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'Akin to Marriage': Sexual Citizenship, Heterosexism and Immigration in the UK.

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Abstract:

This thesis aims to understand the ways in which particular categories of sexual citizenship are constructed through immigration discourses and practices both in the UK and in European migratory spaces. The thesis examines the exclusion of sexual citizens and its implications for the lived experiences of these categories.

The thesis sets out how sexual citizenship literature provides a pertinent theoretical framework to investigate the significance of immigration policy and practices for sexual citizens. It argues that the relationship between immigration and sexual citizenship has not been fully explored. Conversely, work on migration, particularly in the under researched area of family reunion, has not always fully explored sexual identities within its theorisation of the family. This thesis draws on a number of sociological and cultural perspectives that highlight the diversity of family practices, which are unrecognised by family reunion policies, drawing these strands together to address the conceptual gaps in these literatures.

My methodology aims to analyse and differentiate the particular discourses that shaped the development of the unmarried partners rule. Firstly, the relevant legislation, which includes parliamentary debates, Home Office documents and immigration instructions, is studied through critical discourse analysis. Secondly, I apply theoretical perspectives from Critical Legal Studies, to 'Official' legal discourse. This includes an examination of legal practice, such as the arguments and strategies used by legal professionals in appeal cases. This analysis extends to rights discourses that utilise European legal instruments and applies relevant case law to critically assess postnational and transnational perspectives. Thirdly, I examine fourteen interviews, conducted with same-sex migrant couples, which give accounts of the experiences and processes that affect couples entering under this provision.

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Introduction

This thesis is concerned with three interrelated topics: international immigration, the family and sexual citizenship. The combination of these three elements provides a rich terrain of debate from which to examine questions of belonging, rights and recognitions. A common thread through these three topics is the importance of recognising the diverse and varied experiences of citizenship as migrationary movements and experiences are becoming increasingly more complex and diverse (Castles and Miller, 1998). Also, in terms of the family its constituents are seen as a site of change and transformation (Silva and Smart, 1999). Queer perspectives also highlight the potential range and diversity of sexual identities (Bell and Binnie, 2000). Yet as this thesis will show, institutions that confer citizenship rights still continue to produce rigid and conservative categories of identity, which ignore changing social and cultural practices. This is central to the particular difficulties for sexual citizens attempting to achieve their family reunion.

1. Aims and themes of the thesis

The main aim of this thesis is to examine the way UK immigration produces discourses that exclude particular forms of relationships. In the UK this is achieved by the category of 'unmarried people', which is applied to same-sex and cohabiting couples. This aspect of immigration policy has not been examined in great detail in existing immigration research. The thesis attempts to fill this lacuna by providing a detailed analysis of policy in the context of relevant existing theoretical frameworks (family reunion and immigration, sexual citizenship) and also through new empirical research. This research will show how these literatures are both relevant to each other and address the issues of sexual identity as it is constructed through the immigration category of 'unmarried people'.

1.a. The contribution made to sexual citizenship and immigration literature

Some work has identified the absence of lesbian, gay and bisexual (LGB) experiences within migration literature. Bob Cant (1997) provides a collection of first person narratives, where individual lesbian and gays tell the story of their migratory experiences within and into Britain. These accounts highlight the specific localities of lesbian and gay experiences. In particular, large cities with an established lesbian, gay and bisexual community often provide a space where such migrants can feel at 'home'. However, these narratives only provide a partial picture of lesbian and gay migration, for the emphasis, in these stories, is on the personal journey that led to migration, rather than the legal, political structures that sexual citizens must deal with in order to migrate. But these structures have implications for the geographical variation in sexual citizenship. Jon Binnie (1997) and Bell and Binnie (2000) have highlighted the differential experience of sexual citizens across space. This is a welcome intervention as Binnie (1997) raises the absence of this issue and points out the emerging work from geographers, as a corrective to the 'aspatiality' of lesbian and gay intellectual work. However, despite the pertinence of sexual citizenship theory, it has not been applied to the way in which immigration discourses maintain and regulate sexual identity.

The following section of this introduction explains that this is partly due to existing literature on the family and immigration, which has not fully dealt with the interplay between immigration legislation and sexual identities. Chapter one continues this debate to set out the relevance of the work on sexual citizenship to the discussion of unmarried people in immigration legislation. In addition to these contributions to theoretical debates, interviews were conducted to understand how same-sex couples attempt to achieve their

family reunion, the type of strategies they deploy and the role of resources in the application process. This research aims to build on these interventions and draw together the work on sexual citizenship and migration. It also intends to contribute to these interventions by providing further qualitative research (alongside quantative data), and examine in detail the processes that are facilitated by sexual citizens; their strategies for invoking citizenship and the relationship between couples and legal professionals engaged with the formation of this particular piece of immigration legislation. This empirical work aims to not only inform my theoretical analysis and understanding of the implications of this policy, but also to provide new research which is not available in the existing corpus of immigration literature. The following sections set out the ways in which this thesis aims to contribute to neglected areas of research: in the literatures and policy on immigration and the family.

1.b. The family in migration literature

Dominant models of the nuclear family and traditional assumptions about gender roles, that posit a male lead migrant, have characterised international migration theory (Ackers, 1998:44). Therefore, the family within the body of migration literature largely remains under researched and inadequately theorised. Moreover, the work on family migration in the context of Europe has been particularly marginalized (Kofman forthcoming). What the literature on family migration has done is pay attention to particular issues around transnationalism and integration. For example, a significant amount of research on family migration has been concerned with the Asia-Pacific region, which has foregrounded the cultural, political and economic impact on the family as a result of transmigratory movements (Yeoh, Graham, Boyle, 2002). It attempts, therefore, to transcend the preoccupation of existing migration literature that focuses on the two poles of 'individual

and nation' (Yeoh et.al., 2002). In addition, this literature broadens beyond the nuclear, western norms, to include extended familial formations that indicate the diversity of family practices unrecognised by immigration policy. However, the range of compositions does not extend to non-heterosexual families. Literature from the European perspective tends to be concerned with the role of the family in receiving countries and issues surrounding integration (Kofman forthcoming). Although, as a corrective to previous work, there has been some attention given to issues around gender (Hugo, 2002), these theoretical perspectives remain heterosexist. Sociological discussions have been critical of monolithic, traditional models of the family that are bound by biological ties. This discussion offer a useful way to theorise non-heterosexual families as the following section explains.

1.c. The 'new family'

Sociological analysis of the family has recently challenged the traditional presumption that the family is a separate social institution, but rather a practice, which is part of wider social processes (Silva and Smart, 1999: 7). This work situates the family in relation to the interplay between the boundaries of the public and private. In addition, it conceptualises the family as a composite of intimate connections that transcend the 'formal' ties of blood or marriage and therefore fall outside traditional legal, welfare and economic models (Silva and Smart, 1999: 7). The 'postmodern' (Stacey, 1996:7) or post-fordist family (Silva and Smart, 1999) represents the diversity of familial forms, beyond that of the conjugal heterosexual couple and biological children. The 'new' family can include a range of co-residencies, kinship, separate households, step-parents, erotic, non-erotic relationships. The seemingly endless possibilities that comprise these familial forms, has been taken up by those concerned with non-heterosexual 'families of choice'. Ethnographic research, such

as that of Kath Weston's (1991) in the Bay Area of the US, situates lesbian and gay kinship in the context of the AIDS epidemic, where caregiving of people with AIDS was undertaken by blood relatives, friends and lovers. Such blending of erotic and non-erotic kinship suggests a self-determination based on love to define the family. The 'family of choice' has come to signify the way in which same-sex couples define their families beyond traditional norms (Weeks, Heaphy, Donovan 2001). However, the elasticity of the 'family of choice' has yet to extend to immigration family reunion policy.

1.d. Family reunion policy and sexual citizens

As well as the partial conceptualisation of the family in migration research, family reunion has been subordinate to policies that focus on 'primary' labour migration, which highlights the economic benefits to nation states. Immigration policy continues to assert a restrictive and exclusionary model of the family divorced from the socio-political changes that have taken place. This narrow definition of the family has particular negative implications for sexual citizens attempting to realise their family reunion. Moreover, discrepancies in policy between individual states and the ability of sexual citizens to exercise their right of free movement in the EU, is based on the level of recognition accorded to unmarried people by the receiving country. At present, the EU primarily recognises a married partner - a 'spouse' for these purposes. Though the UK has from 1997 recognised same-sex couples, and recently cohabiting couples, the policy continues to foster the 'akin to marriage' model, with the emphasis on 'proof' for those making an application.

The following best sums up the situation with regards to the UK and its policy on family reunion:

> There is an ongoing tension within immigration control on the level of sexuality. On the one hand there is the perceived political need to assert the primacy of

> heterosexual over same-sex relationships. On the other hand there is the desire to assert the primacy of marriage over common-law heterosexual relationships. Within this tension there exists a romantic concept of marriage, which devalues and destroys arranged marriages at the expense of nuclear, 'love' matches. All this has led to a constant merry-go-round of policy changes within immigration control (Cohen, 2001:106).

The changing aspect of this provision is detailed in chapter two, but what the above quote effectively summaries is the contradictory and conservative history of this piece of provision. It has taken the consistent pressure of Stonewall Immigration[1] to persuade the Labour government in October 1997, to introduce a concession for unmarried people (later incorporated into a rule 2000). However, as the rule states, same-sex couples are required to present their relationship 'akin to marriage', thus the heterosexism is embedded in the discourse of the legislation. 'Heteronormativitiy', as the dominant bearer of such ideologies, is produced through these discourses as a marker of citizenship, penetrating individual and collective life in ways far removed from sexual and romantic practice' (Bell and Binnie, 2000:135). Traditional notions of the family prevail not only within UK national discourse but also at the European level where '...immigrants are bound to traditions whereas the "native Europeans' are increasingly shaking off the yoke of repressive old-fashioned lifestyle' (Lutz, 1997:105).

Despite some positive moves by nation states[2], like the UK, to recognise same-sex couples for immigration purposes, the EU still excludes same-sex couples from their definition of the family. The International Lesbian Gay Association (ILGA) is at present lobbying the EU on this matter and recently the European Parliament has voted to approve a 'new

[1] Stonewall Immigration, has from April 2003 been renamed the UK Lesbian and Gay Immigration Group, for the sake of consistency and clarity I will throughout the thesis refer to them by their former name, they were predominantly known as this over the period I undertook this research.

[2] There are at present a number of European countries that recognise same-sex couples for the purposes of immigration, as well as the UK, there is Denmark, Sweden, Netherlands, Belgium, Spain, France, Germany, Portugal and Switzerland.

directive', which would broaden the definition of the family to same-sex spouses (Stonewall Immigration, 2003). Though this is a step in the right direction as ILGA-Europe executive director Ailsa Spindler acknowledges, they are only 'half-way there', and await the endorsement of the council (Stonewall Immigration, 2003)[3]. Therefore, the rights to residency available in some countries are not available and recognised in other nation states. Presently, legally a spouse at the European level, is only understood in terms of a married partner. The widening of the definition to include unmarried, registered partners would allow same-sex partners of migrants and asylum seekers to come to the UK, though it has been reported in The Pink Paper that Britain has 'refused to opt-in' to this law (Coyne, 2003).

