr dismantled the Secretary of State's position, taking the view that the policy pursued did not have a legitimate aim. He wished to make it 'unequivocally clear' that the moment same-sex marriage was introduced 'the government had to eliminate the inequality of treatment *immediately*'.<sup>24</sup> Ultimately, the relevant sections of the Civil Partnership Act 2004 limiting such status to same-sex couples only were declared incompatible with the ECHR via section 4 of the Human Rights Act 1998.

*Steinfeld* is a rather disappointing decision. While the outcome precipitated (rather than expressly mandated) the extension of civil partnerships to mixed-sex couples, the judgment tells us very little about their inherent value. The reason for this is that the Supreme Court did not express any preference as to phasing out the regime or extending it. Instead, it told the government that they must either 'level up' or 'level down'.<sup>25</sup> This absence of a normative value underpinning civil partnerships prompted misunderstandings in the media reporting and captured the public imagination. The couple were inaccurately described as 'winning' the right to a civil partnership<sup>26</sup> and bold claims were made as to the effect extending the regime would have on cohabitation, tax breaks and benefits.<sup>27</sup> The reality was far less dramatic or newsworthy and required further parliamentary effort and time. It was section 2 of the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 that paved the way for mixed-sex civil partnerships to be introduced via the Civil Partnership (Opposite-Sex Couples) Regulations 2019. Such regulations enabled the first ceremonies to take place on New Year's Eve 2019.

When attempting to assess the value of a second status for couples, the legal text only takes us so far. The Civil Partnership Regulations amended the Civil Partnership Act 2004 in a straightforward manner, removing the words 'of the same sex'. But the architecture of civil partnerships remained virtually the same with now an expanded cohort of couples eligible to

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<sup>23</sup> *R (on the application of Steinfeld and Keidan) v Secretary of State for the International Development (in substitution for the Home Secretary and the Education Secretary)* [2018] UKSC 32 [36]. See Andy Hayward, 'Equal Civil Partnerships, Discrimination and the Indulgence of Time' (2019) 82 MLR 922.

<sup>24</sup> *ibid* [50] (emphasis in original).

<sup>25</sup> Brenda Hale, 'Private Family Law Reform' [2018] *Family Law* 810.

<sup>26</sup> Katie French, "'We did it for Britain's 3.3m cohabiting couples!': Heterosexual pair WIN right to enter a civil partnership rather than get married after landmark Supreme Court ruling' *Mail Online* (27 June 2018).

<sup>27</sup> Emma Munbodh, '3.3 million cohabiting couples to be offered a mammoth tax break as civil partnerships are finally extended to all', *Daily Mirror* (2 October 2018).

register.<sup>28</sup> Thus, a more revealing line of enquiry is the arguments advanced by proponents of reform and assessing how far they are realisable, to which this chapter now turns.

### **Interrogating Claims justifying the Introduction of Mixed-Sex Civil Partnerships**

In England and Wales there were three core claims underpinning calls for the extension of civil partnerships to mixed-sex couples. This part delineates each argument and then questions how far such claims can be realised.

#### ***Ideological Opposition to Marriage***

The Equal Civil Partnerships campaign articulated many of the reasons why mixed-sex couples might choose not to marry. Concerns were raised as to the institution of marriage from a variety of different perspectives. For some, marriage is anti-feminist and, fuelled by the patriarchy, its history exemplifies the oppression of women.<sup>29</sup> Some proponents of equal civil partnerships conceptualise wives as their husband's property and would readily point to ceremonial traditions of marriage such as the father of the bride giving them away to the groom. Other problematic traditions included wives, and only wives, having to 'obey' their husband in their marriage vows and the symbolism associated with the white dress. More recent feminist critiques attack marriage on a basis that husbands tend to fare much better than wives financially through marriage, particularly owing to gender roles reinforcing a division of labour disadvantageous to wives.<sup>30</sup> Relatedly, marriage was originally heteronormative and thus exclusionary, particularly of same-sex couples. This country's long history of legalised and institutionalised homophobia readily explains why some same-sex couples might be ambivalent about, or even reject, marriage.<sup>31</sup> Lastly, as Hern notes, marriage is 'entwined with the history of religion',<sup>32</sup> which in turn intersects with the aforementioned feminist and LGBT+

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<sup>28</sup> Minor changes were made through the creation of a new pater est presumption stating that where a female civil partner gave birth to a child, the male civil partner would be presumed to be the father. A distinction was maintained on conversion where same-sex, but not mixed-sex couples, are able to convert their partnerships to marriages.

<sup>29</sup> Eva Wiseman, 'New ways to say I love you – without slavery and homophobia' *The Guardian* (8 July 2018). Respondents to the study by Hayfield et al (n 6) expressed feminist concerns as to marriage.

<sup>30</sup> See Julie Bindel, 'Marriage should be abolished. The civil partnership debate proves that' *The Guardian* (29 June 2018) and Katherine O'Donovan, 'The male appendage: Legal definitions of women' in Sandra Burman (ed), *Fit Work for Women* (Croom Helm 1979) 135.

<sup>31</sup> Kenneth Norrie, 'Marriage is for heterosexuals – may the rest of us be saved from it' [2000] CFLQ 363.

<sup>32</sup> Alex Hern, 'The civil partnerships ruling means we can move on from marriage', *The Guardian* (27 June 2018).

concerns. Given such objections, many couples did not want to shore up an institution possessing values that were antithetical to theirs.

These objections naturally positioned mixed-sex civil partnerships as representing the opposite. They were viewed as modernising, progressive, different and secular.<sup>33</sup> More importantly, it was believed that civil partnerships were a symmetrical institution that was rooted in the values of ‘mutual respect and equality’.<sup>34</sup> For same-sex couples, civil partnership might offer a ‘freedom’ not available with marriage.<sup>35</sup> By appreciating these important values it follows that the State should equally respect the autonomy of couples to shun marriage and chose how they wish to formalise their relationship.

