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PROTECTION AND AUTONOMY: CAN WOMEN HAVE IT ALL? A COMPARATIVE STUDY OF MARRIAGE, CIVIL PARTNERSHIP AND COHABITATION

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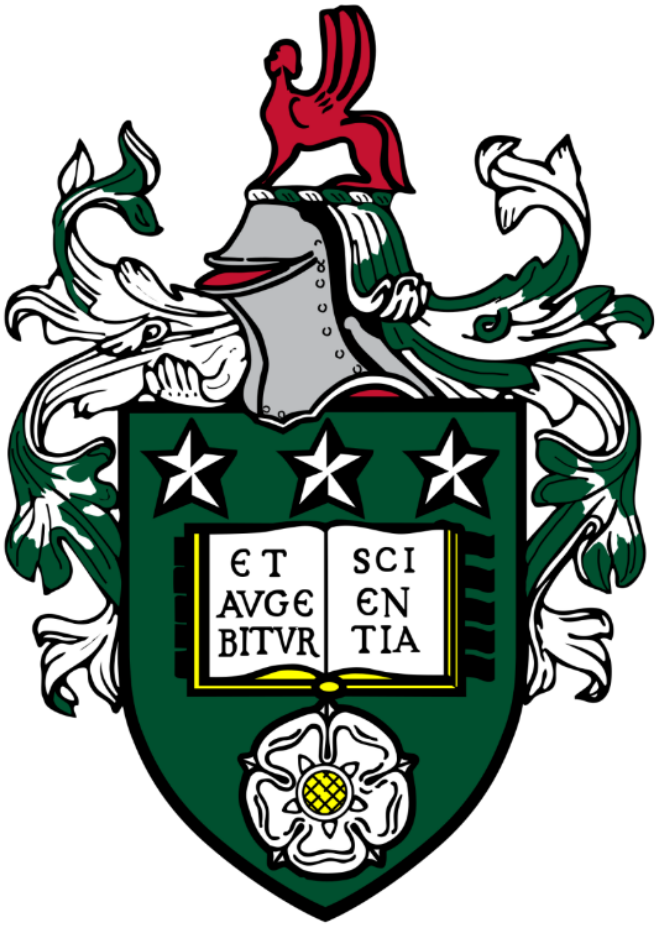

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Abstract

In light of the 2019 decision to extend civil partnerships to opposite sex couples, this dissertation will compare three forms of union available to heterosexual couples - marriage, civil partnership and cohabitation. Focusing on the experience of heterosexual women, the aim of this research project is to assess which form of union is able to provide women with both autonomy and the highest level of legal protection. A large body of literature will be analysed in conjunction with numerous pieces of recent research which concern the three forms of union. It is contended that this dissertation is one of the few research projects that directly compares the three unions and their capabilities to protect and promote equality and autonomy, looking primarily at the experience of heterosexual women. The conclusions drawn will be three-fold. Firstly, it will be argued that whilst marriage offers ample legal recourse, it imposes traditional heteronormative gender roles and has negatively shaped the aspirations and experiences of women. Secondly, it will be suggested that whilst cohabitation and its unregulated form and ad hoc development may have liberated women, any protection afforded under cohabitation is largely illusory and thus it should be avoided as a long-term form of union. Finally, it will be concluded that civil partnership offers the most comprehensive protection for women, liberating them from the sexist shackles of marriage and protecting them from the indemnity of cohabitation.

Introduction

In 2019, the ground-breaking case of *R (on the application of Steinfeld and Keidan) v Secretary of State for International Development*[1] led to Parliament extending civil partnerships, a form of union previously only available to same-sex couples, to opposite-sex couples. The introduction of opposite-sex civil partnership has come at a time where marriage, once the only acceptable form of union, has seen its rates fall to 'the lowest on record'[2] and cohabitation, a newer informal type of union, is growing in popularity. Focusing on the experience of heterosexual women, this research project will explore these three forms of union to assess the level of legal protection and the ability to promote autonomy and equality of each. The success of each union will be measured in terms of the legal protection, autonomy and equality it offers. These benchmarks will be used as it is contended that they comprise the fundamental requirements of a union.

The recent change in the law to extend civil partnerships to opposite-sex couples makes this research project particularly pertinent. Not only may many heterosexual couples be unaware that they can register for a civil partnership, they may also be unaware of the legal implications of marriage, civil partnership and cohabitation. Due to the way that marriage and other social institutions have positioned women throughout history and in the modern day, the experience of women will serve as the focal point for this dissertation.

Separately, marriage, civil partnership and cohabitation have been explored thoroughly in academic literature. However, most research surrounding civil partnership has been centred around same-sex civil partnerships. It is also contended that this dissertation is one of few research projects where the chief aim is to consider the differences between marriage, civil partnership and cohabitation focusing on the experience of women.

In order to answer this research question, a plethora of academic literature and research will be analysed. Chapter one will begin by focusing on marriage, exploring its strengths, then moving onto investigate the factors associated with its declining rates. Chapter two will then explore the historical position of wives before asking whether marriage as an institution has negatively shaped the aspirations and experiences of women. Chapter three will consider

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[1] R (on the application of Steinfeld and Keidan) (Appellants) v Secretary of State for International Development (in substitution for the Home Secretary and the Education Secretary) [2018] UKSC 32.
[2] Office for National Statistics, 'Marriage in England and Wales: 2017 (April 2020) < https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriagecohabitationandcivilpartnerships/bulletins/marriagesinenglandandwalesprovisional/2017> accessed 15 April 2020.

cohabitation, weighing up its strengths and weaknesses when compared to marriage and civil partnership. Finally, chapter four will analyse civil partnership, exploring the parallels and differences of marriage and civil partnership.

Chapter One: Marriage

Introduction

For centuries, marriage has been central to the idea of what constitutes a family. Overtime marriage has evolved from a religious sacrament into a legal, social and cultural institution.[3] Defined by Barron Hannen as 'an engagement between a man and women to live together, and love another as husband and wife, to the exclusion of all others'[4], marriage is argued to be rooted in heteronormative notions of relationships, 'paternalistic and patriarchal origins'[5]. This chapter will explore marriage, analysing the alleged strengths of the institution before moving on to examine 21st century marriage trends and the factors associated with the downturn of marriage rates, focusing primarily on the experience of marriage for women.

The Case for Marriage

The case for marriage will now be explored. The strengths of marriage that will be explored in this dissertation can be separated into three categories - rights, status and benefits.

i) Rights

There are a number of rights afforded to married couples. These rights are what set marriage apart from other informal forms of union, such as cohabitation. It is worth noting from the outset, that the rights given in marriage are almost identical to those given in civil partnership, another form of legal union which will be explored in chapter four. Examples of rights which married couples enjoy are joint ownership of assets[6], automatic inheritance when their partner dies intestate[7], automatic parental rights for husbands who father children with their wives[8] and provisions relating to divorce which help parties separate property and child custody[9]. Despite the fact that these rights, which until 2019, were only afforded to married couples, research by Eekelaar has concluded that the rights offered by marriage were not the main incentive for couples to wed. Instead, it was 'compliance with convention'

[3] Martha Fineman, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240, 247.
[4] Durham v Durham [1855] 10 PD 80, 82.
[5] Helen Fenwick and Andy Hayward, 'From same-sex marriage to equal civil partnerships: on a path towards 'perfecting' equality?' [2018] Child and Family Law Quarterly 97.
[6] The Law of Property Act 1925.
[7] Inheritance (Provision for Family and Dependents) Act 1975.
[8] Children Act 1989.
[9] Matrimonial Causes Act 1973, s21-44.

that was cited most frequently – marrying due to religious, social or cultural practice.[10] Eekelaar acknowledges that rights may still play a part in a decision to marry but asserts that 'extreme caution' must be taken in drawing conclusions as marriage has varied meaning for every individual.[11] It is also likely that many couples may be unaware of the rights that marriage offers. This is evidenced in the findings of the British Social Attitudes Survey which found that 42%-49% of married and civil partnered participants believed that common law marriage exists[12] thus illustrating that whilst the rights marriage offers are an advantage of the institution, they are unlikely to be the main incentive to wed.

ii) Status

Marriage, as a form of union, has long been afforded a unique privileged status. In the 19th century, marriage was said to be the 'single most profound and far-reaching institution' that would affect a woman's life.[13] In securing a husband, a woman would lose her political and financial freedom and in its place gain 'a clear elevation in social status'.[14] The status of marriage has altered in the modern day to shift the focus from giving women standing, to the institution itself being an object of status and desire. This was illustrated in the case of *Wilkinson v Kitzinger*[15], where marriage was described as 'the gold standard'[16] of human relationships by the same-sex couple who petitioned to have their Canadian same-sex marriage legally recognised in England and Wales. Marriage is also afforded significant status by Parliament w[5]ivileges married couples by conferring special rights. It is argued by O'Donovan that the status of marriage outweighs the rights which marriage gives.[17] Lord Penzance wrote of marriage in the case of *Hyde v Hyde and Woodmansee*[18], 'It creates mutual rights and obligations…but beyond that it confers a status'.[19] The status of marriage could be argued to be a prime asset of the institution.

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[10] John Eekelaar, 'Why People Marry: The Many Faces of an Institution' (2007) 41(3) Family Law Quarterly 413, 418.
[11] John Eekelaar, 'Why People Marry: The Many Faces of an Institution' (2007) 41(3) Family Law Quarterly 413, 423.
[12] Park, A., Bryson, C., Clery, E., Curtice, J. and Phillips, M. 'British Social Attitudes: the 30th Report' (London, NatCen Social Research 2013).
[13] Philippa Levine, '"So Few Prizes and So Many Blanks": Marriage and Feminism in Later Nineteenth-Century England' (1989) 28(2) Journal of British Studies 150.
[14] Ibid.
[15] Wilkinson v Kitzinger [2006] EWHC 2022 (Fam).
[16] Wilkinson v Kitzinger [2006] EWHC 2022 (Fam) 6.
[17] Katherine O'Donovan, 'Marriage: a Sacred of Profane Love Machine?' (1993) 1(1) Feminist Legal Studies 75.
[18] (1866) LR 1 P & D 130.
[19] Hyde v Hyde and Woodmansee (1866) LR 1 P & D 130, 133.

iii) Benefits

It is alleged that married couples enjoy a number of benefits that unmarried couples do not. O'Donovan divides these benefits into three categories, material benefits, personal benefits and generational benefits.[20] Material benefits are the rights afforded to married couples, special procedures relating to social benefits, property and inheritance and policy relating to tax. Personal benefits include stability, rights of succession and the assistance of the court to redistribute property in divorce. Generational benefits describe the way that marriage is recognised by the medical and psychological professions which allow married couples, with greater ease than unmarried couples, to access fertility treatment, adopt and gain parental rights in divorce. Children of married couples are also thought to benefit. It is maintained by the Marriage Foundation that children of married couples have increased chances of going to university, avoiding benefits and getting married when they are older.[21] However, it is difficult to prove this using social science.[22] Eekelaar points out that it is 'very difficult to know whether it is the fact of marriage which brings about these consequences, or whether they are brought about by other factors, which also happen to be associated with marriage'.[23] Despite not being able to prove that the benefits associated with marriage stem from the institution itself, the benefits associated with marriage are recognised as a strength of the institution.

Marriage Trends in the 21st Century

Marriage rates have fallen to 'historical lows'[24]. The number of opposite-sex marriages have decreased steadily since the 1970s.[25] The rate has levelled out in the past few years with only minor increases or decreases, around 20% for women and 22% for men.[26] In investigating the decline of marriage rates, a number of factors have been identified. For the

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[20] Katherine O'Donovan, 'Marriage: a Sacred of Profane Love Machine?' (1993) 1(1) Feminist Legal Studies 75, 86.
[21] Harry Benson and Stephen Kay, 'The Marriage Gap: The rich get married (and stay together). The poor don't.' (Marriage Foundation, August 2015) < https://marriagefoundation.org.uk/wp-content/uploads/2019/09/MF-paper-The-Marriage-Gap-Rich-and-Poor.pdf> accessed 7 April 2020.
[22] Jane Lewis, 'Is Marriage the Answer to the Problems of Family Change? (2001) 72(4) Political Quarterly 437, 439.
[23] John Eekelaar, 'Why People Marry: The Many Faces of an Institution' (2007) 41(3) Family Law Quarterly 413, 413.
[24] Office for National Statistics, 'Marriages in England and Wales: 2016' (March 2019) < https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriagecohabitationandcivilpartnerships/bulletins/marriagesinenglandandwalesprovisional/2016> accessed 15 April 2020.
[25] Ibid.
[26] Office for National Statistics, 'Marriages in England and Wales: 2016' (March 2019) < https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriagecohabitationandcivilpartnerships/bulletins/marriagesinenglandandwalesprovisional/2016> accessed 15 April 2020.

purposes of this chapter, five factors will be explored – secularisation, the sexual revolution, access to education and better jobs for women, the cost of weddings and the choice of unions available.