1.e. Categorisation of sexual identity in immigration discourse: asylum

The differing recognition of same-sex couples, which can be seen at a national, European and global level has enormous implications for lesbian and gay migrants. One cannot universalise the experiences of sexual citizens, across such varied legal, political and cultural terrain. An issue relating to this, raised by Stonewall Immigration, Amnesty International and other refugee advocates, is the levels of persecution faced by lesbians and gays in a variety of countries. The ability to live safely as a same-sex couple is particularly difficult in countries where both male and female same-sex acts are illegal such as: Afghanistan, Algeria, Angola, Bahrain, Bangladesh, Cape Verde, Cuba, Ethiopia, Iran, Kuwait, Morocco, Mozambique, Namibia, Pakistan, Somalia, the Sudan and Zaire (Crawley, 2001:161). There are also specific dangers for lesbians who live in countries where *Sharia* laws apply, which can result in violent punishments such as stoning,

[3] As Ailsa Spindler explains in the Ilga-Europe press release (Brussels, 11 February 2003), the vote on the free movement directive COM (2001) 257 is a co-decision of both the European Parliament and the Council. The aim of the directive is to broaden the concept of the family to include same-sex couples, registered partners', and other unmarried couples. If the directive is agreed, it will come into force mid 2004.

amputation of hands and feet and execution (Crawley, 2001:161). Despite the violence and discrimination meted out to lesbians and gays in a number of countries, the Home Office has been resistant to recognise sexual orientation as a basis for claiming asylum. It was not until a decision taken by the House of Lords in March 1999, that lesbian and gay people could constitute a 'social group' and therefore qualify for refugee status (Stonewall Immigration, 2003). Outside the UK, there have also been a number of cases, which highlight the resistance to recognise homosexuality as a valid basis to claim asylum under the UN convention. A recent example of this is a case involving a same-sex couple from Bangladesh who are appealing against an Australian court's decision, which rejected their claim for asylum based on the persecution they face at home. It is reported that the review tribunal rejected their application as in the past four years they had lived together they had only experienced 'minor' problems, and if they continued to conduct themselves in a 'discreet manner' they could return home (Fickling, 2003). This is despite the couple's claim of stoning and whipping and a cleric issuing a fatwa against them calling for their death. This highlights two main problems that prevail in these types of asylum cases; 'proof' of persecution and discrimination and 'proof' of homosexuality. The previous case alludes to the rejection of persecution in the appellants country of origin (this can also been seen in other cases[4]). Ioan Vraciu, a Romanian man, seeking asylum based on his sexual orientation, had to convince the Immigration Appeal Tribunal of the 'authenticity' of his homosexuality. The case reveals how the law produces 'authorised' knowledges to 'speak' about homosexuality and fix it as a sexual identity through medical and psychiatric examination (McGhee, 2000). As McGhee adds such pathologising of homosexuality is a legacy of the Wolfendon report, a British committee made up of medical 'experts' set up in

[4] A Zimbabwean man is appealing against the Home Office, Ashley V SSHD (01/TH/1837) 21 September 2001, (source Stonewall Immigration 2003) which have rejected his asylum application. The Tribunal do not accept he has anything to fear from the Zimbabwean authorities and there was no actual 'current public outrage' against homosexuals in that country. In addition, the Tribunal argued that the prohibition of sodomy was 'not enforced'.

1963 to consider the decriminalisation of anal sex amongst gay men (this is discussed in more detail in chapter four). Rectile examination to 'prove' homosexuality in men who are not acting 'gay enough' by immigration authorities has been raised as a wholly invasive and humiliating process by Stonewall Immigration in a recent article in the Pink Paper (Swift, 2003). As the discussion of asylum demonstrates, the possibility of a 'transnational' sexual citizenship is difficult whilst immigration policy and practice remains deeply heterosexist. It also, highlights how the literature on migration needs to consider how essentialist notions of sexuality continue to be mobilised in immigration discourse.

2. Methodological issues

2.a. The implications of social factors, skills and gender

The introduction of the unmarried partners' category in 1997 has seen a significant and recently growing number of applications being made by couples based on their unmarried relationship. Tables (1-3) show that between 1997 –2001 numbers have grown in terms of admissions, for those granted leave to remain and settlement. These statistics also provide us with a quantitive view of the types of couples entering under this rule. Firstly, the statistics show a gender bias, with more male applicants completing their migration through this route. They also give an indication of the geography of those using this legislation with the applicants from the Americas, Asia and Oceania heavily represented. These statistics raise issues, which will be pursued later in the interviews, about how variables such as gender and national identity and economic resources are implicated in the applicants' ability to realise their migration successfully.

The methodological approach aims to understand how couples have facilitated their migration. This involves analysis of the ways in which they have met the criteria through accessing resources. Resources can include access to economic resources (savings, liquid assets), and that minimum amounts are required to demonstrate their ability to subsist without public funds. Economic resources, also enable couples to access legal representation for initial advice or to prepare and submit their application. The utilisation of resources can be applied to formal and informal networks, the former being advice from the Home Office, or legal professionals, the latter Non Government Organisations (NGO), or migrant networks. There is a great deal of overlap between the formal and informal advisory networks, as legal professionals are often engaged in advocacy work for NGOs as well as simultaneously challenging or working with policy makers on immigration provision. This can be seen with Stonewall Immigration, a NGO, which is made up of lawyers who have been involved in lobbying policy makers on the unmarried partners' rule, as well as voluntary migrants who staff the advice line and pass on general information.

Goss and Lindquist (1995) conceptualise the web of resources and networks as the 'migrant institution'. They examine the migrant institution from a structuration perspective, which acknowledges that structures, as rules and resources, can be both constraining and enabling in the actions of social agents. From this perspective:

> Individuals act strategically within the institution, to further their interests, but the capacity for such action is differentially distributed according to knowledge of rules and access to resources, which in turn may be partially determined by their position within other social institutions (Goss and Lindquist, 1995: 345).

Therefore, migrants are 'knowledgeable agents' utilising and exploiting resources, both formal and informal associations and organisations. Goss and Lindquist apply this

theoretical approach to international labour migration using the Philippines as a case study. In this context, at a formal level, recruitment agencies act as private gatekeepers, in terms of access to employment and in their capacity increase migrants' time space distanciation, in a global economy. At an informal level, successful migrants may become brokers of information, using knowledge and strategies gained from their experience of migration, which are emulated by friends and relatives. How migrants utilise resources, networks within structures, is certainly applicable to this research regarding family reunion, as the interviews in Chapter five will illustrate.

For migrants, networks are increasingly implicated by the possession of desirable skills and qualifications. Currently, UK immigration has been active in its encouragement of migrants who can fulfil certain skill shortages. The number of work permit holders admitted to the UK in 2002, is 19 per cent higher than 2000 (Mallourides and Turner, 2002). Therefore, the intersections between raced, classed and gendered perspectives on migration have become a significant field of enquiry for scholars in the field. Raghuram (forthcoming) has brought together two sets of debates, which tend to be theorised separately, concerning gender and international migration and tied migration. By bringing these two related debates together the significant relationship between skills (specifically of women) and its implications for family migration is set out. This research aims to add to this discussion by discussing how sexual citizens are implicated by increasing emphasis on skilled migration. Do same-sex couples' employment profiles fulfil the categories of shortage occupations encouraged by the Home Office? To what extent is the marketability of sexual citizens crucial to the strategies of those arguing for their recognition in immigration policy, be it lawyers, MPs and or couples themselves? Therefore, skills may have implications not only in terms of the success couples have at meeting the

requirements of the unmarried partners' category, but also entrance based on skills may be an easier route than that based on their relationship.

For couples, their ability to prove their relationship is bound up with access to economic resources as well as their viability as skilled employable migrants, hence, there is a political economy to sexual citizenship. One significant aspect of this discussion is the importance of the 'pink economy' or 'pink pound', a term used to describe the gay and lesbian market. The 'pink' economy is seen as an indication of the commodification of sexual citizenship discourses (Evans, 1993). It has also been argued that the pink pound represents affluence amongst gay and lesbian consumers (though it tends to focus on gay men), which businesses are increasingly attempting to target and tap into. This notion of the economic power of gay and lesbians has been met with some criticism. Badgett (1997), referring to the American context, argues that inaccurate data has mythologised the economic strength of gays and lesbians. Based on quantitive sources, she argues that on the whole that same-sex couples do not earn more than heterosexual couples. However, she does acknowledge that total earnings vary between men and women, both in heterosexual and lesbian and gay households: 'Thus the reason that heterosexual married couples and lesbian couples have lower total incomes is sex discrimination: women earn less than men, so a family with two male earners will have higher-than-average incomes' (Badgett, 1997: 71). This logic could be applied to the larger representation of men using the unmarried partners' rule, does their greater access to economic resources facilitate their migration? However, returning to critical work on this issue, there is a danger of generalising lesbians as poor in comparison to the 'shallow' gay male consumer, whilst ignoring the implications of race and class (Bell and Binnie, 2000). In addition, there is also the danger of over emphasizing the mobility of gay male migrants over lesbian

migrants (Andermahr, 1992). The debates mentioned around the economic implication of sexual citizenship, once again raise the significance of class in questions of agency.

Gendered assumptions in literature and policy posit the 'primary' migrant as male, followed by a female 'dependent'. Similarly, the separation of 'primary' labour migration (economic), to that of 'secondary migration' (social) such as family reunion. This reinforces a public/private model, where both types of migration are seen as distinct and located in separate gendered domains. As this research will demonstrate such distinctions do not represent the importance of employability for those entering based on their relationship. Feminist interventions have foregrounded the experiences of women in migratory regimes, which counter traditional assumptions of the male, lead migrant and the role of women in the employment sectors (Ackers, 1998; Kofman, Phizacklea, Raghuram and Sales, 2000). This is particularly significant with the 'feminisation of migration' being identified as a new feature of immigration (Castles and Miller, 1998) and coupled with the Home Office opening up of shortage occupations: welfare sectors health, education, social work, which could offer employment for skilled female migrants (Kofman, 2003). Therefore, the role of gender, labour markets and immigration legislation are intertwined.

3. Summary of chapters

Chapter one explores how the work on sexual citizenship provides a pertinent theoretical framework to analyse the discriminatory practices and minimal recognition of rights available for sexual dissidents. Sexual citizenship literature has not been examined in the context of immigration. However, sexual citizenships concern with the heterosexist discourses of legal, political and cultural institutions is relevant to an analysis of

immigration and its categorization of sexual identities. Citizenship models are heteronormative, retaining marriage as the primary way to access rights. As discussed earlier, this is the case in the context of immigration policies pertaining to family reunion. Immigration hierarchizes marriage over common-law and same-sex relationships.

Chapter one draws together the discussions on sexual citizenship and immigration by examining the relationship between national identity and sexuality. Firstly, I will outline some basic premises of sexual citizenship theory and how they relate to the particular concerns of immigration literature. I will not only relate these two theoretical strands to the particular policy that informs unmarried people, but also discuss how UK immigration policy relates to the nation-state's role in regulating and maintaining sexual identities. It then considers how national discourses produce a hegemonic model of national identity which 'others' those who do not 'assimilate' into dominant national ideals. A key feature mobilised in political discourse is that of the nuclear family, which is upheld as the desirable stable unit at the heart of the nation. The motif of the family brings into focus the relationship between the state and sexual citizens. Sexual citizens have an uneasy relationship with the state, which discursively locates sexuality in the private sphere, whilst regulating and maintaining sexuality through public legal and political institutions. The public/private dichotomy is a key component of sexual citizenship theory, as well as feminist, social and political theory and is relevant to the examination of unmarried couples. Same-sex couples have to prove their relationship and therefore find themselves subject to the surveillance and scrutiny of immigration officials. Couples are required to provide a cohesive narrative of their relationship that complies with minimum periods of cohabitation and be substantiated with relevant documentation.

An examination of the 'official' discourse of the unmarried partners'' rule comprises the first level of analysis. This is followed by a second form of analysis, which is an examination of legal discourse, drawing on critical legal studies literature (CLS). A third and final form of analysis involves an examination of the interviews with same-sex couples.

Chapter two introduces and provides an overview of these three types of analysis, setting out the aims and rationale of these approaches. It also lays the foundations for the types of analysis deployed in the methodology. Firstly, it discusses how employing a Critical Discourse Analysis approach, with its emphasis on dominance and inequality, is useful for an examination of official discourse. In addition, it foregrounds how Foucauldian and Gramscian standpoints provide an effective framework for theorising and interrogating notions of discursive power. The discussion then continues to define the 'official' and describes the types of material being analysed namely parliamentary debates and Home Office documentation.