These ideological arguments require careful consideration. While there was some support in the media for mixed-sex civil partnerships, particularly in relation to feminist concerns, others strongly criticised this stance. For example, viewing the issue from the perspective of LGBT+ couples, Silas questioned the absence of mixed-sex couple allyship in the early campaign for same-sex civil partnerships and the perceived entitlement of Steinfeld and Keidan: ‘when our campaigning finally achieved legality of some sort in the form of civil partnerships, you wanted it for yourselves’.<sup>36</sup> This was echoed in research undertaken with same-sex couples by Jowett and Peel, with one respondent finding mixed-sex civil partnerships ‘insulting’ in that they overlooked existing heterosexual couple privilege.<sup>37</sup> And one particularly strident article branded Steinfeld and Keidan an ‘exhibitionist couple’ peddling a ‘fake grievance...just for the pleasure of feeling a warm glow of righteous feminist indignation’.<sup>38</sup>

With much less sensationalism, academic critiques have questioned how far these ideology-based claims correlate with marriage today. In a comprehensive analysis of this issue, Miles and Probert reveal that owing to the close modelling of civil partnership upon marriage, it is difficult for the former to escape the history of the latter.<sup>39</sup> Gender roles, conditioned by

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<sup>33</sup> Alistair Campbell, ‘Civil partnership – why Alastair Campbell and Fiona Millar tied the knot’, *The Observer* (4 April 2021).

<sup>34</sup> Steinfeld and Keidan (n 5).

<sup>35</sup> Adam Jowett and Elizabeth Peel, “‘A Question of Equality and Choice’: Same-Sex Couples’ Attitudes towards Civil Partnership after the Introduction of Same-Sex Marriage’ (2017) 8 *Psychology and Sexuality* 69.

<sup>36</sup> Shelley Silas, ‘Why I won’t be raising a glass to mixed-sex civil partnerships’ *The Guardian* (3 October 2018).

<sup>37</sup> Jowett and Peel (n 35) 75.

<sup>38</sup> Utley (n 21).

<sup>39</sup> Miles and Probert (n 3).



society, are inescapable and time will tell how such dynamics are played out in the lived experiences of mixed-sex civil partners, whether the provision of childcare will be more equal than marriage and how assets will be divided upon dissolution given that gender influences the division of labour.<sup>40</sup> Thus the idea that civil partnership is ideologically distinct, free from baggage, and a blank canvas remains questionable. More recent legal developments have been downplayed too. The fact same-sex marriage has been available since 2014 is irrefutable evidence of the modernisation of marriage. Similarly, the belief that civil partnerships are, at their core, secular, overlooks the fact that since December 2011 civil partnerships can be conducted on religious premises.

Miles and Probert emphasise the need to differentiate the legal aspects from the cultural. Many of the perceived problems with marriage stem from cultural practices that over the years have been negotiated, modified, and personalised with a view to accommodating the more progressive values of certain couples.<sup>41</sup> Where applicable, brides have long been able to reject the vow of obeying their husband and, in terms of brides being given away, ‘couples can choose whether to adopt, adapt, or dispense with this tradition, depending on the policy and facilities of the individual register office’.<sup>42</sup> Hayfield et al noted that participants in their recent study tended to position wedding ceremonies as ‘inevitably imbued with these traditions’ without necessarily recognising that some couples do, in fact, negotiate or outrightly reject them.<sup>43</sup> There will, of course, be couples fortified in their viewpoint that marriage embodies an institution they want no part of but these counterarguments do cast considerable doubt on the ideological purity of civil partnerships.

### ***The Need for Legal Protections***

Another dominant theme in the campaign was the need for legal protections. Owing to the absence of comprehensive cohabitation legislation, couples unable to register a civil partnership would be treated in law as cohabitants. Upon breakdown there would be no

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<sup>40</sup> See Andy Hayward, ‘Mixed-Sex Civil Partnerships and Relationality: A Perspective from Law’ (2021) 10(1) *Families, Relationships and Societies* 205.

<sup>41</sup> See J Carter and S Duncan, ‘Wedding paradoxes: individualized conformity and the ‘perfect day’’ (2017) 65(1) *The Sociological Review* 3 arguing couples embrace and negotiate marriage traditions through a process of bricolage. This need to reject tradition is arguably stronger in same-sex weddings: see T Fetner and M Heath, ‘Do Same-sex and Straight Weddings Aspire to the Fairytale? Women’s Conformity and Resistance to Traditional Weddings’ (2016) 59(4) *Sociological Perspectives* 721.

<sup>42</sup> Miles and Probert (n 3) 310.

<sup>43</sup> Hayfield et al (n 6) 10.

possibility of the court dividing assets like they do for spouses nor any entitlement to maintenance. Upon death the protection is slightly enhanced but there are no automatic intestacy rights or exemption from inheritance tax. Steinfeld and Keidan emphasised this vulnerability, noting that ‘cohabiting placed us in a risky situation’ because they were ‘without the financial and legal protection we craved especially after the births of our children’.<sup>44</sup> Concern for children of cohabiting couples also featured in the parliamentary debates, with MPs reading out letters from constituents detailing their precarious position.<sup>45</sup> Such concerns are not unusual to this jurisdiction.<sup>46</sup>

Extension of the civil partnership regime would undoubtedly confer greater legal protections. But the argument presented, and its implications, generates multiple inconsistencies and overlooks unintended consequences. First, placing strong emphasis on the need for legal protections in the Parliamentary debates had the effect of painting couples desiring a civil partnership in England and Wales as individuals who were effectively all but married. MPs acknowledged how such couples were functioning like spouses and were in longstanding, committed relationships, often with children. This is curious as couples were effectively emulating a status that many were ideologically rejecting. Such depiction probably fuelled some of the resistance to reform because as these couples were demonstrating such high levels of commitment readily associated with marriage, why would they not simply marry? This generated debates as to whether their inability to access legal protections was merely a ‘self-induced detriment’ stemming from a ‘conscience-based barrier’ rather than a pressing concern for family law.<sup>47</sup>

Second, multiple claims were advanced as to the number of individuals who could benefit from reform. After their Supreme Court victory, Steinfeld and Keidan announced ‘[w]e did it for Britain’s 3.3 million cohabiting couples’<sup>48</sup> and Tim Loughton MP, a key proponent of reform, routinely emphasised in Parliament the need for protection for cohabitants.<sup>49</sup> While it is understandable that connecting one reform priority with another might unify and galvanise

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<sup>44</sup> Steinfeld and Keidan (n 5).