Religion and marriage were once entirely synonymous. Referred to as a sacrament in twelfth century Roman Catholic writing, marriage has deep religious origins.[27] Many religions have specific rules and customs appertaining to marriage. Marriage, over time has become more secular, with the creation of civil marriages in 1836. In the last two decades, religious marriages have fallen by 48% and in 2016, there were more than three times the number of civil marriage ceremonies than religious marriage ceremonies. Civil marriage, to a large extent, has provided a lifeline for the institution. With 25% of the population in England and Wales[28] not belonging to a religion, many non-religious couples may be looking away from marriage to other forms of union.

The sexual revolution which began in the 1960s saw the liberation of women as autonomous sexual beings and also been identified as a factor for the decline in marriage rates.[29] Auchmuty argues that the impact of the sexual revolution on marriage was 'profound' as it 'demolished the assumption that wives should be content with dutiful submission to their husband's demands'.[30] In 1974 the contraceptive pill, which was once only available to married women, could be prescribed to all women for free for the first time. Women now felt liberated in their bodies and able to prevent unwanted pregnancies which would have led to marriage therefore explaining the downturn of marriage rates.

Increased opportunities for education and jobs for women have also been argued to contribute as a factor to the decline in marriage rates.[31] Today there are more female students at university than male.[32] With women able to gain qualifications and seek higher

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[27] Lauren Everitt, 'Ten key moments in the history of marriage' (BBC News Magazine, March 2012) <https://www.bbc.co.uk/news/magazine-17351133> accessed 15 April 2020.
[28] Office for National Statistics, 'Full story: what does the Census tell us about religion in 2011' (May 2013)< https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/articles/fullstorywhatdoesthecensustellusaboutreligionin2011/2013-05-16> accessed 15 April 2020.
[29] Rosemary Auchmuty, 'Law and the Power of Feminism: How Marriage Lost its Power to Oppress Women' (2012) 20(2) Feminist Legal Studies 71, 75.
[30] Rosemary Auchmuty, 'Law and the Power of Feminism: How Marriage Lost its Power to Oppress Women' (2012) 20(2) Feminist Legal Studies 71, 76.
[31] May Bulman, 'Marriages between men and women hit lowest rate on record' (Independent, February 2018) <https://www.independent.co.uk/news/uk/home-news/marriages-men-women-lowest-record-heterosexual-lgbt-ons-a8232751.html> accessed 15 April 2020.
[32] Alison Kershaw, 'Almost 10,000 more women than men applying to UK universities as gender gap grows' (Independent, July 2018) <https://www.independent.co.uk/news/education/gender-gap-university-students-men-women-applications-uk-a8442941.html> accessed 15 April 2020.

level employment, they have become self-sufficient and thus have less need to enter into or tolerate unhappy marriages.[33] This too is reflected in the decline of marriage rates.

The growing cost of weddings is thought to have contributed to the decline in marriage rates.[34] In 2018, the average cost of a wedding was found to be £30,355 – a 12% increase from the previous year.[35] It is argued that education, purchasing a house and travel are now prioritised over getting married due to the financial cost. Young people nowadays face enormous cost when trying to purchase or rent property or enter higher education - the average house price, as of January 2020, was £231,185[36] and the average debt accumulated through attending university was £36,000 in 2018[37]. Therefore, an expensive wedding may not be the first thing on the agenda for many couples. Marriage may be left until later in life, if it is considered at all.

The final factor to be considered is the choice of other types of union which are available to couples. Previously, marriage was the only option. Now there are several alternative forms of union to marriage – the most common of these forms are cohabitation, which is an unregulated form of union and civil partnership, which is comparable to marriage in the rights it offers but differs greatly in its origins and traditions. It is the comparison of these three forms of union that will be the main focus of this dissertation.

Conclusion

In this chapter the strengths of marriage have been considered. It has been concluded that the status of marriage is an advantage of the institution, acting as a main incentive to wed. Another strength of marriage exists in the many rights and protections that are afforded to married couples. However, it has been contended that many people may be unaware of the rights marriage offers. The benefits, to which research has found to be many, of marriage have also been explored however it has been suggested that it is difficult to prove these benefits stem directly from marriage. Amongst the factors explored for the declining rates in marriage, an overarching theme of female autonomy arises. As women have been liberated

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[33] Jane Lewis, 'Is Marriage the Answer to the Problems of Family Change? (2001) 72(4) Political Quarterly 437.
[34] May Bulman, 'Marriages between men and women hit lowest rate on record' (Independent, February 2018) <https://www.independent.co.uk/news/uk/home-news/marriages-men-women-lowest-record-heterosexual-lgbt-ons-a8232751.html> accessed 15 April 2020.
[35] Bridebook, 'National Wedding Survey 2018' (2019) https://bridebook.co.uk/article/national-wedding-survey-2018 accessed 15 April 2020.
[36] Land Registry, 'UK House Price Index' <https://landregistry.data.gov.uk/app/ukhpi> accessed 15 April 2020
[37] Paul Bolton, 'Student Loan Statistics' (House of Commons Library, December 2019) <https://commonslibrary.parliament.uk/research-briefings/sn01079/> accessed 15 April 2020.

and able to gain independence, their reliance on marriage has lessened and thus the rates of marriage have fallen. On this basis, it is suggested that marriage is ingrained with patriarchal connotations, such to the conclusion that it is not a neutral legal or social institution.[38] To what extent this is true and how this has influenced women's aspirations and experiences will be the focus of the next chapter.

[38] Martha Fineman, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240, 247.

Chapter Two: The Case Against Marriage

Introduction

> 'One must remember that marriage has not been a neutral social, cultural, or legal institution. It has shaped the aspirations and experiences of women and men in ways that have historically disadvantaged women.'.[39]

It has been argued by Martha Fineman[40], amongst a plethora of other academics[41] that marriage has been central to the enforcement of gender roles which have disadvantaged women for centuries. This chapter will examine the institution of marriage to question whether it has indeed negatively shaped women's lives.

In examining the legal institution of marriage, it is first suitable to look at its legal underpinning. Marriage in England and Wales is governed by two main statutes. The Marriage Act 1949 and the Matrimonial Causes Act (MCA) 1973. The MCA deals with the regulation of the end of marriages, divorce. When a couple marry, they are afforded rights not available to those out of wedlock. These rights include property rights[42], tax rights[43] and parental rights[44]. For some academics, marriage has proven to be a contentious topic, many wishing to abandon the institution.[45] Some, to the contrary, champion marriage suggesting that children and adults are 'happier, healthier and better off in married couple families'.[46] However it has been suggested that it is difficult to prove or disprove this using social science research.[47] To begin, the historical position of wives will be explored so that the historical roots of the institution can be understood.

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[39] Martha Fineman, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240, 247.
[40] Ibid.
[41] Smart C., *The Ties that Bind* (Routledge & Kegan Paul plc 1984); Katherine O'Donovan, Fit Work for Women, Routledge 2012; Rosemary Auchmuty, 'Law and the Power of Feminism: How Marriage Lost its Power to Oppress Women' (2012) 20(2) Feminist Legal Studies 71.
[42] Matrimonial Causes Act 1973.
[43] Income Tax Act 2007 s45.
[44] Children Act 1989 s2.
[45] Clare Chambers, 'VII – The Marriage-Free State' (2013) 11(2) Proceedings of the Aristotelian Society 123; Martha Fineman, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240; Kathleen Kiernan, 'Redrawing the Boundaries of Marriage' (2004) 66(4) Journal of Marriage and Family 980.
[46] Coalition for Marriage 'DIVORCE DAMAGES CHILDREN, STUDY FINDS. AGAIN.' (2019) <https://www.c4m.org.uk/divorce-damages-children-study-finds-again/> accessed 8 March 2020.
[47] Jane Lewis, 'Is Marriage the Answer to the Problems of Family Change? (2001) 72(4) Political Quarterly 437, 439.

The Historical Position of Wives: Unity Theory

Before analysing how marriage has shaped the aspirations and experiences of women, it is first necessary to consider the history of marriage. Prior to the second half of the twentieth century, women were regarded as inferior to men in marriage and society more generally.[48] Unity Theory, as described by Cretney, explains how historically a man and woman would become a singular unit when they married. The wife would lose her legal personality, becoming an extension of her husband. This meant that

> 'she could not sue in her own name, and she could not in principle make an enforceable contract; whilst her husband had to be joined in any legal action against her (and was liable to pay any damages awarded against her) and he was also liable for her pre-marital debts, contracts and torts.'[49].

The apparently subservient position which married women held meant that they lacked legal independence. Blackstone explains the way that this impacted women,

> 'the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection and cover, she performs every thing'.[50]

It was not until the late twentieth century that the Doctrine of Unity no longer applied, and women were able to be autonomous legal beings in marriage.[51] The passing of statutes such as the Married Women's Property Act 1882 gave wives the right to sue or be sued and to own, sell and buy her own property, breaking away from the idea of unity between husband and wife and giving married women the independence they had previously been deprived of. Women's oppression through marriage prior to the second half of the twentieth century has been well documented through historical and legal discourse.[52] The historical oppression that women faced is well-established so what is more relevant for the purposes of this chapter is to explore the ways in which marriage has shaped the aspirations and experiences of women in the modern day.

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[48] Jane Purvis, *Women's History: Britain, 1860-1945: An Introduction* (Routledge 1997).
[49] Stephen Cretney, *Family law in the twentieth century: a history* (OUP 2005) 91.
[50] William Blackstone, *Commentaries on the Laws of England* (4th edition , Volume 1, Oxford Clarendon Press 1770) 442.
[51] Stephen Cretney, *Family law in the twentieth century: a history* (OUP 2005) 91.
[52] Jane Purvis, *Women's History: Britain, 1860-1945: An Introduction* (Routledge 1997).

Shaped Aspirations

Fineman asserts that women's aspirations have been shaped by marriage. In order to assess this claim, this section will focus on whether an expectation to marry exists and then will go on to examine the social status of marriage, compared to other forms of union such as cohabitation or civil partnership.

i) Expectation to marry

Looking at the expectation to marry provides a starting point for the analysis of whether marriage has shaped the aspirations of women. It has been argued by Fineman that marriage has shaped the aspirations of men and women.[53] In the seventeenth century, marriage provided opportunities for women that they could not access as an unmarried woman.

> 'In a society strongly influenced by Puritan values, sexual integrity and the status of a married person gave a woman respectability and social prestige. This, together with the fact that it was very difficult for women to find ways of making an independent living, meant that securing a husband was a matter of great importance.'[54]

Marriage was the only way for women to improve their inferior societal position. It cannot be disputed that women marry under very different conditions in modern society but that is not 8y that the expectation to marry no longer exists.[55] Auchmuty submits that the expectation for women to marry has 'pervaded our culture from top to bottom, from the law's privileging of marriage (and penalising of the alternatives) to the romantic fiction and magazines we read and the films and television we watched.'.[56] The 'importance' of marriage is taught to children from a young age. Schools in England and Wales must adhere to Section 403(1A) of the Education Act 1996 which states that students must 'learn the nature of marriage and its importance for family life and the bringing up of children'.[57] This statute does not afford cohabitation and civil partnership the same privileged status however this has been to some degree rectified in the recent statutory guidance published by the

[53] Martha Fineman, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240, 247.
[54] Alice Brabcová, 'Marriage in Seventeenth-Century England: The Woman's Story' (University of West Bohemia, Plzeň 2016) 21.
[55] Park, A., Bryson, C., Clery, E., Curtice, J. and Phillips, M. 'British Social Attitudes: the 30th Report' (London, NatCen Social Research 2013).
[56] Rosemary Auchmuty, 'Law and the Power of Feminism: How Marriage Lost its Power to Oppress Women' (2012) 20(2) Feminist Legal Studies 71, 73.
[57] House of Commons Library, 'Marriage and Government policy' (Debate Pack, Number CDP-2018-0025, January 2018) 12.

Department for Education in 2019[58]. The guidance instructs that pupils are to be taught of both marriage and civil partnership however civil partnership is not the main focus of this document. The term 'civil partnership' is rarely used, with a footnote on page 13 stating 'In the rest of this guidance, references to marriage should be read as marriage and civil partnership.'.[59] The choice to put marriage at the forefront of the document and confine civil partnership to the footnotes could suggest that marriage is still deemed to be the primary union in England and Wales.

Such expectation and pressures are thought to be felt more strongly by women. Examining the labels which society affixes to unmarried men and women can provide an illustration of this. A woman who does not marry is likely to be labelled as a 'spinster' – this term has been used in a highly pejorative manner to suggest that unmarried women are unfulfilled due to their lack of a husband.[60] The equivalent term for a man is a 'bachelor' – the antithesis of 'spinster'. Such terms were used formally in legal discourse until in 2005 when the Register General of England and Wales retired the terms to bring 'consistency to the registration process between marriage and civil partnerships.[61] The expectation that exists for women to marry can be particularly onerous. This burden can also affect women in their careers, as will be demonstrated later in this chapter when the sexual division of labour is explored. Newer and less popular institutions and familial arrangements, such as civil partnership and cohabitation, may not produce the same expectation as they do not carry the same social and cultural prestige.

ii) Marriage as the 'gold standard'

As a legal union, marriage has been termed as the 'gold standard' when compared to other forms of union such as civil partnership or cohabitation. Until 2013 and the passing of the Marriage (Same Sex Couples) Act, same-sex couples could not legally wed in England and Wales. In the case of *Wilkinson v Kitzinger*[62], which took place prior to 2013, marriage was described as 'the gold standard'[63] in the arguments put forward by the petitioner who wanted her Canadian same-sex marriage to be legally recognised. Auchmuty has suggested there were 'two strands' to the petitioner's argument. Firstly, that 'marriage enjoys the highest

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[58] Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) and Health Education' (2019).
[59] Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) and Health Education' (2019) 13.
[60] Alison Oram, 'Repressed and thwarted, or bearer of the new world? The spinster in inter-war feminist discourses' (1992) 1(3) Women's History Review 415.
[61] BBC News, 'R.I.P Bachelors and Spinsters' (14 September 2005) <http://news.bbc.co.uk/1/hi/magazine/4141996.stm> accessed 23 February 2020.
[62] Wilkinson v Kitzinger [2006] EWHC 2022 (Fam) 6.
[63] Ibid.

symbolic value in our society' as something 'everyone aspires to'.[64] And secondly, only allowing heterosexual couples to marry devalues the relationships of same-sex couples.