Chapter three builds on the contextual, theoretical background of this analysis and focuses on the formation of the rule through Parliament. Wodak's and Van Dijk's (2000) categories for examining parliamentary debates on immigration are applied to those debates that surrounded unmarried partners'' legislation. These debates reveal the strategies and arguments used by MPs, which have shaped the legislation, particularly its emphasis on deterring 'abuse' of the rule. Accompanying this analysis are the strategies and arguments used by legal professionals. Interviews with lawyers reveal that they have been successful in using the legal and political structures, such as the appeals process and the lobbying of MPs.

Legal discourse, particularly in the European context becomes the focus of chapter four. The work of CLS is concerned with deconstructing legal categories and provides a useful theoretical framework. CLS, (as detailed in chapter two) brings together feminist and queer interventions that challenge legal positivism and empiricism. This is useful for examining the way in which citizenship discourses create categories, hierarchies of 'desirable' migrants over others. It also illustrates how lawyers/solicitors professionals attempt to challenge the legal system. One strategy that has been deployed in the UK is to utilise European instruments such as the European Convention on Human Rights (ECHR) and the European court to challenge national decisions. However, this chapter critically considers the view that postnational and transnational discourses are challenging national sovereignty (Soysal, 1996). As the chapter outlines, institutions such as the ECHR and the European Court are reluctant to intervene in immigration matters, which are usually referred back to the national level. It looks also at the relationship between sexual citizens and the European legal arena. There has been mixed success for lesbian and gays challenging national decisions regarding rights. The ECHR, through article 8, has only recognised gays and lesbians in terms of right to private life rather than family life, this has been successful for equalising the age of consent for gays and lesbians. However, the recognition of right to private life rather than family life has been a major obstacle for same-sex migrant couples trying to achieve their family reunion. Drawing together the debates on migrants and sexual citizenship, in the European context, this chapter illustrates the difficulties same-sex couples face, by analysising relevant cases. These cases reveal that conservatism towards immigration matters is also compounded by a refusal to recognise same-sex couples as a family.

Chapter five analyses the interviews with couples, which constitutes the final part of the method. A detailed account of this particular qualitative method is provided in Chapter two. It discusses the merits of a qualitative approach, drawing on feminist perspectives and considering the ethical implications of interviews. It provides a background to the organisation and sampling of the interviews. Chapter five focuses on the outcomes of the interviews and is organised around the specific requirements of the rule. Firstly, a section relating to the requirement of proof and evidence is examined and how couples produced the sufficient documentation to fulfil this requirement and in addition, what strategies couples used to overcome difficulties meeting the rules requirements of proof and minimum periods of cohabititation. These include the role of legal advice and representation, along with couple's own agency in utilising migrant networks and information, and their access to resources. The types of strategies deployed depend on the type of application being made; a distinction is made between applications made in the UK and those outside via British embassies and consulates. Applications made abroad raise a number of specific legal issues regarding the appeals process. The interviews, by considering these factors, aim to provide some empirical work that can address the absences in both sexual citizenship and migration debates.

4. Originality of research

This thesis draws together three substantive areas, which have hitherto not been examined in relationship to the other; international immigration, the family and sexual citizenship. By doing so, it demonstrates the interrelationship between them and contributes to the gaps in both debates. It does this by firstly applying the insights of sexual citizenship to the categorisation of sexual identity and the family in immigration discourse. More specifically, as this introduction has argued, setting out how work on family reunion needs

to be extended to undertheorised areas such as the European context, where it constitutes a significant form of migration and in addition to the topic of non-heterosexual families, which have been ignored in these debates. Within these theoretical strands is a nuanced understanding of the implications of social categories such as national identity, gender and class in family reunion policies. These in particular are significant in terms of the access to resources and 'in–demand' skills which are key features of UK immigration policy. The role of skills is not always brought to bear in family reunion literature; this research aims to examine how skills, along with gender and class intersect with sexual citizens family reunion.

The methodological framework aims to provide new quantitative and qualitative research, which is absent in current empirical accounts. Firstly, I have analysed statistics to see what types of migrants are coming through this category in terms of national identity and gender. I have also examined 'official' parliamentary debates, legal documents (both at UK and European level) and Home Office policies that define the parameters of the family and 'types' of relationships. This is complimented by qualitative research that talks to solicitors and legal practitioners to gain a further insight into how the rule operates. Finally, a sample of couples are interviewed to further understand how social factors mediated in their ability to deploy strategies and their own agency whilst making an application. This is new empirical research and aims to offer accounts of the lived experiences of same-sex couples making an application based on their relationship. This thesis therefore at a theoretical and empirical level addresses a number of gaps that exist in current research debates.

Table 1

ADMISSIONS GRANTED UNDER THE UNMARRIED PARTNERS' CONCESSION 1997-2000

	1997		1998		1999		2000	
	Male	Female	Male	Female	Male	Female	Male	Female
Africa	0	0	7	3	11	7	19	12
Americas	6	2	30	8	35	9	34	24
Asia	1	2	9	8	17	5	36	8
Europe	0	0	7	3	7	8	8	9
Oceania	0	0	12	3	13	4	14	11
Others (including stateless)							0	0
Total	7	4	65	25	83	33	111	64

Table 2

LEAVE TO REMAIN GRANTED UNDER THE UNMARRIED PARTNERS' CONCESSION 1997-2000

	1997		1998		1999		2000	
	Male	Female	Male	Female	Male	Female	Male	Female
Africa	5	2	22	17	31	22	64	41
Americas	10	7	50	24	61	22	142	62
Asia	8	4	50	15	55	10	134	33
Europe	5	0	15	11	4	5	45	23
Oceania	2	1	13	16	25	8	45	34
Others (including stateless)	0	0	3	0	3	2	4	0
Total	30	14	153	83	179	69	434	193

Table 3

SETTLEMENT GRANTED UNDER THE UNMARRIED PARTNERS' CONCESSION 1997-2000

	1997		1998		1999		2000	
	Male	Female	Male	Female	Male	Female	Male	Female
Africa	12	15	5	7	7	12	28	15
Americas	12	29	16	10	35	12	48	29
Asia	4	23	7	6	29	12	46	9
Europe	6	16	5	6	12	4	5	10
Oceania	27	32	2	5	14	9	20	7
Others (including stateless)	2	1	1	0	0	0	3	1
Total	**63**	**116**	**36**	**34**	**97**	**49**	**150**	**71**

Tables, source: Home Office Research, Development and Statistics Directorate 29/02/2000 and 2001.

Chapter One: sexual citizenship, the family and immigration

Introduction

This chapter explores the intersections between three substantive areas: sexual citizenship, the family and immigration. Firstly, it will engage with theoretical debates in the work on citizenship, in particular Marshall's influential model, which has been the basis for the development of a number of critiques and extensions of his original concept. These include most notably feminist interventions, which foreground the highly racialised and gendered nature of citizenship discourses. Alongside these critiques, the chapter examines how sexual citizenship has contributed to the highly (hetero)sexualised ways in which citizenship discourse operate. The chapter will detail the key concepts that inform these discussions such as the public/private split, intimate citizenship and the family. The family will be examined in relation to changing family practices, rise in cohabitation, non-nuclear and non-heterosexual forms which is foregrounded by the work on 'families of choice'. This conceptualisation will be critically assessed in relation to immigration family reunion policies, which still retain a narrow and traditional notion of the family. The heterosexist discourses that underpin immigration family reunion policies will then be linked back to the pertinence of theoretical debates in sexual citizenship literature. This will include a brief examination of the unmarried partners' provision, which will be developed in detail in the following chapters.

1. Conceptualisations of citizenship

1.a. Citizenship debates

Since the 1980s there has been renewed interest in citizenship both in academic and political discourses. It has been advanced from a range of theoretical and disciplinary perspectives within the academy: sociological, cultural, geographical, legal and political. Sexual citizenship, as I shall outline below, offers a necessary addition to the work on citizenship. Furthermore, it has a pertinent theoretical framework to examine immigration legislation that relates to the category of unmarried people. It articulates with other concepts such as cosmopolitan, cultural, feminist citizenship and illustrates the diversity of contested subjectivities that make, or attempting to, claims grounded in the discourse of citizenship. This chapter will examine how the construction of citizenship, as illustrated by Marshall's (1950) influential model, is not only marked by gendered, classed, racialised notions of 'membership' to a national community, but is also highly (hetero)sexualised. The main way citizenship operates along these exclusionary lines is through the public/private divide and hegemonic constructions of the family. These exclusionary aspects of citizenship provide a particular obstacle for unmarried couples entering through family reunion in the UK.

In the UK, as Yuval-Davis attests (1997:16-17), notions of citizenship have been mobilised by both the Left and Right. The Left namely through the Charter 88 group argue for a written constitution, while those on the Right refer to 'active citizenship' as proposed by the Conservatives 'citizens charter' in 1992 (see also David Evans, 1993). It has been argued that the notion of the 'active' citizen is also present in 'centre-left discourses' today in the UK (Bell and Binnie, 2000:6, Lister, 1998). Citizenship and who has access to it

and who is excluded has provided a rich terrain of debate. A number of debates have been based on Marshall's model of citizenship, which the following section will discuss.

1.b. Marshall's model and critiques

T.H. Marshall's (1950) classic liberal model of citizenship based on the acquisition of civil, political and social rights has been the starting point for debates about citizenship. Marshall's evolutionary model posits the development of civil and legal rights (e.g. right to a fair trial) in the eighteenth century; followed by political rights (right to vote, growth in parliamentary democracy) in the nineteenth century, and social rights (welfare entitlements, unemployment benefit, education and health) in the twentieth. Marshall's notion of citizenship is based on 'full' and equal status as members of a 'community' (Marshall, 1992). The 'Marshallian' model has garnered a number of critiques and reappraisals that have exposed the gendered, racialised and sexualised nature of this model (which are also evident in wider conceptualisations of citizenship). Yet, despite its flaws, Marshall's notion of citizenship remains a highly significant and influential account in current citizenship debates.

Rian Voet (1998:10) comments that Marshall's model remains the dominant conceptualisation of citizenship in western liberal democracies and the main model that feminist work on citizenship has responded to. Indeed feminist interventions into citizenship generally has taken to task Marshall's paternalistic model, arguing that the evolution of rights for women does not follow his conceptualisation, such as the right to vote, or in the context of autonomy over personal property (Lister, 1997, Walby, 1990). They have also contested Marshall's notion of citizenship being based on membership of a 'community', rights being accorded in return for obligations. Yuval-Davis (1997:7)

pursuing Marshall's model of citizenship linked to community asks: 'the question arises, then, what should happen to those members of the civil society who cannot or will not become full members of that strong community?' She argues that migrants, refugees, indigenous people may not share in the dominant values of the 'hegemonic national community' (Yuval-Davis, 1997).

The absence of 'race' and ethnicity immigration in Marshall's three dimensions of citizenship and community constitutes a further level of criticism. The acquisition of civil, political, social rights accords with experiences of 'white working men only' (Fraser and Gordon, 1994). Immigration is a clear example of how racial and ethnic lines are mobilized in citizenship discourses and is commented on in relation to Marshall's model:

> The 'freedom of movement within the European community', the Israeli Law of Return and the German nationality law, are all instances of ideological, often racist, constructions of boundaries, which allow unrestricted immigration to some and block it completely to others. (Anthias and Yuval-Davis, 1992 :31)

Similarly the evolutionary progression through the three elements of citizenship have also provoked criticism: 'For migrants, social and civil rights typically precede political rights, in contrast to the Marshallian evolutionary model in which social rights represent the final stage.'(Lister 1997:48). Lister's point can also be applied to indigenous people, where racial boundaries prevent access to citizenship rights such as the Australian Aborigines and Black South Africans (Anthias and Yuval-Davis, 1992:31). Furthermore, collectivities centred around national identity have been challenged and disrupted through migration and globalising processes:

> Members of the national collectivity can also live in the diaspora and be citizens of other states, while some citizens and permanent residents can be members of other national collectivities. In addition there can be cases in which a national collectivity is divided between several neighbouring countries (such as the Kurds). (Anthias and Yuval-Davis, 1992:30)

The complexity of citizenship and the range of subjectivities, render the notion of a unitary 'collectivity' unworkable. Therefore, Marshall's model has been extended and reconsidered in relation to new theoretical perspectives. Turner (1993) makes the case that processes of postmodernity and globalisation reconfigure Marshall's concept of citizenship.