<sup>45</sup> See Hansard, HC Deb, vol 619, col 644–45 (13 January 2017) (Tim Loughton MP) and Hansard, HC Deb, vol 635, col 1126 (2 February 2018) (Sandy Martin MP). See also M Loat, ‘I got a heterosexual civil partnership on the Isle of Man – now bring them to the whole UK’ *iNews* (12 February 2018).

<sup>46</sup> See Rault, this volume, on the ‘instrumental’ reasons for entering into a pacte.

<sup>47</sup> Andy Hayward, ‘The Steinfeld Effect: Equal Civil Partnerships and the Construction of the Cohabitant’ [2019] 31 CFLQ 283, 293.

<sup>48</sup> French (n 26).

<sup>49</sup> Tim Loughton, ‘Are we serious about protecting children?’ *Bright Blue*, (17 January 2018).

support, it has arguably created confusion and conflated different types of couples with differing characteristics.<sup>50</sup> Moreover, it fuels Government resistance to opt-out cohabitation reform on the basis that it is unnecessary. Baroness Deech, for example, noted in the Second Reading of Lord Marks' Cohabitation Rights Bill that '[n]ow that civil partnerships for heterosexuals will soon be available, there is no necessity for this law at all'.<sup>51</sup>

And lastly the need for legal protections but via a conduit that was different to marriage created misunderstandings as to legal differences between the two institutions. Civil partnerships were presented as a 'lighter' form of relationship where couples were able 'effectively grant each other greater rights'<sup>52</sup> or something conferring a lesser obligation on the parties than marriage. This idea of civil partnership not engendering 'lifelong commitment' came up frequently in evidence submitted to the recent Women and Equalities Committee Inquiry into the Rights of Cohabiting Partners.<sup>53</sup> While we know that there is already widespread misinformation about the legal consequences of interpersonal relationships,<sup>54</sup> real concerns exist as to levels of public understanding as to the nature of civil partnerships and whether couple expectation matches reality. Probert and Miles are correct in their view that 'there is a danger that some couples might enter civil partnership as a new, 'different' relationship without appreciating that they are – in legal substance – effectively marrying'.<sup>55</sup>

### ***The Search for a Status***

If couples that were ideologically opposed to marriage merely wanted legal protections, they could have campaigned for opt-out cohabitation reform rather than mixed-sex civil partnerships. Instead, and informed by the ideological arguments detailed above, a key argument advanced in the campaign was the need for a formalised status. In the Parliamentary debates this aim was readily apparent with Members of Parliament noting the 'invisibility' of couples and articulating many of the values of formalisation.<sup>56</sup> These included expressions of

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<sup>50</sup> See Anne Barlow and Janet Smithson, 'Legal assumptions, cohabitants' talk and the rocky road to reform' [2010] 22 CFLQ 328.

<sup>51</sup> Hansard, HL Deb, vol 796, col 1268 (15 March 2019).

<sup>52</sup> A point made by Kevin Hollinrake MP: Hansard, HC Deb, vol 656, col 682 (15 March 2019).

<sup>53</sup> See the written evidence available here:

<https://publications.parliament.uk/pa/cm5803/cmselect/cmwomeq/92/report.html#heading-5>

<sup>54</sup> National Centre for Social Research, *Common law marriage - a peculiarly persistent myth* (22 January 2019).

<sup>55</sup> Miles and Probert (n 3) 315.

<sup>56</sup> See eg Relationships (Civil Registration) Bill 2001, Hansard, HC Deb, vol 373, col 321 (24 October 2001) (Jane Griffiths MP).

commitment, public visibility, deservingness, and respectability. We also saw a blending of the private benefits of formalisation to the couple with public benefits to society. Indeed, when announcing plans to introduce equal civil partnerships Penny Mordaunt MP stated that ‘this government wants to see more people formalise their relationships in the way they want, with the person they love’ because ‘[g]reater commitment leads to greater family stability, and greater security within relationships will help to protect children’s interests’.<sup>57</sup> This connection to broader societal goals had the curious effect of aligning left-wing political positions with more right-leaning political discourse. For example, the Marriage Foundation supported the campaign for equal civil partnerships based on their ability to strengthen commitment, despite such status potentially rivalling marriage.<sup>58</sup> Within this discussion was a key emphasis placed on couples being proactive and taking steps to regulate their affairs, which in turn, furthers the discourse on couple ‘deservingness’. This idea was encapsulated extrajudicially by Brenda Hale, who remarked that in a choice between marriage or civil partnership ‘why should we mind which they do, as long as they do something?’<sup>59</sup>

Extolling the benefits of formalisation, in and of itself, is not a new argument either. It taps into much broader movements such as those recognised in the European Court of Human Rights, where in *Oliari v Italy*, the Court noted that registration schemes possess ‘an intrinsic value...irrespective of the legal effects, however narrow or extensive, that they would introduce’.<sup>60</sup> But, like other justifications for mixed-sex civil partnerships, this argument may have unintended consequences. For example, by promoting formalisation, proposals to protect cohabitants are, at best, seen as inferior or at worse viewed as unnecessary. Thus, the desire for status can have an exclusionary effect on different, non-conforming interpersonal relationships and the superficial simplicity of civil partnership reform – of simply transposing an existing regime onto a new set of couples – overlooks that complexity.