Whilst discussing the first strand of reasoning given by *Wilkinson*, Auchmuty argues instead that marriage 'represents a bastion of heterosexual privilege' which has 'been rejected by a majority of the British population over the past 30 years.'.[65] Auchmuty's statement is evidenced in Office for National Statistics (ONS) findings that marriage rates 'remain at historical lows'.[66] Auchmuty counters Wilkinson and Kitzinger in their belief that 'Demanding the right to marry is not equivalent to endorsing…the traditional symbolic meaning of marriage'[67], arguing that the representations made by Wilkinson and Kitzinger about marriage may 'reinforce conservative ideas about the primacy of marriage'[68]. Wilkinson and Kitzinger are not alone in affording marriage elevated status. O'Donovan has written of a mystical prestige which surrounds marriage. Despite being firmly opposed to marriage and arguing that the institution has perpetuated women's inferior position in society, O'Donovan describes marriage as 'sacred' arguing that whilst criticisms of marriage are well known, the 'magical quality of marriage…retains its hold'.[69] This magical quality which O'Donovan describes could offer an explanation as to why women continually aspire to marry. It could therefore be concluded that the institution's elevated social status in conjunction with the expectation to marry has shaped women's aspirations when deciding what form their relationship ought to take, potentially to the point where other options such as civil partnership or cohabitation are overlooked.

Shaped Experiences

Fineman also contends that marriage has shaped women's experiences.[70] This section will consider the way marriage has impacted upon the experiences of women by considering the

[64] Rosemary Auchmuty, 'What's So Special About Marriage? The Impact of Wilkinson v Kitzinger' (2008) 20(4) Child and Family Quarterly 475, 485.
[65] ibid 486.
[66] Office for National Statistics, 'Marriages in England and Wales, 2016' (28 February 2018) < https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriagecohabitationandcivilpartnerships/bulletins/marriagesinenglandandwalesprovisional/2015> accessed 11 November 2019.
[67] Kitzinger and Wilkinson, 'Why We Got Married Instead of Registering a Civil Partnership' (2004) 14(1) Feminism & Psychology 127, 140.
[68] Rosemary Auchmuty, 'What's So Special About Marriage? The Impact of Wilkinson v Kitzinger' (2008) (20(4) Child and Family Quarterly 475, 498.
[69] Katherine O'Donovan, 'Marriage: a Sacred of Profane Love Machine?' (1993) 1(1) Feminist Legal Studies 75, 89.
[70] Martha Fineman, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240, 247.

ground of non-consummation which renders a marriage voidable, the sexual division of labour in marriage, domestic violence and the impact of divorce.

i) Voidable Marriages: Non-consummation

Voidable marriages exist in marriage legislation meaning that couples have the ability to apply to the courts to nullify their marriage if one of the grounds laid out in section 12 of the MCA is satisfied. Section 12(a) and (b) relate to non-consummation of marriage. Such requirements can illustrate the ways in which marriage has shaped the experiences of women as it imposes upon both husband and wife that a sexual relationship is necessary for a non-voidable marriage. In marriage, an assumption exists that a husband and wife will engage in a sexual relationship. Historically, a husband and wife would wait until their wedding night to consummate the marriage – to make the marriage complete by having sexual intercourse. This requirement to consummate is deemed so pivotal to a marriage that it has been maintained through statute. The MCA outlines the grounds on which a marriage is voidable. Section 12 of this Act decrees that a marriage is voidable if (a) 'the marriage has not been consummated owing to the incapacity of either party to consummate it' and (b) 'the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it'.[71] There is surprisingly little literature surrounding non-consummation. What little literature there is, is dated and represents the attitudes towards women from the time of writing. Margaret Puxon, a barrister, gynaecologist and obstetrician and Sylvia Dawkins, a doctor and medical officer, describe the 'pattern of personalities' of those who are unable to consummate. 'The husband is almost always kind, gentle—and relatively impotent.', 'these men… have probably sought out a woman who does not seem over-passionate and who will not therefore put their virility to the test.'.[72] Describing wives who are unable to consummate they contend that 'they may be ignorant, and they are certainly deeply inhibited but they may present themselves as aggressive personalities who cannot bear the thought of being overcome by a man.'.[73] These women are criticised as they fall out of line with the presumption that women should serve their husbands diligently, willingly surrendering their bodies. This stance is particularly interesting given Puxon and Dawkins are both female, perhaps illustrating how deeply rooted the subordination of women as wives was in 1964 when the article was written. Latey, writing in 1950, goes as far to suggest that a woman's lack of desire to consummate a marriage is the denial of 'the expression of her true

[71] Matrimonial Causes Act 1973 s12(a) and (b).
[72] Margaret Puxon and Slyvia Dawkins, 'Non-consummation of Marriage' (1964) 4(1) Medicine, Science and the Law 15, 21.
[73] ibid 19.

femininity'.[74] Attitudes of ownership, male dominance and women's subservience are rife in this small area of literature.

It remains anomalous that there has been no attempt to reform this ground. It remains good law despite dicta from the courts which suggest that 'A sexual relationship is not necessary for there to be a valid marriage.'[75] In other jurisdictions, such as Australia and Ireland, voidable marriages have been abolished. The Irish Law Society wrote of their decision to remove the non-consummation ground:

> 'It remains a rather curious anomaly in the law, a relic perhaps of medieval times, when the first act of intercourse was thought to 'mark' a new bride as the 'property' of her husband. Whatever its origins, it is not entirely clear what modern purpose this ground serves and it is suggested that it should be dispensed with.'[76]

Attitudes to sex have changed dramatically over time, in 2019, the British Social Attitudes Survey found that 75% of people see nothing wrong with sex out of wedlock.[77] This begs the question of why marriage legislation in England and Wales maintains such an archaic clause? In the Civil Partnership Act (CPA) [78], which was enacted in 2004, this requirement was omitted. This could signal a need to reform marriage law to create an institution which reflects modern ways of thinking.

ii) Sexual Division of Labour

The roles that husband and wife are expected to take may offer insight into the way that marriage has shaped the experiences of women. In both the public and private sphere, labour must be carried out to allow society to function. In the public sphere, which is regulated by law, labour takes the form of employment and earning a wage so that contributions can be made to the economy. In the private sphere, which is unpaid and unregulated, labour constitutes domestic work including maintaining the family home and looking after children. Research has found that in marriage this labour is typically divided by gender.[79] Throughout history and today, to some degree, it has fallen to the wife to maintain the home and care for children and the husband to earn a living to support his family

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[74] William Latey, 'Developments in the Law of Divorce and the Nullity in Marriage' (1950) 18(3) Transactions of the Medico-Legal Society 85.
[75] X (A Child: foreign surrogacy) [2018] EWFC 15.
[76] Law Society of Ireland, 'Nullity of Marriage: The case for reform' (Law Society's Law Reform Committee, October 2001) 31.
[77] Curtice, J., Clery, E., Perry, J., Phillips M. and Rahim, N., 'British Social Attitudes: The 36th Report' (London, The National Centre for Social Research 2019).
[78] Civil Partnership Act 2004 s50.
[79] Anne McMunn, Lauren Bird, Elizabeth Webb and Amanda Sacker, 'Gender Divisions of Paid and Unpaid Work in Contemporary UK Couples' (2019) Work, Employment and Society 1.

financially. In modern society, women can now enter the public sphere and have a career but may still be expected to take responsibility for maintaining the home and looking after children. Chambers argues

> 'marriages tend to reinforce the gendered division of labour, which itself means that women earn less and are less independent than men; that they reinforce the idea that women do most of the housework, even if they work outside the home, which saps their energies and dignity'.[80]

Labour in the private sphere has 'changed little and slowly'[81]. As women have entered the public sphere in large numbers, ready to juggle both the public and the private, men have not 'made a concomitant change in their participation in household labour'[82]. This is explained by Fredman, 'Not only do women's continued responsibilities for unpaid work inevitably restricts their ability to obtain well-paid work, but women frequently land up with the double burden of paid and unpaid work.'.[83] This juggling detrimentally impacts women, preventing full integration into the public sphere.

> 'Women… are still primarily defined in terms of the kinship structure and not as individual workers who can 'freely' sell their labour power. Women do not negotiate on the labour market on the same terms as do men and to understand this difference their position within kinship or family structure needs to be examined first.'[84]

The dual burden that women face can impede on their careers as well as their personal lives – whether they are married or not. Research by McMunn et al found that 'gender equality in the divisions of work is rare and gender norms remain strong.'[85] The findings of this research make for a strong case that women's experience has been and will continue to be shaped by the institution of marriage.

iii) Domestic Violence

Another way in which the experience of women may have been shaped by marriage is the risk wives face of domestic violence. 'Feminists have pointed out for over a century that the institution of marriage is the location of a lot of abuse and violence.'[86] Domestic abuse and marital rape are types of physical and emotional assault that women may experience in

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[80] Clare Chambers, 'VII – The Marriage-Free State' (2013) 11(2) Proceedings of the Aristotelian Society 123.
[81] Jane Lewis, 'Is Marriage the Answer to the Problems of Family Change? (2001) 72(4) Political Quarterly 437, 439.
[82] Ibid.
[83] Sandra Fredman, *Women and the Law* (Oxford University Press 1997).
[84] Smart C., *The Ties that Bind* (Routledge & Kegan Paul plc 1984) 11.
[85] Anne McMunn, Lauren Bird, Elizabeth Webb and Amanda Sacker, 'Gender Divisions of Paid and Unpaid Work in Contemporary UK Couples' (2019) Work, Employment and Society 1.
[86] Martha Fineman, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240, 262.

marriage. Marital rape was pronounced to be illegal as recently as 1992 in the case of R v R[87]. Prior to this, a husband could not be found guilty of the rape of his wife for it was assumed that by marrying him, she had consented to sexual relations with him for the rest of her life. The Coalition for Marriage, a UK based organisation which supports traditional marriage, challenges the views of Fineman, arguing that being married reduces women's chances of being subjected to domestic violence. In a blog post entitled 'Marriage works for women', it was asserted that 'married women are far less likely to be abused or suffer domestic violence than women who cohabit.'.[88] This claim, which is from an American study in 1994, is outdated. As well as this, it is unsupported by the ONS which does not express in its findings that marriage status affects likelihood of being a victim of domestic violence.

This is not to say that women are the only victims of domestic violence. Men too are affected by domestic violence but statistically not to the same degree as women. The ONS found that women are nine times more likely to be killed by a partner or ex-partner than men.[89] Whilst this statistic does not link directly to marriage, it does illustrate that women are more vulnerable than men to domestic violence and abuse. Freeman argues that it is law that is responsible for women's continued vulnerability, 'Law defines the character and creates the institutions and social relationships within which the family operates.'.[90] From this, it is suggested that women experience more vulnerability than men, especially within the family which is governed by the state through institutions such as marriage.

iv) Impact of Divorce

The ways in which marriage has shaped women's experience can be argued to clearly manifest in divorce. Divorce, the legal declaration of an end of a marriage by a court, can have severe legal, economic and emotional impacts for both parties. It has been argued by Auchmuty that the discourse surrounding marriage promotes the institution, promising rights and benefits and failing to prepare couples for when marriages end.[91] Auchmuty in her research found that 'many women concluded that the protection that marriage was supposed to offer them was illusory; marriage was, if anything, a risk, if you gave up so

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[87] R v R [1992] 1 AC 599.
[88] Coalition for Marriage, 'Marriage Works for Women' (March 2018) <https://www.c4m.org.uk/marriage-works-women/> accessed 23 February 2020.
[89] Office for National Statistics, 'Homicide in England and Wales: year ending March 2018' <https:/www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/yearendingmarch2018#how-are-victims-and-suspects-related> accessed 20 February 2020.
[90] M. D. A. Freeman, 'Violence against Women: Does the Legal System Provide Solutions or Itself Constitute the Problem?' (1980) 7(2) British Journal of Law and Society 215, 226.
[91] Rosemary Auchmuty, 'Law and the Power of Feminism: How Marriage Lost its Power to Oppress Women' (2012) 20(2) Feminist Legal Studies 71, 79.

much to enter it and might get so little back when it ended.'.[92] With 42% of marriages ending in divorce[93], divorce is a reality that many couples will face. Both men and women are affected by divorce, but research suggests that women will experience more long-term economic detriment.[94] Leopold has concluded 'findings suggest that men's disproportionate strain of divorce is transient, whereas women's is chronic'.[95] In Britain, women are 40% more likely to enter poverty if they divorce.[96] Men may 'even improve the standard of their living in post-divorce years', whilst women are more likely to lose their homes and be unable to afford a new mortgage.[97] A potential explanation for this is the gendered division of labour which is still prevalent today. Women are responsible for caring for the children, have a lower earning capacity and a higher economic need so face greater economic disadvantage in divorce. The strain on women produced by divorce is demonstrable of the way that marriage has shaped women's experiences, even after the marriage is over.