Bryan S. Turner elaborates on the three sets of rights in Marshall's model by adding 'cultural rights'. Cultural citizenship, to focus on one particular aspect, has pointed to the role of electronic global communication in democratic participation (Turner, 2001). From the 1990s the emergence of cosmopolitan citizenship, though not dispensing entirely with the role of the nation state, has been concerned with four broad themes: 'internationalism, globalization, transnationalism and post-nationalism.'(Delanty, 2000:52). Steenbergen (1994) critically takes on the notion of global citizenship to add a fourth element to Marshall's schema in the form of ecological citizenship. Ecological citizenship like the other conceptualisations above has highlighted the spatial elements of citizenship, within and beyond national boundaries. Also what these perspectives point to is the social and political changes that challenge traditional conceptualisations of citizenship. Post/modern, poststructuralist currents are also important elements in the expansion of citizenship theories. This is particularly evident in Paul Clarke's (1996) notion of 'Deep Citizenship', which emphasises the collapse of meta-narratives against a fragmentary and socio-political landscape in flux. He advances an optimistic and radical form of citizenship where action stems from the individual autonomous and sensitive citizen. Post/modernity also influences reconceptualisations of citizenship such as those offered by Giddens (1992), and Plummer (1995), (discussed further in this chapter). Both view the shifts in intimate relationships as having significant implications for citizenship. Plummer adds 'intimacy'

to Marshall's three spheres of citizenship, and argues that 'new stories' relating to personal 'private' experiences are circulating in the public spheres and making claims for recognition. Plummer's recognition of the interrelationship between the public and private and the significance of 'erotic' experiences has been part of the growing literature concerned with sexual citizenship.

Sexual citizenship literature, like those listed above, has responded to a range of changes in society since Marshall first advanced his model and they have expanded the scope of forms of citizenship. Processes of 'detraditionalism' in gender relations, in the family and intimate relationships generally have been some of the aspects that sexual citizenship literature has responded to (see for example Weeks, 1998). More generally, sexual citizenship, has countered the absence of sexual identity in the emerging literature on citizenship. In particular, the rights and inevitable obligations that follow in citizenship discourses have been examined as highly (hetero)sexualised. Sexuality, along with a range of subjectivities, is implicated in the levels of exclusion and inclusion in the discourses of citizenship. In addition, postnational and transnational debates in citizenship literature, highlight the spatial variability of sexual citizenship (for a full discussion see chapter three). For now, the following section will focus on the mobilisation of (hetero)sexuality in discourses of the nation state.

1.c. National identity and sexuality

Becoming a citizen of a nation state is dependent on membership of the 'dominant cultural community' (Castles and Davidson, 2000:124). This membership is based on hegemonic notions of 'who' can be 'assimilated' into the dominant culture: 'In many instances, a hierarchy of differentiating groups, capable and incapable of fully belonging to and

integrating into a society, has been established' (Kofman et.al, 2000:78). These models of citizenship are not only shaped by gender and race but also sexuality. Citizenship is based on membership of a 'bounded' and 'homogenous' nation-state (Kofman et.al, 2000:79), a homogeneity that assumes equal access makes universal pronouncements and ignores cultural differences. Shane Phelan (2001), in the context of the US, points out the contradictory 'national imaginaries' that exclude Hispanics through border controls and English only schools, yet balances this with the increasing visibility of Hispanics in the government, culture and business. This she argues, forces the image of 'land of opportunity' for the US against the 'white man's empire' (Phelan, 2001:7). National identities are articulated in essentialist, sexualised terms. This is embedded in language, such as the 'foreigner' who intends to be 'naturalised', which Stychin observes, suggests 'homogenisation' (Stychin, 1998:3). Those who are perceived to be 'outside' the nation, such as the migrant can be constructed as a threat to the 'homogenous' national community.

The 'threat' to the nation is also constructed in 'sexualised' ways. 'Same-sex sexuality is deployed as the alien other, linked to conspiracy, recruitment, opposition to the nation, and ultimately a threat to civilisation.'(Stychin, 1998:9). Male homosexuality in Britain has been perceived as a 'security risk' to the nation, homosexuals are open to blackmail, and treachery (Richardson, 1998, Moran, 1991). Homosexual practice can be mobilised as a 'danger' and a 'contagion' to the health of the nation (Moran, 1995). Sexual practices also intersect with racial identities; Zimbabwe president Robert Mugabe described homosexuality as 'unafrican' linking it with white colonialism (Richardson, 1998:91). In turn, the legacy of colonial discourses has essentialised non-white bodies as uncontrollable, exotic and hypersexual (see Mercer, 1994). In communist countries, homosexuality has

been viewed as 'bourgeois decadence', whilst conversely in 'capitalist zones' homosexuality has been associated with communism (Phelan, 2001:28). Not all heterosexuality is equal in the eyes of the nation, thus the preference for marriage and the middle-class nuclear family is held as the 'model of good citizenship' (Richardson, 1998:92). However, the linkage between national identity and the dominance of heterosexuality as a key way of becoming a 'citizen' illustrates the way in which same-sex and unmarried couples attempting to migrate pose particular difficulties. Lines of exclusion constructed by citizenship discourses are considered further in the next discussion which examines how sexual citizens are placed in relation to the public/private divide.

1.d. Citizenship and the public and private divide

Feminist interventions have argued that citizenship is patriarchal in construction and thus participation is restricted along gender, race and class lines, the prime way being through the public/private dichotomy (Lister, 1997, Yuval-Davis, 1997, Walby, 1990). They argue that models of citizenship are typically located in the 'masculine, active' public sphere whilst women are discursively located in the private 'feminine passive' sphere (Lister, 1997, Yuval-Davis, 1997). A clear illustration of this can be seen in the way migrant women are located on this divide. Migrant women face particular difficulties accessing rights. Nationality and immigration laws often assume men are heads of households and therefore women are classed as 'dependants' (Kofman, Phizaclea, Raghuram and Sales, 2000:87). Women fleeing sexual persecution, under asylum or refugee laws, often find their status denied due to the public/private divide (Lister, 1997:42). This designation of women to the private sphere is at odds with the realities that face migrant women. 'In contemporary Europe, migrant women have rarely been able to remain within the private

world although their access to the public sphere may be constrained' (Kofman, et. al., 2000: 166).

Sexual citizenship theorists have argued that citizenship is not only gendered but also '(hetero)sexualised'. They also attribute the public/private dichotomy with one of the main ways citizenship is sexualised. David Bell and Jon Binnie declare that the public/private divide is the most 'fundamental spatiality' of sexual citizenship (2000:4). Although this binary divide is contradictory and unstable it provides a regulatory barrier for sexual citizens, with the public sphere constructed as 'asexual' and the private the 'correct' domain for the sexual (Cooper, 1995:68). Therefore the sexual citizen is a 'hybrid' who 'breaches' this dichotomy when they are making claims for citizenship rights (Weeks, 1998). For Diane Richardson, citizenship in the West, is related to the 'institutionalisation' of heterosexuality and 'male privilege' (1998:88), one example being the lack of recognition of pension and inheritance, tax rights for same-sex couples, rendering lesbian and gays 'partial citizens'(Richardson, 1998:89). This (hetero)sexualised construction of citizenship excludes sexual 'dissidents' from participating fully within the structures of citizenship.

Theorists commentating on this divide identify how the boundaries between public and the private are constantly shifting (Weeks, 1995:125, Bell and Binnie, 2000:5) and being 'rethought' (Lutz, 1997:41). A range of issues such as the '...validity of different sexual preferences, age, disability, racial and ethnic difference has increasingly become legitimate items of public discourse' (Weeks, 1995:126). Conversely, issues that were usually assumed to be of 'public interest' the '...safety of the streets, education, the welfare of our nearest and dearest...' have become in the meaning of it increasingly 'privatised' (Weeks,

1995:126). 'The struggle to control the meaning and positioning of the divide is central to the project of engendering citizenship' (Lister, 1997:42).

Sexual citizens have to negotiate therefore, a paradoxical and unstable dichotomy when claiming rights. For Weeks, it is a necessary 'transgression' for sexual citizens to enter the public sphere to secure rights and 'protect' their private lives and choices (1998:37). This need to secure private space through public intervention, has been criticised for reinforcing 'phobic' arguments that tolerate sexual rights providing they are kept private, rendering them 'invisible' (Bell and Binnie, 2000:5). Furthermore, transgression can result in further surveillance and 'penalties' for 'deviant' sexual identities. The legal penalties for public manifestations of sexuality were strengthened as 'private' behaviour was decriminalised, however such was the strict definition of 'private' that the policing penetrated all 'private territories' (Evans, 1993:63-64). An example of this was 'Operation Spanner', a case which resulted in the conviction of 16 gay men who were engaging in private, consensual sadomasochistic activities (Bell, 1995, Weeks, 1995, Moran, 1995). `Here the 'private' zone of sexuality was clearly open to interrogation and public scrutiny. The notion of a secure private space has been questioned by Yuval-Davis, who comments: 'Especially in the modern welfare state, there is no social sphere which is protected from state intervention' (1997:13). This is evident in terms of relationships in the family. The family has been traditionally observed as belonging to the private sphere, the zone of the domestic. However, personal relationships and familial forms are constantly maintained and regulated by the state.

1.e. The sexual citizen

The discussion of citizenship so far has focussed on the way models are imbued with a 'preferred' sexuality; thus all citizens are demarcated and organised around dominant constructions of sexuality. Generally, theoretical work on sexual citizenship focuses primarily on same-sex couples arguing how they are 'othered' in these models. However, this could equally apply to particular forms of heterosexual identities. Jeffrey Weeks remarks on how the sexual citizen can encompass a range of identities:

> The sexual citizen, I want to argue, could be male or female, young or old, black or white, rich or poor, straight or gay: could be anyone, in fact, but for one key characteristic. The sexual citizen exists-or perhaps better wants to come into being-because of the new primacy given to sexual subjectivity in the contemporary world (Weeks, 1998:35).

Weeks is identifying the emergence of contemporary subjectivities which he argues, along with other social shifts such as the 'democratisation of relationships', new 'stories' or personal 'narratives', can be attributed to the sexual citizen (Weeks, 1998:39). New subjectivities refer to the challenges of the feminist and lesbian gay liberation movements, which have resulted in the emergence of a proliferation of sexual identities. The adoption of 'labels' such as 'queer' challenge the assumed binaries of heterosexual/homosexual. The diversity of sexual identities being named and voiced is making increasing demands on state institutions for recognition through the discourse of rights. Thus, the typically private sphere of the 'intimate', the realm of sexual identities and relationships, is increasingly gaining a forceful presence in the public sphere.