### **Assessing the Impact of Mixed-Sex Civil Partnerships and #ADateToCelebrate**

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<sup>57</sup> Government Equalities Office, *Implementing Opposite-Sex Civil Partnerships: Next Steps* (July 2019) 2.

<sup>58</sup> Harry Benson, ‘Enter Civil Partnerships’, *Marriage Foundation*, (29 December 2019).  
<https://marriagefoundation.org.uk/enter-civil-partnerships/>

<sup>59</sup> Hale (n 25) 814.

<sup>60</sup> (2015) 65 EHRR 957 [174]. See Andy Hayward, ‘Same-sex Registered Partnerships – A Right to be Recognised?’ (2016) 75 CLJ 27.

Since being made available in December 2019, there has been only one small-scale empirical study as to couple perceptions of mixed-sex civil partnerships regarding why they chose that method of formalisation over marriage.<sup>61</sup> We do also have some early data on statistical uptake and the first registrations have generated considerable mainstream and social media attention. One source of information are posts on Twitter where the Equal Civil Partnerships group encouraged those contemplating or registering a civil partnership to tweet using the hashtag #ADateToCelebrate. Nascent trends can be discerned and some of the claims articulated in the second part of this chapter are beginning to emerge in couple practices.

### *Uptake*

One useful source of information is statistical uptake.<sup>62</sup> On 31 December 2019, the first available day to register a mixed-sex civil partnership in England and Wales, 171 were registered.<sup>63</sup> The first full year of registrations, 2020, saw 7,566 mixed-sex civil partnerships registered.<sup>64</sup> And the most recent data indicates that there were 5,692 mixed-sex civil partnership formations in 2021, a decrease of around a quarter (24.8 percent) on the previous year.<sup>65</sup> Comparably low figures of mixed-sex civil partnerships were registered in Scotland and Northern Ireland. In 2021 there were 411 mixed-sex civil partnerships registered in Scotland in comparison to 24,284 marriages<sup>66</sup> and only 28 mixed-sex civil partnerships in Northern Ireland.<sup>67</sup>

Unsurprisingly, mixed-sex civil partnerships, when available, outnumber same-sex ones. In England and Wales there were 785 same-sex civil partnerships registered in 2020, which is the lowest since their introduction in 2005. But there was an increase of 32.4 percent in 2021 (1,039

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<sup>61</sup> See Hayfield et al (n 6).

<sup>62</sup> See John Haskey, 'The new unions of civil partnerships and same-sex marriages in England and Wales – a demographic approach to developments' [2023] Fam Law 554.

<sup>63</sup> ONS, *Civil partnerships in England and Wales: 2019* (22 September 2020). Note the discrepancy in numbers (167 versus 171) is attributable to the inclusion of late registrations.

<sup>64</sup> ONS, *Civil partnerships in England and Wales: 2020* (13 December 2021).

<sup>65</sup> ONS, *Civil partnerships in England and Wales: 2021* (9 December 2022).

<sup>66</sup> National Records of Scotland, *Marriage and Civil Partnership – Time Series Data* (28 June 2022). Available at <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/marriages-and-civil-partnerships/marriages-and-civil-partnership-time-series-data> Note there were 88 same-sex civil partnerships.

<sup>67</sup> Northern Ireland Statistics and Research Agency (NISRA), *Registrar General Annual Report 2021 Civil Partnerships* (21 September 2022). Available at <https://www.nisra.gov.uk/publications/registrar-general-annual-report-2021-civil-partnerships> Note there were nine same-sex civil partnerships.

in total). However, it should be noted that of the total number of civil partnerships registered in 2021, 84.6 percent were to mixed-sex couples.

This data is revealing. Even accounting for the effect of the Covid-19 pandemic that caused a pause in civil partnership (and marriage) registrations, the uptake of mixed-sex civil partnerships is low. This suggests that some of the claims as to pent-up demand might have been exaggerated. The number of registrations fell towards the lower end of the Government Equalities Office Impact Assessment.<sup>68</sup> Published in 2019, that assessment modelled high, medium, and low take-up scenarios for mixed-sex civil partnerships. In 2020, the first full year of registrations, the high take-up estimate was 83,959, the medium was 26,614, and the low was 2,698. Even acknowledging the impact of the Covid19 pandemic, the 7,566 registrations created in 2020 exceeded the low estimate but fell considerably below the medium. Similarly, the data for 2021 of 5,692 exceeded the low estimate for that year of 2,453 but fell below the medium estimate of 15,215.

Further data is needed to accurately plot the trajectory of civil partnerships, but comparative family law provides some insights.<sup>69</sup> The Dutch experience of registered partnerships is particularly insightful given that their registered partnership regime confers upon couples identical elements to marriage so shares similarities with England and Wales. While Sumner notes that the Dutch desire for embracing family ‘plurality’ has come at the cost of complexity,<sup>70</sup> the Dutch registered partnership has proven very popular with mixed-sex couples. In 2022, there were 69,600 marriages and 24,100 registered partnerships.<sup>71</sup> Interestingly, 96.8 percent of those registered partnerships were mixed-sex (23,330). While the numbers in England and Wales do appear low, the ultimate trend may be consistent with that seen in the Netherlands. When introduced in 1998, mixed-sex registered partnerships in the Netherlands amounted to only 2 percent of formalisations, which increased to 12 percent in the 2000s and 23 percent in 2018.

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<sup>68</sup> Government Equalities Office, *Impact Assessment: Legislative Requirement to Extend Civil Partnerships to Opposite-Sex Couples* (9 July 2019).

<sup>69</sup> See Scherpe and Hayward (n 3).

<sup>70</sup> See Ian Sumner, ‘Registered Partnerships in the Netherlands’ in Scherpe and Hayward (n 3).