Fineman has argued that when marriages break down, it has an impact on wider society, contending that marriage's societal role is unfulfilled when couples divorce.[98] With the divorce rate at 42% this could signify that marriage is failing to consistently fulfill its societal role and therefore a different form of union may be more suitable.

As a new form of union, research into the dissolution of opposite-sex civil partnerships has not yet been conducted therefore making it difficult to compare to marriage and the impact of divorce. The economic detriment suffered by women in divorce could be argued to be similar to the detriment that will be suffered in opposite-sex civil partnership dissolution if gendered division of labour is consistent within the two forms of union. However, it is contended that due to the 'conscientious objection'[99] to marriage and its patriarchal traditions that Rebecca Steinfeld and Charles Keidan and other couples express, it may mean that the typical division of labour by gender is absent from opposite-sex civil partnership households.

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[92] Ibid.
[93] Office for National Statistics 'What percentage of marriages end in divorce?' (Office for National Statistics, 9 February 2013) <https://webarchive.nationalarchives.gov.uk/20160106011951/http://www.ons.gov.uk/ons/rel/vsob1/divorces-in-england-and-wales/2011/sty-what-percentage-of-marriages-end-in-divorce.html> accessed 21 January 2020.
[94] Hayley Fisher and Hamish Low, 'Recovery from Divorce: Comparing High and Low Income Couples' (2016) 30(3) International Journal of Law, Policy and the Family 338.
[95] Thomas Leopold, 'Gender Differences in the Consequences of Divorce: A Study of Multiple Outcomes' (2018) 55(3) Demography 769.
[96] Arnstein Aassve - Gianni Betti - Stefano Mazzuco - Letizia Mencarini, 'Marital Disruption and Economic Well-being: A Comparative Analysis' ISER Working Paper 2006-07 < https://www.iser.essex.ac.uk/files/iser_working_papers/2006-07.pdf> accessed 20 January 2020.
[97] Thomas Leopold, 'Gender Differences in the Consequences of Divorce: A Study of Multiple Outcomes' (2018) 55(3) Demography 769.
[98] Martha Fineman, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240.
[99] R (on the application of Steinfeld and Keidan) (Appellants) v Secretary of State for International Development (in substitution for the Home Secretary and the Education Secretary) [2018] UKSC 32 [6].

However, until research is carried out in this area, it is not possible to make generalisations on the effect this will have on the impact of civil partnership dissolution. Comparably, in cohabitation, it has been demonstrated in research by Jepsen and Jepsen that the gendered division of labour is less prominent in cohabiting couples, who have less incentive to 'pool their resources' than couples who are married or in civil partnerships.[100] This could in theory serve as an argument in favour of cohabitation as the impact of relationship breakdown may be less severe than in dissolution or divorce however as it will be demonstrated in the next chapter, provisions for cohabitation breakdown have been argued by the Law Commission to be wholly unsatisfactory and to produce 'unfair outcomes'.[101]

Women's ability to recover financially from divorce through re-partnering illustrates further that women's experience is heavily shaped by marriage. Research has suggested that within the first three years following divorce, women are quicker to re-partner[102] and benefit significantly more than men from doing so[103]. The difference between the effects on men and women are explained by Jansen et al as being due to the lower 'human capital' of women which means that women are more likely to find a partner who is financially better off than men.[104] This finding supports the notion that women's experiences are shaped by marriage for women suffer great economic detriment after divorce until they can rejoin the institution again through re-partnering.

Conclusion

This chapter began with the words of Martha Fineman who wrote that marriage is not a neutral institution and suggested it has changed the way that women have been able to live their lives.[105] It can be argued that marriage has shaped both the aspirations and experiences of women. This has been demonstrated through close analysis of the expectation to marry which is felt more strongly by women due to popular culture as well as tradition, the elevated social status that is afforded to marriage, the obligations and duties placed on couples in order to have a valid marriage, specifically consummation, the sexual

[100] Christopher A. Jepsen and Lisa K. Jepsen, 'The Sexual Division of Labor within Households: Comparisons of Couples to Roommates' (2006) Eastern Economic Journal 32(2) 299.
[101] Law Commission, 'Cohabitation: The Financial Consequences of Relationship Breakdown Executive Summary' (Law Com No.307, 2007) 20.
[102] Hayley Fisher and Hamish Low, 'Recovery from Divorce: Comparing High and Low Income Couples' (2016) 30(3) International Journal of Law, Policy and the Family 338.
[103] Mieke Jansen, Dimitri Mortelmans and Laurent Snoeckx, 'Repartnering and (Re)employment: Strategies to Cope With the Economic Consequences of Partnership Dissolution' (2009) 71(5) Journal of Marriage and Family 1271.
[104] Ibid.
[105] Martha Fineman, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240, 247.

division of labour which imposes a dual burden on women to carry out labour in both the private and public sphere, the risk women face of domestic violence and finally the impact of divorce which research has found to be far greater for women. It has been written by Smart that 'the law does not 'give' power to men over women in the family, rather it legitimizes the preconditions which create an unequal power structure'.[106] In law, women are not unequal to men in marriage – statutes governing the institution are gender neutral and both men and women enjoy all of the same rights. Instead it is the history of the institution that has shaped modern aspirations and experiences of women and in turn causing inequality between the sexes. Having concluded that the institution of marriage has negatively shaped women's lives, cohabitation, an alternative form of union, will now be investigated for its merits and drawbacks.

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[106] Smart C., *The Ties that Bind* (Routledge & Kegan Paul plc 1984) xi.

Chapter Three: Cohabitation

Introduction

In the previous chapter, it was concluded that the institution of marriage has negatively shaped the aspirations and experiences of women. It is therefore suggested that other forms of union may be better equipped to provide women with the autonomy and equality they merit. Cohabitation describes when a couple live together but are not married or in a civil partnership. Cohabitation is rising in popularity – in 2018 the ONS found that cohabiting couple families were 'the fastest-growing family type over the last decade' with an increase of 25.8% from 2008 to 2018.[107] This chapter hopes to illustrate that despite cohabitation's growing popularity, it suffers many drawbacks and does not serve as a comparable union to civil partnership.

Who Cohabits and Why?

It is first suita 12 begin by exploring who cohabits and why. In 2018, 21% of all opposite-sex couples were cohabiting families.[108] Cohabitation is rising in popularity whilst the number of married couple families remains predominately the same.[109] Attitudes to cohabitation have shifted in the last 20 years, cohabitation has slowly become considered normative in 13 England and Wales with attitudes becoming 'more ambivalent and less unaccepting of non-traditional living arrangements'.[110] Research by Barlow and Smithson investigated the reasons that couples cohabit, concluding that there are four diverse groups which cohabitants fall into – Ideologues, Romantics, Pragmatists and Uneven Couples.[111] The diversity of these groups demonstrates the broadness of this form of union and may offer a partial explanation as to why cohabitation remains unregulated by law due to the varying intentions and expectations of each cohabiting couple.

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[107] Office for National Statistics, 'Families and households in the UK (2018) < https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2018> accessed 2 April 2020

[108] House of Commons, '"Common law marriage" and cohabitation' (Briefing Paper No. 03372, 2019) 3

[109] Office for National Statistics, 'Families and households in the UK (2018) < https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2018> accessed 2 April 2020

[110] Ernestina Coast, 'Currently Cohabitating: Relationship Attitudes, Expectations and Outcomes' (LSE Research Online, 2009) < http://eprints.lse.ac.uk/23986/1/Currently_cohabiting_%28LSERO%29.pdf> accessed 2 April 2020

[111] A Barlow and J Smithson, 'Legal assumptions, cohabitants' talk and the rocky road to reform' (2010) 22(3) Child and Family Law Quarterly 328

Arguments in Favour of Cohabitation

In this section, two proposed strengths of cohabitation will be explored. The first, that cohabitation moves away from the patriarchal connotations of marriage and the second, that cohabitation is a useful step towards deciding upon making higher legal commitments such as marriage or civil partnership. It will be demonstrated however that both of these proposed strengths of cohabitation which superficially offer benefits can in fact result in detrimental harm, especially to women.

i) Moves away from Patriarchal Connotations of Marriage

Following conclusions drawn in chapter two, it may be contended that cohabitation is superior to marriage as it does not contain the same 'patriarchal baggage'[112] which is believed to exist in marriage. It is suggested by Haskey that cohabitation rates rose in the 1960s and 1970s due to changes in family structure – particularly an increase in extra-marital childbearing and divorce.[113] Due to the ad hoc nature of its development, cohabitation does not have the same chequered history as marriage. This may be seen as an advantage to those who object to the way that marriage positions women. Kiernan suggests that cohabitation for women may symbolise 'the avoidance of the notion of dependency that has typically been implicit in the marriage contract.'[114] However, this strength is not unique to cohabitation. Civil partnership, as a newer institution which was created initially for same-sex couples, is also free of the traditional and sexist connotations of marriage whilst offering the rights and protections that cohabitation does not.

ii) A Step Towards Higher Commitment

Another purported strength of cohabitation is that it acts as a step before making a higher commitment, be it marriage or civil partnership. It is an accepted norm that couples will live together before taking further commitments such as marriage or civil partnership.[115] Morgan suggests that cohabitation allows couples to prepare for marriage, learn about one another and decide if the union will be a suitable one.[116] If the couple decide the union is unsuitable,

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[112] Ibid 336.
[113] John Haskey, 'Cohabitation in Great Britain: past, present and future trends-and attitudes' (2001) 103 Population Trends 4, 5.
[114] Kathleen Kiernan, 'Redrawing the Boundaries of Marriage' (2004) 66(4) Journal of Marriage and Family 980, 983.
[115] Anne Barlow, Simon Duncan, Grace James and Alison Parks, *Cohabitation, Marriage and the Law: Social Change and Legal Reform in the 21st Century (Contemporary Family Trends)* (Hart Publishing, 2005) 65.
[116] Patricia Morgan, *Marriage-Lite: The Rise of Cohabitation and Its Consequences* (Civitas Institute for the Study of Civil Society, 2000) 6.

they are able to separate without 'legal formalities and personal loss'.[117] Given the emotional and financial hardship which women are likely to face as a result of divorce[118], it may seem a better solution to remain cohabiting. However, it will be explained in the next section that this may prove to be highly problematic for couples who separate and do not share ownership of the property in which they live together. It is also worth noting that the emotional and personal loss suffered in cohabitation relationship breakdown can be equal to that of divorce or civil partnership dissolution.[119]

Arguments against Cohabitation

Two of the central criticisms of cohabitation will now be explored. Firstly, the lack of rights and legal protections cohabitation offers couples and secondly, the widespread public misconception of 'common law marriage'.

i) Lack of Rights and Legal Protections

The main issue relating to cohabitation is the lack of legal rights and protections it affords to couples on relationship breakdown. Unlike in marriage and civil partnership whereby the Matrimonial Causes Act[120] and Civil Partnership Act[121] respectively provide protection on relationship breakdown, ancillary relief does not exist under the common law for cohabitants who separate. Instead, cohabitants must rely upon a 'patchwork of legal rules'[122] from property, trusts and contract law to attempt to gain proprietary interests. Bottomley argues that women are more likely to be disadvantaged by this, explaining that property law favours men who are typically the 'economically dominant partner'.[123] This can be seen in single legal owner cases where no express trust exists so the non-legal owner, often the woman, must demonstrate to the court that a common intention constructive trust exists in their favour. The test for this is set out in *Lloyds Bank v Rosset*[124]. The limbs of the *Rosset* test are onerous and difficult to satisfy. To be successful under the second limb of the test set

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[117] Ibid.
[118] Thomas Leopold, 'Gender Differences in the Consequences of Divorce: A Study of Multiple Outcomes' (2018) 55(3) Demography 769.
[119] Rosemary Auchmuty, 'The experience of civil partnership dissolution: not 'just like divorce' (2016) 38(2) Journal of Social Welfare and Family Law 152.
[120] Matrimonial Causes Act 1973 s21-44.
[121] Civil Partnership Act 2004 s37-79.
[122] Law Commission, 'Cohabitation: The Financial Consequences of Relationship Breakdown Executive Summary' (Law Com No.307 (Summary) 2007) 1.
[123] Anne Bottomley, 'From Mrs. Burns to Mrs. Oxley: Do Co-Habiting Women (Still) Need Marriage Law?' (2006) 14(2) Feminist Legal Studies.
[124] [1991] 1 A.C. 107.

out in *Rosset*, non-legal owners must demonstrate some form of detriment in the form of a 'direct' payment. Examples of direct payments include contributions to the purchase price of the property, deposits or mortgage payments.[125] This requirement does not reflect reality for many who instead contribute to the household via 'indirect payments', for example household bills. These types of payment are less likely to be considered by the court to justify an inference of common intention.[126] It has been argued by Beresford that the court privileges financial behaviour and fails to recognise the performance of 'feminine behaviour traits', such as cooking, cleaning, caring and child rearing. These behaviours, which are more typically performed by women, are essential to the maintenance of a family home and yet are overlooked by the courts. For women who assume fundamental roles of the primary caregiver and homemaker, the law leaves them economically vulnerable should the relationship breakdown.[127]

In 2007 the Law Commission recommended that a scheme be introduced to remedy the issues faced by cohabitants on relationship breakdown.[128] The government did not implement the scheme, instead deferring the decision until the Family Law (Scotland) Act 2006, a similar scheme in Scottish legislation, was [redacted] 14 d and its success evaluated. Post-legislative scrutiny of the Act identified several criticisms of the provision relating to cohabitant relationship breakdown.[129] This scrutiny in conjunction with the fact that more than a decade has elapsed since the deferral was made suggests that it is unlikely that the Law Commission's proposal will be adopted so the law remains unsatisfactory despite the growing number of cohabiting couples.[130] Cohabitation suffers a major detriment in the lack of rights and protections it offers on relationship breakdown. Comparatively, marriage and civil partnership offer a range of rights and protections which protect both men and women throughout and on relationship breakdown. Therefore, it can be concluded that cohabitation does not offer a satisfactory alternative to either marriage or civil partnership in this regard.