1. f. Intimate citizenship

Anthony Giddens asserts that the central feature of reflexive late modern society is the emergence of new forms of intimacy (Giddens, 1992). Forms of intimacy are 'democratised', 'negotiated' and less bound by 'traditional' notions of marriage and

assumed gender roles (Giddens, 1992). This democratising of relationships is characterised by 'confluent love':

> Confluent love is active, contingent love, and therefore jars with 'for ever', 'one-and-only' qualities of the romantic love complex. The 'separating and divorcing society' of today here appears as an effect of the emergence of confluent love rather than its cause. (Giddens, 1992:61)

Giddens, as the above quote illustrates, emphasises the distinct nature of 'confluent love' and the shifts in intimacy to more 'equal' relationships. The feminist movement, lesbian and gay movements are some of the key elements that have contributed to the 'transformation', as Giddens calls it, in the realm of intimacy. The traditional expectations of gender roles, marriage and the nuclear family have receded. Now, people are involved in 'everyday experiments' making their own reflexive life course outside traditional structures. Giddens observes how gay and lesbian relationships offer a good example of these new forms of intimacy (1992:15). Gay relationships have to 'get along' without the 'frameworks' of marriage, nuclear family norms and are more equitable relationships (Giddens, 1992:15). Giddens' notion is that lesbian and gay relationships lead the way on new forms of intimacy, which will then be followed by heterosexuals, (this has been an area of discussion in sexual citizenship literature and will be discussed shortly). However at this point it is worth mentioning a similar influential discussion that is made by Becks and Becks-Gernshein (1995).

Like Giddens, Beck and Beck-Gernshein identify the restructuring of personal relationships as a feature of modernity. Referring generally to the impact on heterosexual relationships, they state:

> Women and men are currently compulsively on the search for the right way to live, trying out cohabitation, divorce or contractual marriage, struggling to coordinate family and career, love and marriage, 'new' motherhood and fatherhood, friendship and acquaintance. (Beck and Beck-Gernshein, 1995:2)

As they go on to argue, particularly in the German context, social changes reflected in the rise in cohabitation and divorce have led people to construct their own 'biographies' and 'do-it-yourself relationships'. Unlike Giddens, Becks and Becks-Gernshein proposition suggests there is less agency on the part of those engaged in new practices of intimacy as they are 'forced' to do so. This process of going your 'own way' is seen as a focus on the individual, as opposed to the wider structures of family and community in modern life. However, the family is a key area that is being restructured. Becks and Becks-Gernshein argue that the traditional nuclear family has not disappeared entirely, but its monolithic presence is declining with the emergence of diverse forms, which constitute the 'post-familial family' (1995:98). Though Becks and Becks-Gernshein offer a useful way to theorise the restructuring of intimacy in contemporary life, as they themselves admit, their focus is on wealthy, western industrial countries that provide a degree of prosperity and social security for their citizens (1995:2). Changes in intimate relationships take place against a backdrop of affluence where class struggles, in their view, have ebbed away and welfare systems and consumption support alternative lifestyles. This glosses over class exclusions and also the remaining resistance in policy and wider political discourse towards those who fall outside social 'norms'. This is evident in the UK, where there still remains an upholding of marriage and the nuclear family against lone parents and other 'pretended family' relationships[1]. Furthermore, this is particularly apparent when it comes to migrants and their ability to form their own families. However, as Plummer (1995) argues, new personal narratives of those experiencing social changes are gaining force in the public sphere and making claims to citizenship. However, there still continues to be a gap between changes in social practises and their recognition in legislation.

[1] Here I am referring to section 28 of the British Local Government Act which one part states: 'A local authority shall not...(b) promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship'. (see also footnote 2).

Ken Plummer, as mentioned earlier in this chapter, proposes a fourth sphere of 'intimacy', in addition to the civil, political and social rights set out in Marshall's model. The intimate sphere is concerned with the body and the self: erotic, intimate desires, pleasures, relationships and 'gender experiences' (Plummer, 1995:151). 'New' stories, or personal narratives, of 'coming out', stories about abuse and recovery are being told and circulated within the public sphere. This sense of 'intimate citizenship' returns us to Giddens' observation of social changes that have precipitated the emergence of the sexual citizen. The array of new stories, as outlined above in Plummer's conceptualisation are about 'intimate citizenship' and the 'democratisation of relationships'. Building on Giddens' and Plummer's observation, Weeks suggests that heterosexual partnerships have not been immune to the impact of social changes such as the rise in cohabitation, the decline in marriage rates and he seems to suggest they will follow the lead of gay and lesbian relationships (Weeks, 1995:35). This will be illustrated by the next section which examines the significance of changing family practices.

2. Changing Family practices

2. a. Families of choice

Lesbians, gays and bisexuals have had particular difficulty making claims for recognition of their families. This is most clearly illustrated by section 28 of the Local Government Act, which prevents the 'promotion of homosexuality' and lesbian and gays as 'pretended' family relationships[2]. However, social changes, such as the rise in single parenting and cohabitation, have resulted in the 'detraditionalization' of the family, with familial

[2] Section 28 is what it is commonly known as though it is section 2a in the final Local Government Act as pointed out by Donovan, Heaphy and Weeks (1999) This section is examined in more detail in chapter two.

formations being based on choice and 'negotiation' rather than exclusively on biological lines (Weeks, 1998). Gay and lesbians families have been described in terms of 'kinship' ties that contest the dominant view of family members having to be 'related by blood' (Weston, 1991). The qualitative research project 'families of choice' interviewed 'non-heterosexuals' about how they create, negotiate and feel about their intimate, family relationships (Weeks, et al, 2001). These interviews are theorised through the lens of citizenship, examining the lack of validation and recognition of same-sex families in social, legal and political terms:

> We argue that the social policies that currently underpin our active participation as citizens are based on a family model that is no longer necessarily appropriate or indeed relevant for many people whatever their sexuality (Weeks, et.al., 2001:197).

Social policies inadequately recognise new family forms, most notably gay and lesbian families, but also heterosexual families that do not accord with the nuclear model.

The 'family of choice' for non-heterosexuals includes (but is not limited to) the couple unit, or non-monogamous relationships; it extends to friendships, former lovers, children (from previous heterosexual relationships and those via reproductive technology) and the blood family. What is distinctive for non-heterosexuals is the possibly ambivalent relationship they may have with the blood family. As Weeks et al. (2001) attest, the family of choice can be an alternative to the family of origin and provide support that is lacking in the biological family. Once again, we have this notion of a more fluid, negotiated and reflexive set of interconnected ties that flow from choice rather than pregiven biology. In this sense, Weeks acknowledges the research of Finch and Mason (1993), which demonstrates that commitments between adult relationships in the family of origin are 'negotiated' and worked out day by day, rather than based on lineage. These elements, Weeks et. al. (2001:39) argue are applicable to non-heterosexuals and their families of

choice, where relationships are flexible and negotiated but also based on a 'firm commitment'. The family of choice, as the name suggests, represents a space where commitments and relationships are reflexive and self-defined.

There have been a number of criticisms of the family of choice model. A key criticism is the framing of lesbian, gay and bisexual relationships in discourses of the family. There is the historical baggage that comes with the hegemonic institution of the family that has traditionally been hostile to lesbian gay bisexual people who in turn reject its ideological associations. Like the debates around gay marriage, the family of choice, it is argued, bears the 'trace of assimilation' (Bell and Binnie, 2000: 137). Therefore, there is a degree of ambivalence about being part of an institution so frequently mobilised in conservative discourses. Does the appropriation of familialism by sexual citizens radically challenge this institution or reify its normativity? Weeks et.al. (2001:17) argue that the appropriation of the family in the context of Section 28, is a good example of 'reversing the discourse'. Furthermore, as the literature on the family attests, there is growing recognition of the diversity of familial norms. Therefore why shouldn't the voices of lesbian gay bisexual families be heard? (Weeks, et.al., 2001:17). In this sense, Weeks argues the project of families of choice can add to widening the diverse definitions of the family.

One final criticism levelled at the notion of families of choice is that it glosses over inequalities and difference. For example:

> The 'families of choice' argument hides class and ethnic factors through its emphasis of *choice*. It remains, therefore, a middle-class debate dependent on this factor of personal choice, which, in turn, is dependent on the material resources with which to make lifestyle decisions that accrue to aspirational lifestyles. Individuals' choices are always marked by and situated within a complex grid of structural constraints. (Chambers, 2001:138; emphasis in original)

Chambers makes a valid point regarding the impact of race and class on the resourcing of families of choice, though I would reject her point about it accruing to 'aspirational lifestyles'. The significance of class and ethnicity in terms of accessing resources also has implications for same-sex couples attempting to achieve their basic right to family reunion, as this thesis goes onto argue (see chapter 5). She adds: 'Postmodern familialism remains contaminated by aspects of the pre-existing nuclearised familialism. It continues to operate on the assumption that we are 'all middle class now'. (Chambers, 2001:172) Indeed, the more democratised model of personal relationships advanced by Weeks et al. does not in any great detail explain the possible complexities and differences of race and class on the dynamics of the family of choice. Though Weeks et.al. (2001:24) acknowledge that 'in reality' the egalitarian relationship maybe more complex, they argue that equality remains the 'measure' of how people judge their lives. In terms of the interviewees in the families of choice project, it is noted that whilst striving for equal relationships they recognise power differentials in their relationships and learn to live with them (Weeks et.al., 2001:114). So though there is some recognition of power imbalances and the investment made by couples to work these differences out, how exactly inequalities operate is not given any lengthy scrutiny. There is no doubt, that the families of choice project offers a useful theoretical and empirical account of same-sex intimacies that challenge conservative and traditional discourses. However it is worth restating valid criticisms that other key social factors such as race and class cannot be erased from this model and structures and resources supported or not by state policies, are key components of sexual citizenship via the family.

2.b. Sexual citizens and family policies

UK policy on family reunion has failed to recognise the diversity of new familial and relationship forms, which encompass and extend beyond the traditional parameters of the nuclear family. To return to Giddens' work on new forms of intimacy, he remarks how kin ties are less biologically determined and produce more diverse configurations, such as step-parent, step-child relationships, which are characterised by 'negotiated commitments' (Giddens, 1992:96). Elizabeth B. Silva and Carol Smart are concerned with the 'new' forms of family, which have arisen out of social and cultural changes. 'We live in a context where the normative European model of the conjugal couple living in a nuclear household is losing force.'(Silva and Smart, 1999:4). They add that policies present an unrealistic image of how the family '*should*' be, rather than how they are in practice (Silva and Smart, 1999:2). Qualitative research undertaken by the 'Families of Choice Project' (Weeks, et.al. 2001) identifies how same-sex families find themselves absent from a range of social policies such as inheritance and pensions. Silva and Smart (1999: 4) note that statistics on the family are contradictory, in that they show the numerical dominance of two parent families, yet they argue this is no longer the exclusive way families are organised or defined. I would argue, however, that statistical evidence does suggest an increasing trend towards cohabitation and families that do not constitute the nuclear family norm. The percentage of lone-parent families has tripled from 1972, to one in five in Spring 2000 (ONS Social Trends, 2001:52). Also, the General Household survey noted that in 1998-99 stepfamilies accounted for 6 per cent of all families with children in the UK (ONS Social Trends, 2001:53). Cohabitation has increased for non-married women aged under 60 and the proportion cohabiting increased from 13 per cent in 1986 to 25 per cent in 1998-99. Similarly for men it has more than doubled from 11 per cent to 26 per cent over the same time span (ONS Social Trends, 2001:45). Overall in 1996, the Office

for National Statistics estimated that there were one and half million cohabiting couples representing one in six of the population and estimated this number to almost double by 2021(ONS Social Trends, 2001:45). Despite the statistical evidence of the growth in cohabitation and non-nuclear family forms, policy changes that reflect this development have been mixed. Silva and Smart observe 'Thus the Children Act prioritises parenthood over marriage, but immigration law gives priority to legal marriage...' (1999:4). Indeed UK immigration policy still retains a conservative definition of the family, in the face of what Silva and Smart (1999) point to-'new' practices of the family.

2.c. Political discourses and the family

The protection of 'the family', in its dominant ideological construction of the nuclear family has been sanctioned through state practices. To focus firstly on the UK, the family is a key ideological tool used by successive Conservative and Labour governments to preserve the dominance of heterosexuality. It has also been linked to the perseverance of national identity. Susan Reinhold (1994) argues how the speeches of Margaret Thatcher, constructed the family as the 'guarantor' of the health of the nation. She adds how 'the family' can be mobilised in right wing discourses to exclude those who threaten the 'nation' such as homosexuals (1994:77 see also Anna Marie Smith, 1994 who also makes this linkage in the British context). Bell and Binnie (2000:111) remark how Tony Blair has used the family and discourses around community which are explicitly linked to the strength of the nation. 'The family' is a common theme running through political discourses of all parties. The mobilisation of 'the family' is part of the state's role in 'regulating' and 'promoting' heterosexuality (Duggan, 1995:189). In order to maintain the dominance of heterosexuality, state discourse produces homosexuality as an 'othered' form of sexual identity.