<sup>71</sup> Statistics Netherlands, *Fewer Registered Partnerships Formed in 2022* (10 March 2023). Available at <https://www.cbs.nl/en-gb/news/2023/08/fewer-registered-partnerships-formed-in-2022>

Curiously, this popularity is not always shared elsewhere. New Zealand introduced civil unions in 2005 for both mixed-sex and same-sex couples, and then introduced same-sex marriage in 2013, which caused a dramatic decrease in the number of registered civil unions. Today civil unions enjoy little popularity. In 2022, 42 civil unions were formed in comparison to 18,810 marriages.<sup>72</sup> While marriage is statistically on the decline in New Zealand, as it tends to be globally, the likely explanation for such low uptake of civil unions is the protection the law affords to cohabitants or de facto relationships, as they are known there. In New Zealand, living together for three years or having a child together renders the couple de facto partners and subject to identical legal treatment as married couples. With the Netherlands possessing a similar approach to cohabitants as England and Wales,<sup>73</sup> there is some foundation for the belief our uptake might develop along the same lines as the Dutch regime.

Other comparator jurisdictions can be used to plot uptake but must be approached with caution because such regimes may confer lesser entitlements than marriage or be capable of personalisation, thus not directly comparable to our regime. The Belgian *cohabitation légale*, created in 1998, is relatively popular. In 2021, 37,768 couples entered legal cohabitation<sup>74</sup> in comparison to 40,836 that married.<sup>75</sup> The regime was introduced at a time when same-sex marriage was not available and so it is interesting to note that the institution has now become popular among mixed-sex couples since marriage equality was introduced in 2003. The regime is also open to any couple including siblings and friends, the inclusion of which diluted the legal entitlements conferred. While Willems observes that this aspect renders the scheme ‘excessively broad but insufficiently deep’, it nevertheless enjoys popularity.<sup>76</sup> Conversely, France limits eligibility for its registration scheme to couples, offering them a tailor-made contract capable of regulating their life in common.<sup>77</sup> Property effects are regulated but with

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<sup>72</sup> StatsNZ, *Marriages, civil unions, and divorces: Year ended December 2022* (3 May 2023). Available at <https://www.stats.govt.nz/information-releases/marriages-civil-unions-and-divorces-year-ended-december-2022/#:~:text=Couples%20living%20in%20New%20Zealand,and%20associated%20restrictions%20on%20gatherings>.

<sup>73</sup> See Wendy Schrama, ‘De Facto Relationships in the Netherlands’ in Jens Scherpe and Andy Hayward, *De Facto Relationships: A Comparative Guide* (Edward Elgar Publishing, 2025) (forthcoming).

<sup>74</sup> Statbel, *The number of legal cohabitation declarations and terminations rises again* (18 October 2022). Available at

<https://statbel.fgov.be/en/themes/population/partnership/declarations-legal-cohabitation#:~:text=In%202021%2C%2037%2C768%20couples%20entered,well%20below%20the%202019%20level>.

<sup>75</sup> Statbel, *Marriages - 40,836 marriages in 2021* (18 October 2022). Available at <https://statbel.fgov.be/en/themes/population/partnership/marriages>

<sup>76</sup> See Geoffrey Willems, ‘Registered Partnerships in Belgium’ in Scherpe and Hayward (n 3) 385.

<sup>77</sup> See Rault, this volume.

some personal obligations attached too. Crucially, the registration and dissolution processes for PACS are different to marriage thereby ensuring the latter's priority and symbolism in French society. Allowing for a similar degree of creativity as the Belgian regime, PACS has also proven popular since its introduction in 1999,<sup>78</sup> with predictions that the number of PACS may soon exceed the number of marriages.

### ***Couple Demographics***

A much richer source of information relates to the characteristics of couples registering civil partnerships. One striking feature is the age of partners when they register. More than half (58.1 percent) of all people forming mixed-sex civil partnerships in England and Wales in 2021 were aged 50 years and over, with 22.3 percent aged 65 and over.<sup>79</sup> This is largely mirrored with same-sex couples, although is slightly lower – in 2021, 44.9 percent of same-sex civil partners were 50 years or over. A similar trend is present in Northern Ireland where nearly half of all civil partners registering were over the age of 50.<sup>80</sup> When first introduced older couples tended to opt for registered partnerships in the Netherlands too. In 1998, the average age at the time of registration was 43.5 for men and 40.9 for women which in 2021 reduced to 37.4 and 34.9, respectively.<sup>81</sup>

These statistics could be interpreted as couples in longstanding relationships taking advantage of civil partnerships finally being made available to them. Moreover, it should also be remembered that, in general, couples are formalising their relationships later in life and that the average age for marriage for mixed-sex couples in 2020 was 35.3 years for men and 33.2 for women.<sup>82</sup> However, perhaps more revealing is that approximately one in three couples entering a mixed-sex civil partnership in 2021 had previously been married or in a civil partnership. This additional information might indicate a different use of civil partnerships as a means of creating legal security without marrying (although the recent census has revealed a large increase in older couples rejecting formalisation entirely and cohabiting).<sup>83</sup> Interviews with some mixed-sex civil partners support this with one couple stating that they 'both felt strongly

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<sup>78</sup> Rault, this volume.

<sup>79</sup> ONS (n 64).

<sup>80</sup> NISRA (n 67).

<sup>81</sup> Statistics Netherlands (n 71).

<sup>82</sup> ONS, *Marriages in England and Wales: 2020* (11 May 2023).