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[125] Gissing v Gissing [1971] A.C. 886.
[126] Lloyds Bank v Rosset [1991] 1 A.C. 107 [133].
[127] Simone Wong, 'Cohabitation Reform in England and Wales: Equality or Equity' (2015) 27(1) Canadian Journal of Women and the Law 112, 115.
[128] Law Commission, Cohabitation: The Financial Consequences of Relationship Breakdown (Law Com No 307, 2007).
[129] Justice Committee, 'Post-legislative Scrutiny of the Family Law (Scotland) Act 2006' (SP Paper 963, 6th Report, The Scottish Parliament 2016) 6.
[130] Office for National Statistics, 'Families and households in the UK (2018) < https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2018> accessed 2 April 2020.

ii) The 'Common Law Marriage' Myth

Cohabitation and its legal effects are largely misunderstood by the general public. 'Common law marriage' describes the assumption that unmarried couples in long term relationships acquire similar rights to married couples.[131] This assumption is incorrect. The 2018 British Social Attitudes Survey demonstrated the mass-belief in this myth, finding that 47% of participants believed that common law marriage exists in England and Wales. This percentage has only fractionally decreased since 2000 when it was found to be at 56%.[132] The belief that common law marriage exists is extremely detrimental as couples only discover on relationship breakdown that they are not protected as they would have been in civil partnership or marriage.[133] Barlow et al explain that people may be 'confused by the disjuncture between the social acceptance of marriage-like cohabitation and its often unmarriage-like legal consequences.'[134] This highlights the need for the government to protect couples by increasing awareness of the risks of cohabitation. To mitigate the risk of harm under cohabitation, it is suggested that the government should prioritise debunking the myth of common law marriage whilst simultaneously increasing awareness of opposite-sex civil partnership, a union which offers cohabitants who oppose traditional marriage an alternative with rights and protections.

Conclusion

In this chapter it has been demonstrated that the few strengths associated with cohabitation are either superficial or are equally applicable to civil partnership which is a more secure form of union. After examining the lack of legal protection afforded to women in cohabitation, it is therefore been concluded that cohabitation is a flawed form of union which ought to be avoided. Whilst it may liberate women as autonomous beings and move away from the patriarchal notions of marriage, it concomitantly offers poor legal protection. With this established, civil partnership, the final form of union to be explored, will be analysed in the next chapter.

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[131] Family Lives, 'Common Law Marriage' https://www.familylives.org.uk/advice/your-family/relationship-advice/common-law-marriage/ accessed 15 April 2020.
[132] Curtice, J., Clery, E., Perry, J., Phillips M. and Rahim, N., 'British Social Attitudes: The 36th Report' (London, The National Centre for Social Research 2019).
[133] Winnie Chan, 'Cohabitation, civil partnership, marriage and the equal sharing principle' (2013) 33(1) Legal Studies 46, 51.
[134] Anne Barlow, Carole Burgoyne, Elizabeth Clery and Janet Smithson, 'Cohabitation and the law: myths, money and the media', in Alison Park, John Curtice and Katherine Thomson (eds), *British social attitudes: the 24th report* (SAGE Publications Ltd, 2008) 29, 47.

Chapter Four: Civil Partnership

Introduction

Until 2019, heterosexual men and women had two options when deciding the form of their relationship – marriage or cohabitation. As established in the previous chapters, each of these options presents their own merits and challenges. The Civil Partnership Act (CPA) 2004 created the exclusive right for same-sex couples to form civil partnerships. The institution was created at a time where Parliament did not see it fit to extend marriage to same-sex couples but wanted to afford these couples with rights and responsibilities similar to that of marriage.[135] In 2013, marriage became lawful for same-sex couples, creating an inequality in the law. An inequality existed in the law between opposite-sex and same-sex couples whereby same-sex couples could choose between marriage or civil partnership, but no such choice could be made by opposite-sex couples. This inequality was remedied in 2019 when the decision of *R (on the application of Steinfeld and Keidan)*[136] led to Parliament amending the CPA to extend civil partnerships to opposite-sex couples. This amendment to the law has provided a new option for opposite-sex couples. This chapter will analyse opposite-sex civil partnerships, looking at the similarities and differences when compared to other forms of union, marriage or cohabitation, in order to make an assessment of which option may be most preferable for women. The main focus of the chapter will be on the comparison of marriage and civil partnership as it has been established in chapter three that whilst cohabitation may give women autonomy, it does not provide women with a number of important protective rights that are offered in civil partnership or marriage, leaving women vulnerable to financial and proprietary insecurity and legal action.

The Case for Equal Civil Partnerships

2nd December 2019 marked the first day that an opposite-sex couple could register for a civil partnership in England and Wales. Formerly only available to same-sex couples, the campaign to open civil partnerships to opposite-sex couples was spearheaded by an organisation called Equal Civil Partnerships[137] and the case of *R (on the application of*

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[135] R (on the application of Steinfeld and Keidan) (Appellants) v Secretary of State for International Development (in substitution for the Home Secretary and the Education Secretary) [2018] UKSC 32 [1].
[136] R (on the application of Steinfeld and Keidan) (Appellants) v Secretary of State for International Development (in substitution for the Home Secretary and the Education Secretary) [2018] UKSC 32.
[137] Equal Civil Partnerships, 'One step closer – regulations laid in Parliament' (October 11 2019) <http://equalcivilpartnerships.org.uk/category/latest-news/> accessed 11 November 2019.

Steinfeld and Keidan).[138] The case was brought by Steinfeld and Keidan, a heterosexual couple with a 'conscientious objection to marriage'.[139] They successfully argued that heterosexual couples had been discriminated against under article 14, prohibition of discrimination, read in conjunction with article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the right to respect for private life. The case for equal civil partnerships was fought on several grounds by the Equal Civil Partnerships Campaign.[140] These grounds will now be explored as they provide arguments for the ways in which civil partnerships may be preferable to marriage.

i) Equality

As established in the case of *R (on the application of Steinfeld and Keidan),* not allowing opposite-sex couples to form a civil partnership was an inequality in the law which infringed rights set out in the ECHR and Human Rights Act 1998. Equality under the law was the focal argument put forward in the case. Fenwick and Hayward argued that the denial of equal access to civil partnership offended both equality and dignity values which are the core basis of Article 8 ECHR, the right to respect for private life, contending that dignity and freedom of choice are 'essential to the notion of identity'.[141] This argument illustrates the importance of equal access to civil partnerships which pertains to fundamental principles enshrined in human rights law. It was decided by the court that the government's decision to delay the extension of civil partnerships to opposite-sex couples to carry out research did not justify the violation of article 14 ECHR in conjunction with article 8 ECHR. Reliance upon this human rights argument is what persuaded the court to declare the exclusion of opposite-sex couples from civil partnerships incompatible.[142] It has been argued by Chambers that the extension of civil partnerships is 'doubly egalitarian' in that it emphasises equality between opposite-sex and same-sex couples and emphasises 'equality between men and women by breaking away from patriarchal history'.[143] The principle of equality has therefore provided a strong argument for couples being able to choose between marriage and civil partnership

[138] R (on the application of Steinfeld and Keidan) (Appellants) v Secretary of State for International Development (in substitution for the Home Secretary and the Education Secretary) [2018] UKSC 32.
[139] Ibid [6] .
[140] Equal Civil Partnerships, 'Why does it matter?' <http://equalcivilpartnerships.org.uk/why-does-it-matter/> accessed 11 November 2019.
[141] Helen Fenwick and Andy Hayward, 'From same-sex marriage to equal civil partnerships: on a path towards 'perfecting' equality?' [2018] Child and Family Law Quarterly 97, 99.
[142] R (on the application of Steinfeld and Keidan) (Appellants) v Secretary of State for International Development (in substitution for the Home Secretary and the Education Secretary) [2018] UKSC 32 [62].
[143] Clare Chambers, 'VII – The Marriage-Free State' (2013) 11(2) Proceedings of the Aristotelian Society 123, 131.

whilst providing women with the opportunity to move away from the historically oppressive institution of marriage to form civil partnerships.

ii) A modern alternative to marriage

According to material put out by the Equal Civil Partnerships Campaign 'Many people would like to have their partnerships legally recognised, but want to avoid the social expectations, pressures and traditions surrounding marriage and have the choice to enter into a more modern form of legal union.' People may have strong objections to marriage's patriarchal history. Horton has argued against opposite-sex civil partnerships, asserting that heterosexual couples will be 'in for a shock' when they realise that the legal consequences of civil partnership are the same as marriage.[144] It could be suggested here that Horton has misunderstood the message of the Equal Civil Partnership campaign and the heterosexual couples who stood alongside it. They did not push for opposite-sex civil partnerships because they wanted different legal consequences or rights to that of marriage. Instead they were fighting because of a strong moral objection to the tradition and expectations which marriage carries with it. Horton highlights the very real issue of public awareness of the different options of unions and institutions. Many people may be unaware of differences or similarities between civil partnership and marriage, or even what a civil partnership is. It is not just civil partnership which may be misunderstood by the general public. The British Social Attitudes survey results found that 47% of people think that common law marriage 'definitely' or 'probably' exists[145] thus illustrating that many people do not know the legal implications of the relationship they are in, be it civil partnership, marriage or cohabitation. This, in turn, highlights a need for the Government to increase education surrounding the different types of legal union available to couples. It could be argued that better awareness and education of civil partnership would draw more couples to the union, especially those who refuse to marry due to moral objections.

iii) Feminism

It has been argued by academics such as Fineman[146], O'Donovan[147] and Smart[148], that marriage is a patriarchal institution which oppresses women and acts as a barrier to women

[144] Michael Horton, 'Commentary on the Steinfeld challenge to civil partnership laws' (Coram Chambers 27th June 2018) <https://www.coramchambers.co.uk/news/commentary-on-the-steinfeld-challenge-to-civil-partnership-laws/> accessed 6 March 2020.
[145] Curtice, J., Clery, E., Perry, J., Phillips M. and Rahim, N., 'British Social Attitudes: The 36th Report' (London, The National Centre for Social Research 2019) 113.
[146] Martha Fineman, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240.
[147] Katherine O'Donovan, 'Legal marriage – who needs it?' (1984) 47(1) The Modern Law Review 111.
[148] Smart C., *The Ties that Bind* (Routledge & Kegan Paul plc 1984).

and men becoming equal. This notion was explored thoroughly in chapter two which argued that the institution of marriage has 'shaped the aspirations and experiences of men and women in ways that have historically disadvantaged women'.[149] Examples of this can be seen through the sexual division of labour which restricts women in both their professional and personal lives[150] and the vulnerability of women to domestic violence in the family home[151]. Chambers contends that civil partnership 'breaks away from the patriarchal symbolism of historically oppressive marriage' and provides a neutral alternative which is free from potentially sexist traditions and gender roles.[152] Gaffney-Rhys, however, is cautious of the egalitarian perception of civil partnership, concluding that heterosexual couples may 'find themselves adopting traditional gender roles, despite initial intentions to the contrary'[153]. This calls to question whether marriage is responsible for the creation of such gender roles or whether marriage simply perpetuates these roles. Conversely, Fenwick and Hayward suggest that when women enter civil partnership and reject the label of 'wife', this could signal to their partners that from the beginning of their formalised relationship that the typical gender roles and 'expectations of economic inequality between husband and wife' will not apply.[154]

Baroness Hale has suggested that marriage is a transformed institution, arguing that its patriarchal features have 'virtually disappeared from the law'.[155] However, she later contends, 'marriage has a social and psychological significance which has nothing to do with legal consequences'.[156] The social, cultural and historic differences between civil partnership and marriage are what makes them dissimilar. It is this fundamental difference that makes civil partnership, a neutral and modern form of union, a superior alternative to marriage.