Immigration, a state policy, plays a role in defining and categorising sexual identities. Connell (1990) develops further conceptions of the state that are contained in feminist, social science critiques and the challenges invoked by gay liberation. Here he places the state in wider national and historical contexts. He argues that the state regulates sexuality often in the name of 'population policies', which aim to stifle particular unconducive forms of sexual behaviour, such as the criminalisation of homosexuality. He posits how 'marriage' is a regulator of citizenship both in the colonial state as well as the metropole (1990:550). He also comments: 'Two centuries ago, marriage in European culture was a precipate of kinship rules, local custom, and religion. It has increasingly become a product of *contract* as defined and regulated by the state' (Connell, 1990:530). In addition he argues that the state has a role in creating new categories as well as regulating them. Cooper, asserts the state's role in reforming and co-opting challenges for rights by social forces (1995). She suggests that the state is deeply sexualised with multiple identities and multiple boundaries. The state in its interstate/international mode gives the *appearance* of being more unified and corporate, its sexual identity being metaphorically like a 'heterosexual man' (1995:71). However, this appearance belies the challenges it faces in its domestic mode, whereupon coercion can be utilised to retain control and coherence (1995:59). She adds that access to state power depends on whether you are deemed to be 'inside' the state's 'terrain' (offering a 'positive' influence) or 'outside' (challenging the state in a more 'negative' way) (1995:64). Lesbian and gay challenges have been characterised by: 'contesting state power' and secondly attempting to 'use it' (Cooper, 1995: 63). Cooper (1995) gives the example of the Australian Lesbian and Gay Taskforce, who are similar to Stonewall Immigration in that they lobby the government on citizenship rights for same-sex migrants. Cooper believes they have been 'co-opted' by the government in that they

have taken on the role of processing and assisting immigration claims on behalf of the government, yet remain a voluntary organisation. Cooper highlights the problematical outcomes of lesbian and gay strategies when they attempt to engage with the state. This discussion is extended in more detail in chapter four, which relates to rights discourse.

3. Sexual citizenship and the unmarried partners' rule

3. a. UK family reunion policies

Same-sex and cohabiting couples face particular difficulties in defining their own familial and relationship forms through the process of UK immigration. This is a significant problem with family reunion being a major source of immigration (Kofman and Sales, 1998). Family reunion through marriage itself has been a highly gendered and racialized process in Britain. To paraphrase Helma Lutz, migrants are forced into complying with a family reunion policy based on westernised nuclear family model, which may not resemble their own family formation prior to emigration (Lutz, 1997:104-5). She adds that this can result in women becoming isolated from their family networks. Bhabba and Shutter (1994) give a full account of how immigration has from the 1960s onwards become more restrictive on the entry of foreign-born husbands who wish to join their wives in the UK. This has involved the removal of rights for women to bring their foreign husbands and an attempt to prevent Asian men entering the UK. Despite the Sex Discrimination Act coming into force during the mid 1970s, it finally took the decisions of the European Court to stop the sex discriminatory element of this policy. Bhabba and Shutter go on to give a further account of racialised assumptions that formed the 'primary purpose' rule which saw a continuation of attempts to prevent Asian men gaining entry to the UK through their wives (1994:68). This rule was utilised to test the validity of marriages particularly between Asian couples, where there was an assumption that they were entered into for

immigration purposes. This illustrated also by the lack of recognition that UK immigration has of other cultural practices (such as 'arranged marriages') and their increasing surveillance of the intimate space of couples in order to satisfy westernised constructions of marriage. The predication of family reunion being based on the nuclear family pattern continues to provide a consistent obstacle to migrants whose families do not resemble this model.

3.b. Heterosexist citizenship spaces

The work on space and sexuality has highlighted the way in which space is organised around and endowed with heterosexuality (see generally Bell and Valentine, 1995; Binnie and Valentine, 1999, Blunt and Willis, 2000). Sexual citizens find themselves excluded from public space, where the manifestation of non procreative, heterosexual (be it the sex shop, the gay bar) must be retained in the 'private' space or sex zones (Hubbard, 2001). Similarly, David Evans (1993) has examined sexual citizenship through gay and lesbian demarcated spaces of consumption in the city. The large metropolitan city has traditionally been a more 'liberatory' place for lesbians and gays to occupy. More recently there has been some attention paid to rural sexual identities, to address the bias towards work on the metropolitan city (Phillips, West, Shuttleton, 2000). However, existing work is concerned with the migration of lesbians and gays to cities such as San Fransisco (Castells, 1983), London (Binnie, 1995). These studies highlight the spatial imperatives of sexual citizenship. As Jon Binnie asserts 'The basic premise of lesbian and gay geography is that it is only possible to be gay or lesbian (or bisexual or transsexual) in specific places and spaces (1997:241).

Bob Cant's study of lesbian and gay migration is predominantly concerned with the migration of lesbians and gays to large cities (1997). This study includes first person accounts of gays and lesbians experiences of migration. These accounts feature gays and lesbians migrating as individuals rather than couples and most of the accounts are of inter-migration within the country of origin. Cant makes this important point in the introduction to his study: 'Lesbians and gay men differ from other groups of migrants in that there is no homeland that can validate our group identity' (1997:4). This is a point also made by Phelan (2001:30), who argues that gays and lesbians have no 'historical/territorial' home to return to. Phelan articulates the notion of sexual strangers, to describe the distinct experiences of sexual citizens as outsiders and 'others':

> Gays and lesbians do not constitute a population with fixed territory or a unified national, ethnic, or racial history that clearly distinguishes them from their neighbours. Homosexual desire and activity occur across and within cultures, nations, and families, and the recent formation of a homosexual identity has not eliminated that fact (Phelan, 2001:30)

As Phelan's quote demonstrates there is a sense that sexual citizens have no fixed sense of home. As Cant goes onto argue 'home' can have an ambiguous meaning for sexual citizens.

'Home' or the place of origin can often be a difficult space for gays and lesbians to be. Thus, as Cant adds, lesbian and gay migrants may seek to 'belong to two worlds' their community/country of origin and the lesbian and gay community (1997:4). Disapproval from 'home' from family members may result in a need to migrate: 'If migration is experienced as freedom, the family and its values are perceived as a prison' (1997:6). Cant cites the experiences of South Asian gays who may feel 'torn' over their loyalty to family and community which may conflict with their sexual identity and a need to move to a

community which may marginalise their ethnicity (1997:10). Thus, these accounts reveal the importance of place in terms of 'validating' a sexual identity.

Jon Binnie (1997) has argued for the importance of immigration as an issue for interrogation by those concerned with sexual citizenship. He argues that work in this area needs to address local, regional and national contexts more closely (1997:238) and immigration provides a useful example of how these contexts can engender varying levels of inclusion and exclusion for sexual citizens. Immigration brings into sharp focus the essentialist constructions around sexual identity, which continue to impede the movement of sexual 'dissidents'. Immigration policy is modelled on biologically essentialist notions of membership to national and sexual identities through blood ties of 'consanguinity'. This is most clearly illustrated through family reunion migration in the UK. This policy hierarchies marriage above other relationships, and espouses the importance of long-term, monogamous partnerships.

3.c. UK immigration policy: unmarried partners' category

EU nationals moving from one EU country to another to work are entitled to bring in a spouse. According to UK immigration law, spouses are defined as a married partner or a fiancé(e) but this excludes unmarried 'common law' couples who apply through the unmarried partners' rule. From 1997 to 2003, the rule stated that unmarried couples must show they are legally unable to marry under UK law, other than because they are related by blood or under the age of 16, rather than they are 'unwilling to' (JCWI, 1999). This meant that unless they are a same-sex couple, transsexual or there is some 'other bar to marriage' (for example religious grounds) the couple must marry, whether they are unwilling to or not (JCWI, 1999). The rule itself did not make it clear exactly how these

grounds work. One or both of the partners going through a divorce from a previous marriage may act as a bar to marriage. Therefore the rule was mainly applicable to same-sex couples, as heterosexual couples must eventually marry in order to satisfy immigration regulation. Heterosexual couples, that previously had some recognition in family reunion policy, then found themselves excluded (see chapter three for a full discussion of this). Recently the Home Office's, White Paper proposed the removal of the 'legal impediment' required for unmarried heterosexuals, which came into effect on the 1st April 2003[3].

However, from 1997 same-sex couples have automatically been recognised, as they cannot legally marry. They must present their relationship as 'akin to marriage' (JCWI, 1999). This involves evidence to prove periods of cohabitation (two years minimum), joint bank accounts, mortgages, etc and letters from relatives and friends to affirm their relationship is both 'stable' and 'genuine'. Thus, the heterosexual model based on marriage is merely replicated in immigration legislation. This is further exacerbated by the lack of uniformity across other nation states' immigration practice and partnership laws. As Jon Binnie asserts: 'Nothing throws the question of the different ways in which formations of sexual citizenship are constructed by nation states into greater relief than the migration process' (Bell and Binnie, 2000:119). Partnership rights for cohabiting and same-sex couples in their country of origin will not automatically be recognised by the receiving country for the purposes of immigration (Binnie, 1997:242). Furthermore, as Lutz states with marriage remaining the 'gatekeeper' in EU immigration policy, difference is created between 'indigenous' nationals who are able to benefit from more liberal policies regarding cohabitation and migrants who are bound by more traditional norms (1997:105). Thus, rights available to lesbian and gay nationals may not be afforded to migrants. This can

[3] The Home Office released the white paper covering immigration and asylum in the UK 'Secure Borders, Safe Haven: Integration with Diversity in Modern Britain, on February 8th 2002.

result in the 'loss' of rights for some same-sex couples moving from a nation state where their partnership has been legally recognised to a state that does not legally recognise it.

Conclusion

This chapter has set out a number of critiques of citizenship models, in particular Marshall's three tiers of citizenship rights. These critiques foreground the exclusionary lines based on class, race, gender and sexuality citizenship operates on. The wider discussion of citizenship points to the 'rights and responsibilities' that are embedded in citizenship. Such rights and responsibilities are highly normative. For unmarried people the obligation is on themselves to 'prove' their relationship is 'akin to marriage' to the immigration authorities. This obligation is more difficult for them than for married couples. The emphasis on meeting periods of cohabitation, providing bureaucratic evidence, which are not required by married couples, illustrates the hegemony of marriage in immigration policy. It also illustrates how sexual citizens are placed on the public/private divide, subject to surveillance in the 'private' domain in order to achieve rights in the public. Both citizenship and immigration discourses produce normative, patriarchal and heterosexist categorisations. Migration illustrates how sexual citizenship varies across nation-state boundaries. Thus, when sexual citizens cross national boundaries the acquisition and loss of rights depends on the availability of rights within that particular national context. Immigration also shows how national identity is closely associated with sexual identity. Belonging, who can belong, is founded on the desirability of procreative, heterosexual identities. The observations and themes set out in this chapter, inform my methodological aims and questions. The following chapter discusses the types of analysis used for my methodology and how they address the questions/aims being examined.

Chapter Two: Overview of Methodology

Introduction

This chapter provides an overview of my method, which analyses three sources: political texts, legal texts and interviews from couples. The method aims to analyse and differentiate the particular discourses that shape immigration policy and legislation. By doing so, I try to understand the ways in which these discourses categorise and help to reproduce sexual identities. In addition, I also explore how political and legal processes have led to the normativity of the present unmarried partners' rule. This is achieved first by examining the 'official' discourses that shape immigration policy and practice; secondly, analysing the discourses of legal professionals and advocates working in immigration practice; and thirdly, through informal interviews I aim to capture the experiences of couples that have used or are attempting to use the former unmarried partners' concession (now a rule). This chapter will set out the rationale and distinct characteristics of the three areas of analysis and how they best serve the aims of my thesis.