<sup>83</sup> See ONS, *Marriage and Civil Partnership Status in England and Wales: Census 2021* (22 February 2023).



that repeating those vows and promises, knowing they hadn't worked the first time, wasn't the route [they] wanted to go down'.<sup>84</sup>

This data also reveals an interesting departure point from other jurisdictions. The Parliamentary debates suggested that couples might use civil partnership as a steppingstone to marriage.<sup>85</sup> Indeed, the first couple to enter a mixed-sex civil partnership in the Isle of Man told the media, perhaps to the dismay of the Equal Civil Partnerships campaign, that despite entering a legal arrangement that was to all intents and purposes marriage, they did hope to ultimately marry in a few years' time.<sup>86</sup> However, the evidence emerging in England and Wales is that civil partnerships are not a conduit to marriage and are being chosen by older couples with a high likelihood of being previously married. This fact differentiates the engagement of couples with our regime with those registering the French PACS or the Belgian *cohabitation légale*. In France, couples entering a PACS tend to be considerably younger and more often childless (27 percent to 11 percent married).<sup>87</sup> More importantly, around 50 percent of PACS end owing to the couples ultimately marrying.<sup>88</sup> Similar patterns exist in Belgium: in 2021 54.1 percent of legal cohabitations ended owing to the couple marrying thereby showing that for some couples registration leads to marriage as opposed to being repelled by it.<sup>89</sup> As Rault notes many French couples choose PACS in full awareness of the availability and attractiveness of marriage and with the belief they might marry later in life.<sup>90</sup>

One area that needs further empirical research is couple motivations behind formalisation. Some couples are choosing mixed-sex civil partnerships in England and Wales as an alternative to marriage, perhaps later in life. But comparative insights reveal that registration might occur as a response to a specific life event. In the Netherlands, 53 percent of couples who entered a registered partnership in recent years had a child and/or moved house within a year of registration as compared to 32 percent of married couples.<sup>91</sup> A similar pattern can be discerned

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<sup>84</sup> BBC News, 'Civil partnerships: "We wanted to find a different way"' (31 December 2019).

<sup>85</sup> Civil Partnerships Bill, Hansard, HL Deb, vol 630, col 1734 (25 January 2002) (Lord Goodhart).

<sup>86</sup> *The Independent*, 'Heterosexual couple becomes first to enter into civil partnership in British Isles' (15 October 2016).

<sup>87</sup> See chapter by Rault in this volume.

<sup>88</sup> *ibid.*

<sup>89</sup> See Statbel (n 74).

<sup>90</sup> See Wilfred Rault, 'Entre droit et symbole. Les usages sociaux du pacte civil de solidarité' (2007/8) 48 *Revue française de sociologie* 555 and W Rault, 'Is the Civil Solidarity Pact the Future of Marriage? The Several Meanings of the French Civil Union' (2019) 33 *IJLPF* 139.

<sup>91</sup> Statistics Netherlands (n 71).

in France where the PACS, as a contract, is used as a device to regulate a specific issue in a couple's life at a time when marriage might be considered an 'unyielding over-protective fence' surrounding the couple.<sup>92</sup> PACS operates as a device offering protection and certainty for couples entered at a time when marriage offers too much intensity both symbolically and in terms of the rights conferred. This connection is underexplored with mixed-sex civil partnerships, but the concerns raised about protecting children of the relationship may indicate one potential trigger.

### *Traditions and Ceremonial Rites*

Marriage is rich in tradition, with many originating from religion and others evolving from cultural practice. Equal civil partnerships, therefore, generate interesting questions. How far will couples view such status as a blank canvas allowing them to sculpt their own ceremonial practices? Will couples cherry pick marriage traditions that they feel most appropriate? These questions are starting to be answered. Pictures of the first mixed-sex registrations were posted to social media platforms using the #ADateToCelebrate hashtag and covered in the national press, allowing us to gain glimpses into couple decision-making as to ceremonies.

Tentative signs show a preference for civil partner registrations to have a small number of guests<sup>93</sup> and some registrations involved just the couple and two witnesses.<sup>94</sup> The Equal Civil Partnerships campaign also facilitated this by running a scheme allowing individuals to volunteer as witnesses. Extrapolating trends as to the size of ceremonies, however, must be approached with caution owing to the impact of the Covid-19 pandemic. While there was a period in 2020 in which no registrations could take place, when they were later made available social distancing measures and nationwide travel restrictions may have impacted attendance. Similarly, we also saw several ceremonies take place outside. Now that such restrictions have been fully removed and there exists potential for larger ceremonies, it still appears that registrations are relatively small, more administrative in nature, and tend to take place in register offices. The study by Hayfield et al supports this conclusion with some participants

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<sup>92</sup> See Laurence Francoz-Terminal, 'Registered Partnerships in France' in Scherpe and Hayward (n 3) 184.

<sup>93</sup> See Ben Quinn, 'Couple who won battle to open up civil unions register partnership' *The Guardian* (31 December 2019).

<sup>94</sup> Katie Wright, 'Civil Partnerships: How we are celebrating getting "not" married' *BBC News* (30 December 2019).

conceptualising weddings as ‘extravagant and large events’ in contrast to civil partnership registrations that are ‘far more low-key’.<sup>95</sup>

In one sense, a simpler ceremony could be linked to couple finances. Mixed-sex civil partnerships may be chosen as a reaction to the skyrocketing cost of weddings compounded by other financial pressures currently faced by couples. In a recent survey of 2,457 couples that were married in 2022, the average cost of a wedding was £18,400.<sup>96</sup> This figure may price out many couples wishing to formalise. Cost was also a feature emphasised by Keidan and Steinfeld, the litigants in the Supreme Court challenge, when they remarked that they paid £46 for a simple registration in one of the smallest rooms in Kensington and Chelsea Register Office.<sup>97</sup> However, while this trend for smaller ceremonies might evolve over time, it does not mean that civil partnerships are inevitably cheaper than marriages. Indeed, marriages can be entered into using a cheap, administrative ceremony with minimum fanfare. The issue may instead lie in expensive cultural traditions being expected as part of marriage (such as the dress, bridesmaids, and venue hire) but subject to negotiation or even outright rejection for civil partnerships.<sup>98</sup>

Some couples decided not to have a ceremony at all. One couple saw civil partnership as an administrative act or ‘just a piece of paper’<sup>99</sup> and another said it was ‘equivalent of going to sign mortgage deeds in which you don’t invite people along to have a party afterwards’.<sup>100</sup> There are echoes here of the French PACS where marriages tend to be ‘celebrated’ while the PACS is instead ‘recorded’.<sup>101</sup> Unlike marriage, especially civil marriage that imposes specific spoken words, the legal framework of civil partnerships can certainly facilitate this as they can be entered into in silence. This certainly provides evidence of civil partnerships evolving as a cheaper, administrative option and may pave the way for further differentiation. For example, in the Netherlands weddings are normally held on a Friday in spring and summer. In contrast,

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<sup>95</sup> Hayfield et al (n 6) 14.