Parallels in Civil Partnership and Marriage

In 'Implementing Opposite-Sex Civil Partnerships: Next Steps'[157], the government set out how they intended to introduce opposite-sex civil partnerships. Within the document, they set out clearly the changes they intended to make and legislation they intended to retain for

[149] Martha Fineman, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240.
[150] Sandra Fredman, *Women and the Law* (Oxford University Press 1997).
[151] Martha Fineman, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240, 262.
[152] Clare Chambers, 'VII – The Marriage-Free State' (2013) 11(2) Proceedings of the Aristotelian Society 123, 130.
[153] Ruth Gaffney-Rhys, 'Same-sex marriage but not mixed-sex partnerships: Should the Civil Partnership Act 2004 be extended to opposite-sex couples?' (2014) 26(2) Child and Family Law Quarterly 173, 189.
[154] Helen Fenwick and Andy Hayward, 'From same-sex marriage to equal civil partnerships: on a path towards 'perfecting' equality?' [2018] Child and Family Law Quarterly 97, 99.
[155] Baroness Hale, 'Keynote Speech' (Resolution's 30th National Conference, Bristol, 20 April 2018) < https://www.supremecourt.uk/docs/speech-180420.pdf> accessed 3 December 2019.
[156] Ibid.
[157] Government Equalities Office, 'Implementing Opposite-Sex Civil Partnerships: Next Steps' (July 2019).

the purposes of extending civil partnerships to opposite-sex couples. This document makes it clear that civil partnership and marriage have almost identical legal consequences. Similarities in the rights afforded to civil partners and married couples include rights to the family home, rights to financial support during the relationship, inheritance and tax rights. It is on this basis that cohabitation differs the most from civil partnership and marriage.

It could be argued that it is the enjoyment of these rights that are the main incentive to marry so therefore civil partnership, which offers identical rights to marriage, serves as a pointless additional institution as such rights were already secure in marriage. Research by Eekelaar, however, provides a counter argument to this.[158] Eekelaar has concluded that there are five main reasons why people decide to marry. Of the five reasons, Eekelaar found 'Compliance with Convention' to be the largest category. In this category, respondents' answers demonstrated that marriage was entered into 'in order to follow some rule, or prescription'.[159] This could be religious, social or cultural and often followed the wishes of their parents. This research therefore illustrates that rights alone are not the reason that people choose to marry. Social convention may be more influential than the legal protection an institution affords. However, since the publication of Eekelaar's research in 2007, it could be argued that society's expectations and conventions have adjusted. A strong indicator of this is secularisation which exists more prominently today than ever before. It is therefore possible that Eekelaar's study would yield different results if it were carried out in 2020. Another reason that Eekelaar found was public recognition in a category he labelled as 'External Manifestation of an Internal State'.[160] Couples in this category married as a proclamation to the outside world of their relationship and its validity. Similarly, the importance of public recognition was also found as a key factor in research by Smart and Shipman into the reasons for entering into civil partnerships. It was found that whilst many couples were aware of the legal rights and protection that civil partnership would afford them, it was not the main reason for entering into a civil partnership.[161] Instead they found that family recognition and acceptance were the key reasons that couples chose to enter into civil partnerships.[162] It can therefore be concluded that the similarity in the rights offered in civil partnership and marriage does not render civil partnership a pointless form of union as rights are not the sole motivating factor. The extension of civil partnership to opposite-sex couples will give those who oppose marriage a chance to have their relationship recognised by the state and their family and friends. 17

[158] John Eekelaar, 'Why People Marry: The Many Faces of an Institution' (2007) 41(3) Family Law Quarterly 413.
[159] Ibid, 418.
[160] ibid, 419.
[161] Beccy Shipman and Carol Smart, ''It's Made a Huge Difference': Recognition, Rights and the Personal Significance of Civil Partnerships' (2007) 12(1) Sociological Research Online 129.
[162] Ibid.

'Marriage in all but name'?

Having established the legal similarities between marriage and civil partnership, it could be argued that marriage and civil partnership are identical all but for the label which they bear. This argument was put forward in the case of *Wilkinson v Kitzinger*[163] by Sir Mark Potter P. In his judgment, which denied legal recognition of Wilkinson and Kitzinger's Canadian same-sex marriage in England and Wales, he described civil partnership as 'marriage in all but name'.[164] Horton is critical of the extension of civil partnerships, arguing that civil partnership is 'functionally identical to marriage' and what is really needed is a 'different legal concept with different legal consequences.'[165] It is argued by academics such as Chan, that Horton is ignoring the social and symbolic differences between civil partnership and marriage. Chan argues that civil partnership does not have the same 'institutional and ceremonial history, religious and patriarchal overtones and its attached baggage of prevailing societal norms and expectations'[166] as marriage. This sentiment is echoed in Gaffney-Rhys' study where one respondent commented on the language used to describe the two types of legal union.

> 'The "civil" clearly is making a statement about it being, you know, not religious; being secular. And "partnership" is clearly about . . . for me it communicates something about equality'.'[167]

Chan and Gaffney-Rhys instead suggest that the labels used are pivotal in positioning the parties in each union. The idea of 'partnership' which holds egalitarian and modern connotations as opposed to the traditional connotations of 'husband' and 'wife', is an asset of civil partnership. 18

The Coalition for Marriage, a pro-marriage campaign group, have described civil partnership as 'Marriage-Lite', expressing concern that civil partnership threatens the institution of marriage. Drawing on ideas of marriage is the 'gold standard'[168] they contend that by offering heterosexual couples the choice between the two legal unions, it will weaken marriage. Similar concerns are voiced by Ferguson who contends that the extension of civil partnerships could produce a 'real risk of inverting the hierarchy of marriage and civil partnership as status relationships, with the ostensibly more modern civil partnership being

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[163] Wilkinson v Kitzinger [2006] EWHC 2022 (Fam).
[164] Ibid 88.
[165] Michael Horton, 'Commentary on the Steinfeld challenge to civil partnership laws' (Coram Chambers 27th June 2018) <https://www.coramchambers.co.uk/news/commentary-on-the-steinfeld-challenge-to-civil-partnership-laws/> accessed 6 March 2020.
[166] Winnie Chan, 'Cohabitation, civil partnership, marriage and the equal sharing principle' (2013) 33(1) Legal Studies 46, 49.
[167] Ruth Gaffney-Rhys, 'Same-sex marriage but not mixed-sex partnerships: Should the Civil Partnership Act 2004 be extended to opposite-sex couples?' (2014) 26(2) Child and Family Law Quarterly 173, 188.
[168] Wilkinson v Kitzinger [2006] EWHC 2022 (Fam) 6.

seen as more desirable'[169]. Both cohabitation and civil partnership have been the subject of contention amongst pro-marriage organisations as they threaten the long-standing existence of marriage as the main form of legal union. It could be suggested that if marriage was a wholly satisfactory institution, these concerns may not exist, and individuals would not be looking outside of marriage to other forms of union.

It would be factually inaccurate to suggest that marriage and civil partnership are completely identical both socially and legally. The legal differences will be discussed in the following section.

The Legal Differences between Civil Partnership and Marriage

The legal differences that exist between marriage and civil partnership are threefold, the differences between weddings and civil partnership ceremonies, the existence of a non-consummation voidability ground which only exists with respect to heterosexual marriage and finally the existence of adultery as a fact for divorce which only exists in heterosexual marriage. Each will be considered in turn.

i) Weddings and Civil Partnership Ceremonies

The fundamental difference between a wedding and civil partnership ceremony is that in a civil partnership ceremony it is not necessary to speak vows where in a wedding it is essential. S.44 of the Marriage Act decrees that for non-Church of England, Jewish and Quaker marriages, couples must speak a set of prescribed words which create the marriage. Section 2 of the CPA, which sets out the formalities of civil partnerships, does not require spoken vows of any sort. Instead it is the signing of the register which creates the civil partnership. As well as this, civil partnership ceremonies lack any religious element. Civil partnership registrars perform a secular function. This is not to say that a religious service is forbidden after they have become civil partners.[170] In Gaffney-Rhys' work, she observed that 'some opposite-sex couples spurn marriage due to the nature of the marriage *ceremony* rather than the institution itself'.[171] She explains that many couples may be attracted to the more private nature of a civil partnership whereby they are not compelled to make public

[169] Lucinda Ferguson, 'The denial of opposite-sex couples' access to civil partnership as discrimination?' (2016) 38(4) Journal of Social Welfare and Family Law 450, 454.
[170] Jonathon Herring, *Family Law* (9th edition, Longman Law Series, Pearson 2019) 118.
[171] Ruth Gaffney-Rhys, 'Same-sex marriage but not mixed-sex partnerships: Should the Civil Partnership Act 2004 be extended to opposite-sex couples?' (2014) 26(2) Child and Family Law Quarterly 173, 189.

promises in the form of vows as they would have to in marriage. The lack of a religious element may be a strength of civil partnership in increasingly secular England and Wales. Support for opposite-sex civil partnership was highest in those who do not identify with a religion according to the British Social Attitudes survey.[172] This along with growing secularisation whereby 25% of people in Britain do not identify with a religion[173], creates a strong case that many couples may wish to form civil partnerships. Whether this will be the case is yet to be seen and will have to be investigated after opposite-sex civil partnerships have been available for some time. Similarly, to civil partnership, civil marriage offers couples the opportunities to have a non-religious ceremony. However, this form of marriage still requires the speaking of vows and inherits many of the same religious and patriarchal undertones of religious marriages.[174]

ii) Voidability: non-consummation

Another key difference between marriage and civil partnership is that voidability on the grounds of non-consummation due to incapacity or wilful refusal exists only in marriage. This ground, which can be found in the Matrimonial Causes Act 1973 section 12(a) and (b), places pivotal importance upon a sexual relationship existing between parties to a marriage. The lack of existence in civil partnership has been interpreted in two ways. The first interpretation suggests that the ground arose due to a lack of willingness to accept that homosexual sex is real sex.[175] The exclusion occurred first in the original CPA 2004 which was drafted exclusively for same-sex couples.[176] It is worth noting that same-sex marriage also excludes this ground for voidability for the same reasons. Alternatively, it could be argued that removal of the ground is progressive, modern and forward-thinking. By not allowing civil partnerships to be annulled due to incapacity or wilful refusal to consummate, it could suggest that under civil partnership conjugal rights are no longer deemed necessary or important. This argument may appeal to couples who have strong beliefs about the way that conjugal rights have been associated with male dominance and female subservience. This

[172] Curtice, J., Clery, E., Perry, J., Phillips M. and Rahim, N., 'British Social Attitudes: The 36th Report' (London, The National Centre for Social Research 2019).
[173] Office for National Statistics, 'Full story: what does the Census tell us about religion in 2011' (May 2013)< https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/articles/fullstorywhatdoesthecensustellusaboutreligionin2011/2013-05-16> accessed 15 April 2020.
[174] Helen Fenwick and Andy Hayward, 'From same-sex marriage to equal civil partnerships: on a path towards 'perfecting' equality?' [2018] Child and Family Law Quarterly 97, 99.
[175] Sarah Beresford, 'We're All Same (Sex) Now?: Lesbian (Same) Sex Marriage; Consummation; Adultery and Marriage' (2016) 12(5) Journal of GLBT Studies 468, 469.
[176] Charlotte Bendall, Should We Welcome an End to the 'Blame Game'? Reflecting on Experiences of Civil Partnership Dissolution (2019) Journal of Divorce and Remarriage.

interpretation is supported by Ireland who removed the ground due to its outdated nature.[177] Gaffney-Rhys' argues that the non-existence of a non-consummation ground is positive and progressive as it moves away from the 'patriarchal overtones'[178] of marriage. She also suggests that there is potential for those who do not wish to have sexual relations to find civil partnership attractive for this reason. However, she expects the number of couples who will fall into this category to be very few.[179] This lack of a sexual element in civil partnership therefore creates differentiation between marriage and civil partnership, moving away from notions of sex and procreativity to a more modern and egalitarian form of union.[180]

iii) Adultery as a Fact for Dissolution

The process by which a marriage is brought to a legal end is divorce. The same process under a civil partnership is dissolution. Legally, there is only one difference between the two processes. Under the Matrimonial Causes Act section 1, in order to obtain a divorce, the petitioner must be able to prove that the marriage has 'broken down irretrievably' by satisfying the court that one of five facts, provided in section 1(2)(a)-(e), is met. Section 1(2)(a) allows a spouse to cite adultery if their spouse has had a sexual relationship with a member of the opposite-sex (s1(6) MCA 1973). Under the CPA section 44(1), applicants must prove that the civil partnership has 'irretrievably broken down', using one of the facts provided in section 44(5)(a)-(d). Civil partners may not cite adultery as a basis for showing the civil partnership has broken down irretrievably. This difference can also be seen in same-sex marriage and has been argued by Beresford to represent 'a missed opportunity' to 'relieve marriage of some of its heteropatriarchal normative values'.[181] Gaffney Rhys, however, argues that this difference is a matter of terminology only as it is possible for a civil partner to cite being unable to live with the respondents due to their behaviour, with adultery as the behaviour, under section 44(5)(a).