The 'official' will be examined both in forms of government output on immigration via the Home Office, (such as Her Majesty's Stationary Office publications, statistics, papers, bills, amendments), and also parliamentary debates (as recorded in Hansard) and legal institutions (court judgements appeal rulings, relevant cases) both in the UK and in Europe. Critical discourse analysis, as will be explained in this chapter, is a valuable theoretical perspective to apply to these 'official texts'. Also, Teun A. Van Dijk and Ruth Wodak's study of parliamentary debates on immigration and racism in the EU, provides a useful guide to my own analysis of the parliamentary debates around the unmarried partners' rule. In addition to the discussion of parliamentary debates, an examination is needed of the 'unofficial discourses' of lobby groups such as Stonewall Immigration and International

Lesbian Gay Association (Ilga), in relation to their role in the development of official discourses of immigration policy and practice.

In addition to the examination of the development of the policy that culminates in the current unmarried partners' rule, the method has been concerned with those working with and challenging the policy. This has involved conducting interviews with specialist immigration professionals who provides an understanding of how legal professionals interpret and deal with aspects of immigration policy. What discursive strategies do they adopt? In what ways do they mediate between legal, government institutions and their clients? These questions and issues will be related to Critical Legal Studies, the work of feminist and particularly queer legal theorists who critically analyse how legal discourse constructs and inscribes meanings on legal subjects.

The final source of analysis is concerned with the experiences of couples using the unmarried partners' category. Through interviews this research will uncover the implications of this particular policy for migrants. What are the consequences of the application process on couples' resources? In what ways did couples approach their applications and what strategies did they deploy in order to satisfy the requirements of the rule, e.g. use of legal representation and advice, interventions by local MPs? What were their overall experiences of the procedure? These interviews also aim to contribute to the experiences of those directly affected by this area of policy which has not been conveyed in existing literature.

1. Official Discourse

1.a. Defining the official

Firstly, this section will begin by defining what official discourse is and its significance to my research. Burton and Carlen (1979) identify the official as: output that is produced both internally and externally of Parliament from Her Majesty's Stationary Office and Royal Commissions. They also offer some key characteristics of official discourse: 'Official discourse is thus the systemisation of modes of argument that proclaim the state's legal and administrative rationality.'(Burton and Carlen,1979:48). Official discourse as defined by Burton and Carlen, is explicitly embedded within state apparatus, 'a hegemonic discourse' that aims to legitimise and justifies state processes and practices (1979:48). A closer inspection of official discourse reveals the ways in which it attempts to evade any challenges to its legitimacy. For example, it attempts to 'ward off' challenges to government policy initiatives, from NGOs, 'pressure groups' or opposition parties, by selectively incorporating *some* 'dissent' to legitimise and retain its dominance. Official discourse, therefore, may make a few concessions to those criticising its authority, but it does it in a way that does not powerfully reduce its dominance and retains its hegemony. Challenges to this 'authority' may arise 'outside' the boundaries of the official, pressure groups, members of the public affected by policies (for a further discussion on this see chapter three). This is evident with unmarried partners' provision, and the boundaries between those challenging the official and those protecting it are less clear. These boundaries can change as professionals seeking change can often become incorporated into new policy processes. The following discussion will illustrate the blurring of the lines between the official and the unofficial with regards to the unmarried partners' rule.

The introduction of the unmarried partners'' concession in 1997 marked the culmination of debates within Parliament but also lobbying principally by Stonewall Immigration supported by other migrant NGOs such as the Joint Council for the Welfare of Immigration (JCWI). Stonewall Immigration sought the support of the then opposition Labour party, to secure rights for same-sex couples. In addition, there were individual couples successfully appealing against decisions when their applications were rejected. So there were a number of processes and actors taking place outside parliamentary space. The appeals being made by couples fighting the Home Office can still be conceived as within the realm of the official as they use legal processes and institutions in order to challenge existing legislation. However, lobbying groups such as Stonewall Immigration are less easy to locate in relation to the official. Stonewall Immigration is made up of legal advocates and couples who are actively engaging with the regulations that affect unmarried persons. They also, as I have mentioned, had an impact on legislation not only in terms of presenting individual cases but also through 'behind the scenes' meetings with MPs. Political life extends beyond the domains of Westminster and constituency offices and MPs can be involved in 'off the record' briefings, lobbying activities, 'leaking' activities, rumour and speculation. Political activity can be seen to take place in the media, such as newspaper relevations, briefings via 'spin doctors' and photo opportunities. These activities both directly and indirectly can have implications on the official such as the latest government line on drugs or asylum. Therefore, in my analysis of the official discourses, it is important to consider how they may incorporate or contest discourses that could arguably be placed 'outside' the official. In addition, it needs to be considered that the relationship of NGOs such as Stonewall Immigration to the official is not static and can change. For example, they can be 'outside' a Conservative government (take an oppositional stance to the government) yet take part in forming legislation as Stonewall

Immigration did with the concession for the Labour Government. Therefore, the official can contract and shift to suit its interests (incorporate some dissent) to retain its legitimacy.

1.b. Critical Discourse Analysis

Official discourse as it has been discussed so far, plays a crucial role in legitimising and regulating UK immigration; it constructs criteria and sets up boundaries and categories. It is therefore crucial to this research to understand the way in which official discourse achieves this in relation to unmarried couples. Generally, as Fairclough attests, discourse analysis aims to uncover the way in which discourse supports power relations (1989:40). Discourse analysis is used across disciplines: sociology, literature theory, linguistics, philosophy and social psychology. It can be applied in a number of ways to examine grammar, stylistics, rhetoric, argumentation or conversation analysis (Van Dijk, 2000:28). Sara Mills (1997) comments that the meaning of discourse analysis varies with the disciplinary contexts for in which they are applied. CDA emerged from a network of scholars, (namely Tuen Van Dijk, Norman Fairclough, Gunter Kress and Ruth Wodak) following a symposium in Amsterdam in 1991 (Wodak and Meyer, 2001:4). CDA incorporates a number of influences and approaches, such as French discourse analysis, social semiotics and is also closely linked to theorists such as critical linguistics (Barker and Galasinski, 2001). In particular it is influenced by the work Foucault, Gramsci and Bakhtin.

What is distinct about CDA is the focus on the role of discourse in the 'reproduction of power, dominance and inequality' (Van Dijk, 2000). In the context of critical discourse analysis it tends to be applied in the following way:

> The term CDA is used nowadays to refer more specifically to the critical linguistics approach of scholars who find the larger discursive unit of text to be the basic unit of

> communication. This research specifically considers institutional, political, gender and media discourses (in the broadest sense), which testify to more or less overt relations of struggle and conflict (Wodak and Meyer, 2001: 2).

As the above quote illustrates, CDA does not focus on the technical linguistic properties of texts but more on wider discursive meanings and how they operate in various institutions. This particular approach provides a useful tool for examining the political and legal discursive patterns concerning this thesis. The relationship between language and power within wider social contexts is a key concern of CDA. 'In other words, CDA aims to investigate critically social inequality as it is expressed, signalled, constituted, legitimised and so on by language use (or in discourse)'(Wodak and Meyer, 2001:2). In addition, it is concerned with the ideological struggles that take place within texts (Wodak and Meyer, 2001:10). CDA can be a useful tool in examining how dominance is challenged and sustained in texts. As set out below it is therefore useful for an analysis of legal and political texts.

The focus on analysing dominance and inequality in discourse is relevant to the official texts being investigated in this research, in particular, the way in which immigration discourse legitimises the differential treatment of unmarried couples. CDA can also be applied to the debates that surrounded the legislation, for example, the way in which MPs argued for and against the rule. How did they construct their arguments to secure provision for unmarried people and what were the counter arguments that were produced? What processes within the political and legal arena were used to try and challenge existing policy? What were the shifts in discourse that led to change? The Foucauldian and Gramscian perspectives on power and dominance are particularly useful ways to theorise the discursive struggles that took place over the unmarried partners' provision. Also, the emphasis CDA places on discursive struggles in institutional settings makes it particularly

pertinent to my discussion of the processes that led to the unmarried partners' provision. The debates in parliament, as recorded in Hansard, are the starting point in terms of the political arguments that shaped the legislation and it is to this I turn to next.

1.c. Parliamentary debates

Parliamentary debates make up a key area of the official discourse of the unmarried partners' rule. They had an important role in shaping the final outcome of the legislation. Through an examination of Hansard, it is possible to see what type of arguments were mobilized by those in favour of the provision and those defending the status quo. Fairclough identifies how specific discursive formations like the law, utilise their own jargon to remain accessible only to 'insiders' such as lawyers (1989:48). Government, parliamentary, legal sources all need to be examined within the context of their specific discursive formations. One way to do this is to borrow from some of the forms of analysis deployed by Wodak and Van Dijk (2000) and Epstein, Johnson and Steinberg (2000) in their studies of parliamentary debates.

Wodak and Van Dijk (2000:57) apply six categories to their analysis of parliamentary debates they are: 1. topics, 2. disclaimers, 3. implicitness, presuppositions and indirectness; 4. actor/group descriptions, 5. argumentation (topoi, fallacies, etc.); 6. rhetorical devices (metaphors, hyperboles, euphemisms, irony, etc.). From these six categories, I have applied four to my analysis of parliamentary debates they are: topics, actors, argumentation and rhetoric. I felt that the remaining two categories of Wodak and Van Dijk's study (disclaimers; implicitness, presuppositions and indirectness) could ultimately be viewed as rhetorical devices and therefore could be included under that category. I have also extended the category 'topics' to include themes. The inclusion of themes covers the

recurrence of particular patterns that arise out of specific topics. For example the topic of asylum is marked by a recurring theme around abuse. Themes are a continuous discursive strand that runs through debates centred on a topic. I have also included 'narrativisation' which adds to the category of 'rhetoric' being applied to the examination of Hansard. Epstein et.al., (2000) analysis of the 1998 Age of Consent parliamentary debates, focuses on narrative discursive properties. The authors identify competing narrations which offer an often moral prediction of the consequences of a piece of legislation (Epstein et.al., 2000:9). These narratives are used as rhetorical devices to counter an argument. This concept is certainly applicable to the analysis of the debates surrounding the unmarried partners' provision. It provides a tool to consider what 'stories' or narratives are invoked to advance claims on behalf of unmarried people and conversely to justify the lack of recognition of these persons. To summarise, my remaining categories used to analyse the parliamentary debates are 1. actor, 2. topics/themes, 3. argumentation, 4. rhetoric/narrativisation (chapter 3 explains in more detail how these categories are pertinent to my analysis).

1.d. UK immigration rules and criteria

One other set of documents that accompanies my analysis of the 'official' is the rules and criteria set out by the Home Office and the Immigration Nationality Directorate (IND). As the following chapter explains in more detail, the rules and criteria relating to unmarried people have undergone a number of changes. Firstly, its existence as a rule (applying to common law wives only) and then its replacement by a discretionary 'concession' in 1985 (allowing both common law wives and husbands entry). That concession was subsequently removed in 1996 during a parliamentary debate. However, the Labour government reintroduced the concession in 1997 (for the first time representing same-sex

couples excluding heterosexual common law relationships). The 1997 concession was incorporated into a rule in 2000 and more recently changed to recognise common law heterosexual couples in April 2003. Within these changes there have been amendments to the criteria such as the cohabitation period (reduced in 1999 from four years to two) and the probationary period (increased from one year to two in the same year).