<sup>96</sup> Zoe Burke, ‘How Much Does a Wedding Cost? The UK Average Revealed’ *Hitched* (24 January 2023).

<sup>97</sup> Henry Martin and Terri-Ann Williams, ‘Mixed sex couple are among first to enter into “modern” civil partnership after they won Supreme Court case to change law because they felt marriage ‘treats women as property’” *Mail Online* (1 January 2020).

<sup>98</sup> Steinfeld and Keidan (n 5). See Daniel Willers, ‘Couple to Tie Knot in York’s First Mixed-Sex Civil Partnership’ *The York Press* (17 December 2019).

<sup>99</sup> Wright (n 94).

<sup>100</sup> Hayfield et al (n 6) 14.

<sup>101</sup> See W Rault, ‘20 years of France’s civil union, the PACS (Pacte Civil de Solidarité): An increasingly popular option’ [https://www.ined.fr/en/everything\\_about\\_population/demographic-facts-sheets/focus-on/20-years-pacs-considerable-expansion/](https://www.ined.fr/en/everything_about_population/demographic-facts-sheets/focus-on/20-years-pacs-considerable-expansion/) accessed 1 September 2023.

registered partnerships are more commonly concluded on Mondays and take place all year round.<sup>102</sup> It is also noted that a more business-like approach is taken in the Netherlands, which echoes similar trends in Belgium and France where couples enter contracts and declarations as to their joint lives. There is some evidence of this happening in England and Wales with couples rejecting the idea of the ceremony as transformative. One couple referred to it as ‘a bit of paper’ that would ‘not make any difference to how [they] behave towards each other when we get up the next day’.<sup>103</sup>

Key elements, readily associated with marriage, appear to have been modified too. The first registrations show women rejecting the wearing of a white dress or the so-called ‘meringue dress’.<sup>104</sup> This is unsurprising in the light of the deep, and for many problematic, symbolism of such dress that attests to the bride’s chaste nature and virginity. The cost of the dress and the fact it would be ‘worn for only 1 day’ were also concerns.<sup>105</sup> Instead, one couple spoke of the “non-wedding” dress’,<sup>106</sup> almost as a protest or reclaiming of a tradition, and in general the trend appears to be one of informality in terms of the clothing worn. The empirical study by Hayfield et al provides evidence of this modification too. They note that participants often engaged in a compromise between opting for alternative attire (that they felt comfortable wearing) and satisfying expectations imposed upon them by family members and the sense of the occasion itself. While weddings were ‘an inevitable frame of reference’ for decision-making, participants in the study expressed resistance to ‘copycatting’ or ‘mimicking’.<sup>107</sup>

Another key feature of ceremonies is the giving of an engagement/wedding ring, which is rooted in Christian religious practice. The ring, worn on the fourth finger or ring finger, symbolises *vena amoris* – the vein of love – said to run from that finger to the heart. Some civil partners incorporated rings and chose to wear them on the ring finger but kept them ‘low-cost’.<sup>108</sup> Others modified the practice with one couple remarking ‘we won’t wear them all the time, or even on a particular finger, but we wanted something special and a bit different for the day’.<sup>109</sup> Unsurprisingly, other couples rejected the ring entirely and gave gifts as part of the

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<sup>102</sup> Statistics Netherlands (n 71).

<sup>103</sup> Martin and Williams (n 97).

<sup>104</sup> Hayfield et al (n 6) 16.

<sup>105</sup> *ibid.*

<sup>106</sup> Wright (n 94).

<sup>107</sup> Hayfield et al (n 6) 13.

<sup>108</sup> Wright (n 94).

<sup>109</sup> *ibid.* See also Sally Howard, ‘No rings, flowers or “I do” - Why we chose a civil union instead of a wedding’ *The Telegraph* (9 February 2020).

registration ceremony. One couple exchanged a watch and a necklace, suggesting a borrowing and subsequent modification of marriage traditions.<sup>110</sup>

Practices appear to be embraced by reference to their readiness to being re-purposed. Those deeply connected to marriage, such as the bride being ‘given away’, appear to have been rejected although that is not universal. For example, one couple registered their civil partnership in the blacksmiths forge in Gretna Green, which is a somewhat bizarre choice owing to that location’s strong symbolism and its important role in the history of marriage in Scotland.<sup>111</sup> Other traditions associated with marriage that appear less gendered or patriarchal have been retained. Some couples, for example, kept the tradition of the honeymoon.<sup>112</sup> Similarly, as ‘entering the building was inescapable’, the idea of ‘walking down the aisle’ was reconceptualised.<sup>113</sup>

While these practices appear unique for the couples concerned, they arguably contribute to a broader sense of civil partners forging a group identity, coloured by ideology. Social media posts of couples registering civil partnerships thanked Rebecca Steinfeld and Charles Keidan for making that possibility happen, often referencing at the same time the fact that they were the first couple to register in a particular district or register office. This idea of ‘history-making’ and coverage in the mainstream media certainly gave visibility to the movement. The Equal Civil Partnerships campaign also played an important role in building a supporter base, providing frequent updates on the litigation or activities in Parliament. That sense of community was furthered through the organisation producing branded merchandise ranging from mugs, aprons, cushions, and even facemasks. They also developed with a specific jeweller an Equal Civil Partnership bar brooch that could be worn by mixed- or same-sex civil partners and was gender-neutral.<sup>114</sup> The choice of a brooch came after a media campaign to choose an emblem for equal civil partners; curiously a ring was suggested despite its central role in marriage and wedding ceremonies. These activities certainly unified the movement at the time, although it should be noted that both the brooch and the merchandise appear to be no longer available for purchase.