Socially, it may be perceived that dissolution does not have the same negative effects of divorce. However, research by Auchmuty has suggested that civil partnership dissolution and divorce on a practical level are alike but symbolically are very different as civil

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[177] Law Society of Ireland, 'Nullity of Marriage: The case for reform' (Law Society's Law Reform Committee, October 2001) 31.
[178] Ruth Gaffney-Rhys, 'Same-sex marriage but not mixed-sex partnerships: Should the Civil Partnership Act 2004 be extended to opposite-sex couples?' (2014) 26(2) Child and Family Law Quarterly 173, 188.
[179] Ibid.
[180] Helen Fenwick and Andy Hayward, 'From same-sex marriage to equal civil partnerships: on a path towards 'perfecting' equality?' [2018] Child and Family Law Quarterly 97.
[181] Sarah Beresford, 'We're All Same (Sex) Now?: Lesbian (Same) Sex Marriage; Consummation; Adultery and Marriage' (2016) 12(5) Journal of GLBT Studies 468.

partnership is a new institution with a different origin to marriage.[182] The lack of an adultery fact in dissolution is unlikely to deter couples from civil partnership, if anything, it is a strength of civil partnership and could be argued to encourage couples who are conscious of LGBT+ rights to prefer civil partnership to marriage. It is worth noting however that the requirement to establish a fact will be removed when the Divorce, Dissolution and Separation Bill[183] is passed.

Conclusion

It has been demonstrated through the examination of the similarities and differences of marriage and civil partnership that legally, the two institutions are mostly similar, save for a few differences relating to civil partnership ceremonies, dissolution and grounds for voidability. These differences, which are 'arguably minor'[184] are unlikely to be the reason which will prompt couples to choose civil partnership. It is instead the symbolic differences between the two forms of union that carry the most weight. Civil partnership and marriage have very different histories, traditions and public perceptions. Marriage is entrenched in heteronormative and patriarchal tradition. Comparatively, civil partnership is a ''blank canvas' conception of the public expression of a relationship, untainted or less tainted by patriarchal or religious associations'.[185] Civil partnership provides a hopeful alternative to marriage for women, granting them rights and protections but under a 'more neutral, less gendered'[186] and modern form of union.

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[182] Rosemary Auchmuty, 'The experience of civil partnership dissolution: not 'just like divorce' (2016) 38(2) Journal of Social Welfare and Family Law 152.
[183] Divorce, Dissolution and Separation Bill [HL] 2019-21.
[184] Ruth Gaffney-Rhys, 'Same-sex marriage but not mixed-sex partnerships: Should the Civil Partnership Act 2004 be extended to opposite-sex couples?' (2014) 26(2) Child and Family Law Quarterly 173, 176.
[185] Helen Fenwick and Andy Hayward, 'From same-sex marriage to equal civil partnerships: on a path towards 'perfecting' equality?' [2018] Child and Family Law Quarterly 97.
[186] Ibid.

Conclusion

Three forms of union, marriage, civil partnership and cohabitation, have been explored in this comparative research project. Through taking each union in turn to explore its merits and drawbacks, comparing both the legal protection offered as well as the implications on the autonomy of women and equality of the sexes, it has been concluded that civil partnership provides the strongest choice of union for heterosexual women. It has been asserted that civil partnership remedies both of the pitfalls of marriage and cohabitation. Civil partnership provides women with an alternative choice to marriage and cohabitation, a form of union which does not impose traditional gender roles whilst giving them the same legal protection as marriage. It has been suggested that whilst the status and benefits associated with marriage are desirable, the way that marriage has shaped women's aspirations and experiences has been highly detrimental in the ongoing battle for achieving gender equality. This is a recurring theme in much of the literature in this area of research. Opposit[redacted] 21 has been illustrated that whilst cohabitation is accredited for the way it moves away from traditional patriarchal notions of marriage, it should be avoided due to the poor legal protections it offers which have been found to disadvantage women on relationship breakdown.

Chapter one investigated the case for marriage, looking at the strengths of the institution. It was concluded that status provides the main incentive to marry, with less emphasis on rights. It was also concluded that the benefits associated to marriage are difficult to prove using social science research. The factors associated with the decline of marriage were also explored – concluding that many of which centre around the liberation of women. Chapter two explored the historical position of wives and different elements of marriage findings that marriage has negatively shaped the aspirations and experiences of women in the modern day. A strong precedent still exists that marriage is the 'gold standard' of human relationships and so women feel an expectation to marry. Similarly, it was concluded that the experiences of women have been negatively shaped by marriage with a recurrent theme of the gender norms and sexual division of labour which exist particularly in marriage and continue to pervade women's lives both in the home and outside of it. Chapter three focused on cohabitation. It was noted that whilst cohabitation is successful in moving away from the patriarchal overtones which exist in marriage, cohabitation is largely flawed in the lack of protection it offers women on relationship breakdown. It was therefore recommended that cohabitation is the least adequate of the three forms and ought to be avoided as a long-term form of union. Chapter four examined civil partnership comparing it primarily to marriage. It

was illustrated that civil partnership is modern, supports feminist beliefs and equality between opposite-sex and same-sex couples. It was asserted that these qualities of civil partnership ultimately serve as the main reasons why civil partnership is preferable to marriage. The differences and similarities between civil partnership and marriage were also explored. It was concluded that whilst the legal differences between the two unions may have minor significance, the social, cultural and historical differences are the most convincing argument to favour civil partnership.

With civil partnerships having been available to opposite-sex couples for less than a year at the time of writing, a limitation of this research project has been the lack of primary data and specific academic discourse on opposite-sex civil partnership, particularly the experience of women in opposite-sex civil partnership. Due to this lacuna, some conclusions have been drawn using inferences from same-sex civil partnership, which may differ to the experience of opposite-sex civil partnerships. It is therefore imperative that further research is carried out in this area to explore the success of opposite-sex civil partnership as a new form of union. It will be particularly useful to note the number of couples who choose civil partnership as opposed to marriage and their motivation for doing so. The process of opposite-sex civil partnership dissolution must be studied closely too. Going forward, the number of opposite-sex dissolutions per year must be recorded as well as the experience of women and men during and after dissolution investigated. As well as this, continued data collection by the Office for National Statistics and the British Social Attitudes Survey is also necessary to monitor public perceptions and rates of all three forms of union.

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Additionally, it has been speculated on several times throughout this dissertation that public awareness of the legal differences between marriage, civil partnership and cohabitation are likely to be poor. As a new form of union, many couples may be unaware that they are eligible to form a civil partnership. It is therefore suggested that raising awareness of the different forms of union and the rights they offer must be prioritised and acted on by the government.

Table of Cases

Durham v Durham [1855] 10 PD 80

Gissing v Gissing [1971] A.C. 886

Hyde v Hyde and Woodmansee (1866) LR 1 P & D 130

Lloyds Bank v Rosset [1991] 1 A.C. 107

R v R [1992] 1 AC 59

R (on the application of Steinfeld and Keidan) (Appellants) v Secretary of State for International Development (in substitution for the Home Secretary and the Education Secretary) [2018] UKSC 32

Wilkinson v Kitzinger [2006] EWHC 2022 (Fam)

X (A Child: foreign surrogacy) [2018] EWFC 15

Table of Statutes

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Bibliography

Aassve A, Betti G, Mazzuco S, Mencarini L, 'Marital Disruption and Economic Well-being: A Comparative Analysis' ISER Working Paper 2006-07 < https://www.iser.essex.ac.uk/files/iser_working_papers/2006-07.pdf> accessed 20 January 2020.

Auchmuty R, 'Law and the Power of Feminism: How Marriage Lost its Power to Oppress Women' (2012) 20(2) Feminist Legal Studies 71.

Auchmuty R, 'The experience of civil partnership dissolution: not 'just like divorce' (2016) 38(2) Journal of Social Welfare and Family Law 152.

Auchmuty R, 'What's So Special About Marriage? The Impact of Wilkinson v Kitzinger' (2008) 20(4) Child and Family Quarterly 475.

Barlow A and Smithson J, 'Legal assumptions, cohabitants' talk and the rocky road to reform' (2010) 22(3) Child and Family Law Quarterly 328.

Barlow A, Burgoyne C, Clery E and Smithson J, 'Cohabitation and the law: myths, money and the media', in Alison Park, John Curtice and Katherine Thomson (eds), *British social attitudes: the 24th report* (SAGE Publications Ltd, 2008) 29.

Barlow A, Duncan S, James G and Parks A, *Cohabitation, Marriage and the Law: Social Change and Legal Reform in the 21st Century (Contemporary Family Trends)* (Hart Publishing, 2005) 65.

Baroness Hale, 'Keynote Speech' (Resolution's 30th National Conference, Bristol, 20 April 2018) < https://www.supremecourt.uk/docs/speech-180420.pdf> accessed 3 December 2019.

BBC News, 'R.I.P Bachelors and Spinsters' (14 September 2005) <http://news.bbc.co.uk/1/hi/magazine/4141996.stm> accessed 23 February 2020.

Bendall C, Should We Welcome an End to the 'Blame Game'? Reflecting on Experiences of Civil Partnership Dissolution (2019) Journal of Divorce and Remarriage.

Benson H and Kay S, 'The Marriage Gap: The rich get married (and stay together). The poor don't.' (Marriage Foundation, August 2015) < https://marriagefoundation.org.uk/wp-content/uploads/2019/09/MF-paper-The-Marriage-Gap-Rich-and-Poor.pdf> accessed 7 April 2020.

Beresford S, 'We're All Same (Sex) Now?: Lesbian (Same) Sex Marriage; Consummation; Adultery and Marriage' (2016) 12(5) Journal of GLBT Studies 468.

Blackstone W, *Commentaries on the Laws of England* (4th edition , Volume 1, Oxford Clarendon Press 1770) 442.

Bolton P, 'Student Loan Statistics' (House of Commons Library, December 2019) <https://commonslibrary.parliament.uk/research-briefings/sn01079/> accessed 15 April 2020.

Bottomley A, 'From Mrs. Burns to Mrs. Oxley: Do Co-Habiting Women (Still) Need Marriage Law?' (2006) 14(2) Feminist Legal Studies.

Brabcová A, 'Marriage in Seventeenth-Century England: The Woman's Story' (University of West Bohemia, Plzeň 2016) 21.

Bridebook, 'National Wedding Survey 2018' (2019) https://bridebook.co.uk/article/national-wedding-survey-2018 accessed 15 April 2020.

Bulman M, 'Marriages between men and women hit lowest rate on record' (Independent, February 2018) <https://www.independent.co.uk/news/uk/home-news/marriages-men-women-lowest-record-heterosexual-lgbt-ons-a8232751.html> accessed 15 April 2020.

Chambers C, 'VII – The Marriage-Free State' (2013) 11(2) Proceedings of the Aristotelian Society 123.

Chan W, 'Cohabitation, civil partnership, marriage and the equal sharing principle' (2013) 33(1) Legal Studies 46.

Coalition for Marriage 'DIVORCE DAMAGES CHILDREN, STUDY FINDS. AGAIN.' (2019) <https://www.c4m.org.uk/divorce-damages-children-study-finds-again/> accessed 8 March 2020.

Coalition for Marriage, 'Marriage Works for Women' (March 2018) <https://www.c4m.org.uk/marriage-works-women/> accessed 23 February 2020.

Coast E, 'Currently Cohabitating: Relationship Attitudes, Expectations and Outcomes' (LSE Research Online, 2009) < http://eprints.lse.ac.uk/23986/1/Currently_cohabiting_%28LSERO%29.pdf> accessed 2 April 2020.

Cretney S, *Family law in the twentieth century: a history* (OUP 2005) 91.

Department for Education, 'Relationships Education, Relationships and Sex Education (RSE) and Health Education' (2019).

Eekelaar J, 'Why People Marry: The Many Faces of an Institution' (2007) 41(3) Family Law Quarterly 413.

Equal Civil Partnerships, 'One step closer – regulations laid in Parliament' (October 11 2019) <http://equalcivilpartnerships.org.uk/category/latest-news/> accessed 11 November 2019.

Equal Civil Partnerships, 'Why does it matter?' <http://equalcivilpartnerships.org.uk/why-does-it-matter/> accessed 11 November 2019.

Everitt L, 'Ten key moments in the history of marriage' (BBC News Magazine, March 2012) <https://www.bbc.co.uk/news/magazine-17351133> accessed 15 April 2020.

Family Lives, 'Common Law Marriage' https://www.familylives.org.uk/advice/your-family/relationship-advice/common-law-marriage/ accessed 15 April 2020.

Fenwick H and Hayward A, 'From same-sex marriage to equal civil partnerships: on a path towards 'perfecting' equality?' [2018] Child and Family Law Quarterly 97.

Ferguson L, 'The denial of opposite-sex couples' access to civil partnership as discrimination?' (2016) 38(4) Journal of Social Welfare and Family Law 450.

Fineman M, 'Why Marriage?' (2001) 9(1) Virginia Journal of Social Policy and the Law 240, 247.

Fisher H and Low H, 'Recovery from Divorce: Comparing High and Low Income Couples' (2016) 30(3) International Journal of Law, Policy and the Family 338.

Fredman S, *Women and the Law* (Oxford University Press 1997).