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<sup>110</sup> BBC News, ‘Why we chose a civil partnership over marriage’ (14 February 2020).

<sup>111</sup> Jasmine McWilliams @rexwestern (11 October 2021), ‘#ADatetoCelebrate @EqualCPs Thanks to the campaign we held our Civil Partnership at Gretna Green in September’. Available at <https://twitter.com/rexwestern/status/1447538775651926017>

<sup>112</sup> Wright (n 94).

<sup>113</sup> Hayfield et al (n 6) 14.

<sup>114</sup> Equal Civil Partnerships, ‘Get Involved’ – available at <http://equalcivilpartnerships.org.uk/get-involved/>

Couple identity also featured in news stories exploring how the civil partners would refer to each other. Many civil partners did not like the terms ‘husband’ and ‘wife’,<sup>115</sup> with one couple stating that such terms were ‘not relevant to us’.<sup>116</sup> Given the ideology underpinning the movement, the label ‘wife’ was found to be particularly inappropriate.<sup>117</sup> While there was considerable ease in rejecting terms, the difficulty lay in selecting alternative labels. On social media a range of terms were used with couples welcoming the fact that they were ‘now legal’. ‘Civilly partnered’ was often mentioned and one couple quipped that they were pleased to be ‘civilised’.<sup>118</sup> The attractiveness of ‘partner’ was readily apparent, and couples embraced the idea of their relationship being egalitarian, gender neutral and a partnership. This focus on equality was a key finding in the recent study by Hayfield et al with one respondent being particularly drawn to ‘the idea that you are partners, that it’s the same word on both sides’.<sup>119</sup> The experience of England and Wales is not unique on this issue. The same problem existed in France with the French even creating a verb – *se pacser* – meaning to register a PACS. The open texture of language allows for a considerable degree of creativity, which certainly contributed to the belief that civil partnerships could have transformative potential. However, time and greater exposure of civil partnerships to wider society are needed to embed a new language.

## Conclusions

When introducing his Civil Partnerships Bill in 2002, Lord Lester remarked that some might question whether Shakespeare would have written sonnets about equal civil partnerships.<sup>120</sup> Marriage, after all, has always had the monopoly in art, music, and literature and remains so engrained in public understandings of love. But, perhaps, that is the whole point? If the saga of civil partnership reform has revealed anything, it is just how alluring the concepts of possibility, starting afresh, and a blank canvas are for some couples. Interviews with new civil partners reveal a strong emphasis upon how such status offered a completely new way of

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<sup>115</sup> See Helen Fenwick and Andy Hayward, ‘From Same-Sex Marriage to Equal Civil Partnerships: On a Path towards ‘Perfecting’ Equality?’ [2018] 30 CFLQ 97.

<sup>116</sup> See Wright (n 94) and BBC News, ‘Civil partnerships: First mixed-sex unions take place’ (1 January 2020).

<sup>117</sup> Owen Bowcott, “‘How to get hitched as a feminist’: mixed-sex civil unions to begin’ *The Guardian* (1 December 2019).

<sup>118</sup> Wright (n 94).

<sup>119</sup> Hayfield et al (n 6) 12.

<sup>120</sup> Hansard HL Deb 25 January 2002 vol 630 col 1746 referencing the Christian Institute, *Counterfeit Marriage*.

formalising relationships that had ‘no social script’ and ‘no fixed expectations of what you should or shouldn’t do’.<sup>121</sup> It was a ‘tabular rasa to be filled with meanings that fitted them and their relationships’.<sup>122</sup> There was also endless possibility expressed in relation to the devising of new ceremonial rites and traditions that drew upon, and disrupted, those routinely associated with marriage.

But without wishing to undermine this optimism or question this ‘hoped-for brave new world’, it must also be accepted that the evolution of civil partnerships in England and Wales was neither principled nor a masterclass in law reform.<sup>123</sup> Creating a second status involved precarious and, at times, unlikely alliances between groups with differing political agendas.<sup>124</sup> Rather than devising a regime from first principles cognisant of how it will work alongside marriage, mixed-sex civil partnerships were a retrospective addition mandated by a human rights violation. Their evolution demonstrated revisionism too with the Government spending an estimated £65,000 in fighting the *Steinfeld* legal challenge only to then applaud its forward-thinking vision when civil partnerships were finally extended to mixed-sex couples. And we must not overlook the contested nature of civil partnerships that endures today. While marriage is far from perfect, civil partnerships already possess a legacy despite their short existence. As Wiseman notes same-sex civil partnerships are ‘still smoky with the stench of its history as a consolation prize to gay couples when a homophobic society, under pressure to modernise, was still unable to bring itself to fling open the doors to “actual” marriage’.<sup>125</sup>

The future of mixed-sex civil partnerships remains uncertain. It is still too early to predict their trajectory or how they might evolve alongside marriage. What is clear is that civil partners are not homogenous and their engagement with the status varies. There is certainly potential for differentiation to be made and that new sets of values and ideologies can be created. But after the battle for mixed-sex civil partnerships becomes a memory and couples contemplating formalisation in the future have a decontextualised menu of options, these distinctions may become illusory. Rather than offering a blank canvas, mixed-sex civil partnerships may

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<sup>121</sup> *Steinfeld and Keidan* (n 5).

<sup>122</sup> *Hayfield et al* (n 6) 12.

<sup>123</sup> *Miles and Probert* (n 3) 319.

<sup>124</sup> See Nausica Palazzo and Jeffrey A. Redding, *Queer and Religious Alliances in Family Law Politics and Beyond* (Anthem Press 2022).

<sup>125</sup> *Wiseman* (n 29).

develop their own (problematic) legacy and become an exercise of couples painting by numbers in colours and paints determined by the State.





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