Freeman M. D. A, 'Violence against Women: Does the Legal System Provide Solutions or Itself Constitute the Problem?' (1980) 7(2) British Journal of Law and Society 215

Gaffney-Rhys R, 'Same-sex marriage but not mixed-sex partnerships: Should the Civil Partnership Act 2004 be extended to opposite-sex couples?' (2014) 26(2) Child and Family Law Quarterly 173.

Government Equalities Office, 'Implementing Opposite-Sex Civil Partnerships: Next Steps' (July 2019).

Haskey J, 'Cohabitation in Great Britain: past, present and future trends-and attitudes' (2001) 103 Population Trends 4.

Herring J, *Family Law* (9th edition, Longman Law Series, Pearson 2019) 118.

Horton M, 'Commentary on the Steinfeld challenge to civil partnership laws' (Coram Chambers 27th June 2018) <https://www.coramchambers.co.uk/news/commentary-on-the-steinfeld-challenge-to-civil-partnership-laws/> accessed 6 March 2020.

House of Commons Library, 'Marriage and Government policy' (Debate Pack, Number CDP-2018-0025, January 2018) 12.

House of Commons, '"Common law marriage" and cohabitation' (Briefing Paper No. 03372, 2019) 3.

Jansen M, Mortelmans D and Snoeckx L, 'Repartnering and (Re)employment: Strategies to Cope With the Economic Consequences of Partnership Dissolution' (2009) 71(5) Journal of Marriage and Family 1271.

Jepsen C and Jepsen L, 'The Sexual Divison of Labor within Households: Comparisons of Couples to Roommates' (2006) Eastern Eonomic Journal 32(2) 299.

Kershaw A, 'Almost 10,000 more women than men applying to UK universities as gender gap grows' (Independent, July 2018) <https://www.independent.co.uk/news/education/gender-gap-university-students-men-women-applications-uk-a8442941.html> accessed 15 April 2020.

Kiernan K, 'Redrawing the Boundaries of Marriage' (2004) 66(4) Journal of Marriage and Family 980.

Kitzinger C and Wilkinson S, 'Why We Got Married Instead of Registering a Civil Partnership' (2004) 14(1) Feminism & Psychology 127.

Land Registry, 'UK House Price Index' <https://landregistry.data.gov.uk/app/ukhpi> accessed 15 April 2020.

Latey W, 'Developments in the Law of Divorce and the Nullity in Marriage' (1950) 18(3) Transactions of the Medico-Legal Society 85.

Law Commission, 'Cohabitation: The Financial Consequences of Relationship Breakdown Executive Summary' (Law Com No.307, 2007).

Law Commission, Cohabitation: The Financial Consequences of Relationship Breakdown (Law Com No 307, 2007).

Law Society of Ireland, 'Nullity of Marriage: The case for reform' (Law Society's Law Reform Committee, October 2001) 31.

Leopold T, 'Gender Differences in the Consequences of Divorce: A Study of Multiple Outcomes' (2018) 55(3) Demography 769.

Levine P, '"So Few Prizes and So Many Blanks": Marriage and Feminism in Later Nineteenth-Century England' (1989) 28(2) Journal of British Studies 150.

Lewis J, 'Is Marriage the Answer to the Problems of Family Change? (2001) 72(4) Political Quarterly 437.

McMunn A, Bird L, Webb E and Sacker A, 'Gender Divisions of Paid and Unpaid Work in Contemporary UK Couples' (2019) Work, Employment and Society 1.

Morgan P, *Marriage-Lite: The Rise of Cohabitation and Its Consequences* (Civitas Institute for the Study of Civil Society, 2000) 6.

O'Donovan K, 'Marriage: a Sacred of Profane Love Machine?' (1993) 1(1) Feminist Legal Studies 75.

O'Donovan K, Fit Work for Women, Routledge 2012.

Office for National Statistics 'What percentage of marriages end in divorce?' (Office for National Statistics, 9 February 2013) <https://webarchive.nationalarchives.gov.uk/20160106011951/http://www.ons.gov.uk/ons/rel/vsob1/divorces-in-england-and-wales/2011/sty-what-percentage-of-marriages-end-in-divorce.html> accessed 21 January 2020.

Office for National Statistics, 'Families and households in the UK (2018) < https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2018> accessed 2 April 2020.

Office for National Statistics, 'Full story: what does the Census tell us about religion in 2011' (May 2013)< https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/religion/articles/fullstorywhatdoesthecensustellusaboutreligionin2011/2013-05-16> accessed 15 April 2020.

Office for National Statistics, 'Homicide in England and Wales: year ending March 2018' <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/yearendingmarch2018#how-are-victims-and-suspects-related> accessed 20 February 2020.

Office for National Statistics, 'Marriage in England and Wales: 2017 (April 2020) < https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriage

cohabitationandcivilpartnerships/bulletins/marriagesinenglandandwalesprovisional/2017> accessed 15 April 2020.

Office for National Statistics, 'Marriages in England and Wales: 2016' (March 2019) < https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriage cohabitationandcivilpartnerships/bulletins/marriagesinenglandandwalesprovisional/2016> accessed 15 April 2020.

Oram A, 'Repressed and thwarted, or bearer of the new world? The spinster in inter-war feminist discourses' (1992) 1(3) Women's History Review 415.

Park, A., Bryson, C., Clery, E., Curtice, J. and Phillips, M. 'British Social Attitudes: the 30th Report' (London, NatCen Social Research 2013).

Purvis J, *Women's History: Britain, 1860-1945: An Introduction* (Routledge 1997).

Puxon M and Dawkins S, 'Non-consummation of Marriage' (1964) 4(1) Medicine, Science and the Law 15.

Shipman B and Smart C, ''It's Made a Huge Difference': Recognition, Rights and the Personal Significance of Civil Partnerships' (2007) 12(1) Sociological Research Online 129.

Smart C, *The Ties that Bind* (Routledge & Kegan Paul plc 1984).

Wong S, 'Cohabitation Reform in England and Wales: Equality or Equity' (2015) 27(1) Canadian Journal of Women and the Law 112.

[redacted] Long Dissertation LAW3320

GRADEMARK REPORT

FINAL GRADE

74/100

GENERAL COMMENTS

Instructor

An enjoyable read. Wide range of sources identified and used effectively in this dissertation. Overall chapter 3 on cohabitation is probably the weakest - it is competent but pedestrian. Chapter 2 is the most impressive organised around the quotation from Fineman. Some interesting arguments analysed in Chapter 4 on civil partnerships. Few examples of awkward word choice but generally well written.

[redacted]

This was a strong dissertation that synthesised refined feminist theory with a contemporary development in family law. You demonstrate excellent understanding of the issues and address these comprehensively. You make some very sophisticated points of analysis and although there is the occasional colloquial phrase, your writing style is fluent and academic. The piece is well researched and attentively referenced. To improve, ensure that you maintain consistent reference back to your research question to maintain a clear thread throughout your chapters, and be mindful of formatting around quotes - these needed to have a clear space around them. Overall, this is a very good piece and I enjoyed reading it!

[redacted]

PAGE 3

PAGE 4

Comment 1

Excellent abstract until final phrase as I do not understand what indemnity means here.

PAGE 5

PAGE 6

PAGE 7

Comment 2

Should this be Baron? It would usually be Sir James Hannen, P.

Comment 3

We do not have community of property regime in England and Wales - it is a separate property regime.

Comment 4

Civil partnership dates from 2004 - maybe means that only available to heterosexual women in an opposite sex relationship?

PAGE 8

Comment 5

Awkward - "who" is incorrect here and does not follow up by statutory reference as expected.

PAGE 9

Comment 6

Very narrow definition of personal benefits and with the exception of stability seem more to fall within category of material benefits.

PAGE 10

PAGE 11

Comment 7

Rather less nuanced than the earlier discussion.

PAGE 12

PAGE 13

PAGE 14

PAGE 15

Comment 8

Well argued here.

PAGE 16

PAGE 17

PAGE 18

PAGE 19

Comment 9

Very good to have tracked down these sources. Very powerful analysis here.

PAGE 20

Comment 10

Excellent analysis here using sources very well.

PAGE 21

PAGE 22

PAGE 23

PAGE 24

Comment 11

Overall a very well argued chapter and strong conclusion.

PAGE 25

Comment 12

"appropriate" rather than "suitable"?

Comment 13

Not well expressed and does not explain what she means by "normative".

PAGE 26

PAGE 27

PAGE 28

Comment 14

"implemented" rather than passed as 2006 whereas Law Com reported in 2007

PAGE 29

Comment 15

Good choice of quotation here.

Comment 16

Reference to evaluation of public information campaign on dispelling the "myth".

PAGE 30

PAGE 31

PAGE 32

PAGE 33

PAGE 34

Comment 17

Good use of both pieces of research to support her argument.

PAGE 35

Comment 18

Again good use of research in this paragraph.

PAGE 36

PAGE 37

Comment 19

Incorrect apostrophe here.

PAGE 38

PAGE 39

Comment 20

Strong conclusion to this chapter and again good use of quotations.

PAGE 40

Comment 21

"conversely" not "oppositely"

PAGE 41

Comment 22

Well argued point about need for further research.

PAGE 42

PAGE 43

Comment 23

Should really be separated out by jurisdiction.

PAGE 44

PAGE 45

PAGE 46

PAGE 47

PAGE 48

RUBRIC: UG ASSESSMENT CRITERIA

CONTENT	Very Good
EXCELLENT	Exceptional understanding of complex material. Identification of less obvious issues not widely discussed in the literature
VERY GOOD	Complete answer which displays an in-depth understanding of the key issues; discussion always related to the question
GOOD	Full answer (only minor omissions) which displays a good understanding of the key issues; discussion predominantly related to the question
SATISFACTORY	Solid answer but some omissions and may be lacking in detail; understanding of the key issues is variable and may be shallow at times; discussion typically related to the question but may be some digressions
LIMITED	Partial answer with a number of omissions; displays a reasonable understanding of the material but may be superficial at times; discussion frequently strays away from the focus of the question.
BELOW PASS STANDARD	Unsatisfactory answer due to failure to identify and/or understand the key issues, and/or limited relevance to the question

ANALYSIS	Excellent
EXCELLENT	Exceptional level of analysis Demonstrates excellent evaluative skills when using sources
VERY GOOD	Highly analytic answer which draws upon - and evaluates a range of sources - to reach own conclusions
GOOD	Analytic approach adopted throughout the answer making appropriate use of evidence to support the analytic points made
SATISFACTORY	Some level of analysis but answer is likely to be overly descriptive at times; analysis may be confined to the final section of the essay and points made may not be explored in-depth or substantiated
LIMITED	Primarily descriptive with only limited analysis, which is likely to be superficial and without reference to any sources
BELOW PASS STANDARD	Overly descriptive answer with little, if any, analysis

STRUCTURE	Excellent
EXCELLENT	Imaginative and innovative argument Almost faultless structure
VERY GOOD	Engaging introduction which lays out a structure for the answer and demonstrates a full understanding of the issues raised by the questions; robust conclusion which consolidates the argument advanced in the main body of the essay; discussion flows

	effectively as argument is developed throughout
GOOD	Introduction lays out a structure for the answer and identifies key issues; conclusion consolidates the argument built up in the main body of the essay but both may benefit from further development; answer is generally well organised with clear progression
SATISFACTORY	Introduction may be pedestrian, simply outlining what will be discussed; brief conclusion which does not consolidate the argument presented in the body of the essay; evidence of planning but answer would benefit from some reorganisation of material to improve the flow of the argument
LIMITED	Introduction may be pedestrian, simply outlining what will be discussed; conclusion may be asserted rather than following on logically from the argument advanced in the essay; answer would benefit from reorganisation of material
BELOW PASS STANDARD	Introduction, if present, offers little more than a list of issues to discuss; conclusion, if present, does not answer the question; disorganised answer.

RESEARCH	Excellent
EXCELLENT	Considerable evidence of independent scholarship High level of synthesis
VERY GOOD	Draws upon a wide range of both primary and secondary sources (including those not listed in module materials) and uses them effectively to support points made; very good synthesis of sources to convey understanding of relevant literature
GOOD	Draws upon a range of both primary and secondary sources (relying predominantly on those listed in module materials) and uses them to support points made; good synthesis of sources to convey understanding of relevant literature
SATISFACTORY	Draws upon primary and secondary sources (relying predominantly on the latter) and uses them to support points made; discussion tends to focus on individual sources
LIMITED	Draws on a limited range of sources, predominantly secondary sources; not all points made are supported by reference to the sources used; discussion focuses on individual sources
BELOW PASS STANDARD	Minimal use of sources; points made are generally not accompanied by reference to sources

PRESENTATION	Very Good
EXCELLENT	Close to reaching the expectation for an academic publication Exceptional attention to detail
VERY GOOD	Fluent and precise writing style with only minimal errors; academically appropriate language; full, consistent and accurate referencing
GOOD	Fluent academic writing style with only minor errors; occasional minor referencing errors
SATISFACTORY	Clear writing style on the whole but some errors and areas of confusion; no serious

	referencing errors
LIMITED	Writing style sometimes lacks clarity and precision and may not be academically appropriate; referencing may also be problematic (e.g. inconsistent approach) but not indicative of plagiarism
BELOW PASS STANDARD	Difficult to read due to frequent errors and/or problematic (possibly non-academic) writing style; problematic referencing which may raise concerns about academic integrity