This period has also been marked by a number of political and legal changes (detailed explanation is in the following chapter). There has been a change of government from Conservative to Labour. Also, the impact of the EU on immigration legislation, for example pressure from the European court resulted in the unmarried partners' concession to allowing common law husbands to enter the UK (who were previously barred) in 1985. More recently, there has been the incorporation of the Human Rights Act into British Law in October 2000, which has had an impact on the immigration appeals process. Shifting interpretations of the concession by legal professionals have been advanced through case law and the appeals process (as will be outlined in the next section). There have been announcements made in Parliament, which resulted in the removal of the concession in 1996, which immediately affected the practice of this immigration policy. Furthermore, wider shifts in immigration legislation such as recent moves to encourage certain skilled migrants may have a 'knock on' effect on routes of entry for migrants. It may be more appropriate for sexual citizens to enter under a skills category rather than the intrusive and often lengthy process of the unmarried partners' rule. Conversely, it also has an effect on the type of couples entering based on their relationships, where skilled partners' may have a stronger claim to citizenship (this is discussed in chapter five). Specific categories of entry are shaped by the broader contours of immigration legislation both in the UK and at a wider EU level. The rules and criteria are constantly shifting and therefore have to be

contextualised not only in terms of the domestic political environment (as set out in chapter three) but wider supra-national discourse (which chapter four examines). In the face of these shifts the Home Office attempts to fix meanings, construct categories through the criteria and rules of immigration legislation, which will be considered below.

A discourse analysis of the rules and criteria reveal the way in which the Home Office constructs the category of unmarried people. It illustrates also the way in which the Home Office make this category 'intelligible' through its stipulations and requirements, for example, cohabitation periods, proof through documentation etc. What elements are emphasised in the rules and criteria e.g. types of relationships 'stable', 'genuine'? How do the requirements contribute to the dominant form of relationships recognised by UK legislation? These are some of the questions that can be applied to the analysis of the set of rules produced by the IND. In addition, the relationship between the Home Office criteria and its interpretation by legal professionals is also interesting. Legal professionals have been involved in the formation of the criteria as well as actively challenging it. Thus, there are a number of specific issues, outlined below, that need to be examined in relation to legal discourse.

2. Legal Discourse

2.a. 'Official' Legal Discourse

In addition to parliamentary debates and the rules set out by the Home Office, there are the processes and procedures of law that need to be considered. In particular, the cases taken by couples appealing against decisions that reject their application. What were the arguments used by legal representatives on behalf of couples to have their application recognised by the Home Office? In addition, what has been the impact on the policy as

result of legal challenges through the appeals process? These concerns provide an understanding of the role of legal representatives and case law in advancing changes to existing legislation. Therefore, the discussion must now turn to describing what is distinct about official legal discourse.

Burton and Carlen identify the linkage between common-law reasoning and the dominant empiricist theories of knowledge (1979:53). Common-law is constructed as based on 'common sense,' its main principle of 'stare decisis' (standing by past decisions) and precedent articulates a notion of 'consistency and continuity'. The invoking of past decisions and cases provides a benchmark, a convention for similar cases. However, as Burton and Carlen argue, this principle is 'normative'. The invocation of past principles may not be relevant to new cases thus challenging existing legal practice. This indeed has been a major problem for same-sex couples, which have found themselves inadequately recognised or absent in legislation and have attempted to challenge it through case law.

In terms of immigration, as Wesley Gryk, a specialist lawyer representing same-sex couples states, the gradual winning of key cases through the appeals process allowed legal professionals to create a body of law to cite in their cases (Gryk,1998). However, the initial breaking of precedent is a long process, which requires the commitment of individuals and lobby groups to mount sustained pressure on existing legal processes. Burton and Carlen illustrate how legal discourses aim to present law as rational, where past experiences consolidate present principles and attempt to 'minimise contradiction' (1979:64). By rooting legal principles in historical continuity, a tradition, it constructs the law as coherent and consistent. Therefore, it is resistant to change and challenges that calls

to question its image. A useful theoretical perspective that questions the dominance and hegemony of legal discourse is however offered by Critical Legal scholars.

2. b. Critical Legal Studies

Critical Legal Studies (CLS) is the collective title for the body of work produced by socio-legal theorists who have challenged the legal positivism that casts the law as principled, objective and beyond contamination of bias[5]. Hilaire Barnett comments that CLS emerged out of a conference in 1977 where scholars were reacting against 'grand theorising' of traditional jurisprudence and wanted to adopt a more critical approach to the law and society (1998:188). It is also part of a wider discontent with existing legal scholarship and the conservatism of law schools (Hunt, 1987:5). CLS has therefore deconstructed legal discourses and revealed the inherent incoherence and instability of dominant legal categories. In doing so CLS has challenged a number of traditional legal orthodoxies. One first criticism is made against the claim that the judicial processes take place separately from society, politics and economics (Kairys, 1992:11). CLS has challenged this notion and aims to 'reconnect' law with the day to day '...moral and political struggles and experiences, with all their attendant incoherencies, uncertainties and interdetermancies' (Thomson, 1992:3). Secondly, there is a major criticism of the legal decision making processes as based on reason where the examination of facts and evidence will result in the 'truth' (Kairys, 1992:11). Finally, CLS disavows the notion that 'objective' hearing arrives at these facts and that a 'fair' judge will make the right decision (Kairys, 1992:11). These key areas of criticism by no means constitute the full set of debates CLS is concerned with. However, they do illustrate how CLS makes explicit the laws claim to legitimacy. It also exposes the role of the law as a 'medium and expression' of power

[5] Also referred to as Critical Legal Theory.

(Thomson, 1992:3). CLS's challenge to the idealised notion of the law has been characterised by specific feminist interventions and queer legal theorists who focus on how the law constructs and reinforces norms around gender and sexuality.

Feminist legal theory (Olsen, 1995, Cornell, 1991, Mackinnon, 1987) has taken the general concerns of CLS into particular topics - labour law and family law (Olsen, 1995). There are particular areas of emphasis within the varied strands of criticism, such as socialist feminist engagements with labour relations and radical feminist interests in sexual violence and criminal law (Bottomley, 1992). However, '[f]eminist jurisprudence builds on certain aspects of this critical strain of legal thought.'(Charlesworth, Chinkin, Wright, 1991:257). It relates these aspects of critical legal theory to the inequality faced by women within legal systems (Charlesworth, Chinkin, Wright, 1991:257). In particular, feminist jurisprudence shares wider concerns of CLS, in particular its critique of 'masculinist' notions of the law as 'objective'. A major area of interrogation is the public/private dichotomy, which posits the 'private' as 'a natural world separate from law', therefore justifying the lack of protection for women with regards to 'domestic' matters (Naffine and Owens, 1997:4). A good illustration is the case of family law, where this divide operates to regulate and sanction patriarchal familial relations (Rose, 1987). In addition, critical feminist analysis also assesses the gendered nature of international law (see in particular Charlesworth, 1997). Feminist interventions examing the public/private demarcation and dominant constructions of gender identities mobilized in traditional jurisprudence have been highly influential in/on queer legal perspectives.

Ralph Sandland remarks on the debt gay legal rights campaigners owe to feminist critiques in challenging the norm of legal discourse (2000a:227). Legal theorists concerned with

sexual identities invoke aspects of CLS in their critical thought. For example, Stychin (1995) advances parallels between CLS and queer theory. He argues that CLS has challenged the 'naturalness' of the public/private distinction, which is often deployed to justify the intervention of law in some areas of society but not in others. He adds that CLS is mainly concerned with deconstructing categories of legal analysis, whilst within queer theory, the categories are 'primarily sexual' (1995:148). The categorization of sexual identity, focussing on gay men, in legislation can be seen in the work of Leslie Moran (1995, 1996) who applies it to the Sexual Offences Act 1967. This work is commented on as being 'exemplary' of critical legal scholarship, in the ways in which he uses Foucauldian language and concepts so: '[t]hat it might be possible to use law as a site in which to challenge these dominant constructions-turn law belly-up...' (Sandland, 2000b:98).

Sandland's recognition of Moran's work and his incorporation of Foucauldian perspectives raises a number of relevant issues to this research. Sandland points to the role of CLS in challenging dominant constructions and dynamics between the law as a disciplinary power and resistance. This concept is applicable when analysing the combination of dominant constructions of sexual identities and migrant identities, and the extent to which those working within the law can create strategies of resistance and challenge these dominant constructions.

I have drawn on relevant work on sexuality and gender that emerges out of CLS debates, for the analysis of legal discourses. This can extend to my analysis of international legal instruments, namely the European Convention on Human Rights and European Court of Justice. These European instruments have offered the possibility to challenge UK

legislation on issues relating to sexuality and immigration. One might consider, by examining specific cases and analysis in the field, to what extent European law has been effective in challenging national legislation on these matters. In addition, there needs to be an examination of discourses around 'human rights' and the extent to which they are effective in sustaining claims for rights by same-sex couples. To apply a chief concern of CLS to this area, do international instruments consolidate existing legal categories around identities or do they offer spaces of resistance? The work of CLS offers a relevant and useful route into these types of questions, particularly to those more generally posed around legal frameworks. However, more specifically there has to be an understanding of the particular experiences of those working with and affected by the unmarried partners' rule. This includes talking to legal representatives about their role in preparing applications.

2.c. Legal Professionals

In order to understand how lawyers and solicitors have been able to challenge legislation, there needs to be analysis of the arguments used in relevant cases. This can include looking at legal reports on cases and talking to solicitors and lawyers involved in representing same-sex couples. Legal journals provide useful analysis of current decisions, searchable web journals, like that of *Current Legal Issues* (www.webjcli.ncl.ac.uk) contain information on cases and responses by those working in the field. Talking to legal representatives also offered a detailed picture of the kind of scenarios that they deal with during the course of their work. They were be able to tell me how they prepare applications and what strategies they adopt when they are faced with difficulties around a particular application. Specialist lawyers were contacted via Stonewall Immigration, who set up open monthly meetings for couples who would like advice about making an

application. I attended a Stonewall Immigration meeting to see what kind of advice they offer couples and also to introduce myself to Wesley Gryk an immigration lawyer who agreed to be interviewed. I contacted another lawyer who advertises in *The Pink Paper* (newspaper for lesbian and gays) who also offered to speak to me. Finally, I was also contacted (via an appeal on www.Gay.com, which runs an immigration page) by a specialist lawyer who also has made an application and agreed to be interviewed.

3. Interviews with couples

3. a. Interviews as a choice of method

I have so far outlined the importance of analysing the discourses of policy makers and legal professionals. However, my third source of analysis attempts to include the experiences of couples directly implicated by this aspect of immigration policy. An informal interview with couples, who have made or are making an application using the unmarried partners'' category provides an insight into their experiences of the process. This perspective is missing in existing literature. These interviews also aim to understand the practical implications of the process, the effect this has on a couple's financial resources and how couples cope with the conditions that immigration imposes. My intention with these interviews is not to provide the definitive voice of these particular migrants, but to provide qualitative evidence of the diversity of experiences of these couples and the varying ways in which they negotiate immigration policy.

3. b. Feminist perspectives on qualitative methods

Feminist researchers have highlighted the importance of qualitative methods such as interviews as valid forms of knowledge. 'Feminist scholars orientated toward qualitative fieldwork in particular often have encouraged relationships between the researcher and

researched that defy the tenets of positivism and objectivity' (Wolf, 1996:4). This is part of a broader feminist epistemology that critiques mainstream science and social science positivism that bases itself on seeking the 'truth' through an examination of the 'facts' (Wolf, 1996:4). Feminist challenges to this notion argue that research can never be 'objective and value-free' and is shaped by the researchers experiences and interpretations (Wolf, 1996:4). Key to feminist epistemological principles is the recognition of the relationship between the researcher and the researched and its location in terms of power dynamics (Stanley and Wise, 1990:23). Interviews, as qualitative research methods, are part of this feminist epistemological perspective one that attempts to overcome the tenets of positivism and validate women's experiences.

Giving voice and validation supports feminist epistemological perspectives that challenge 'masculinist assumptions' of what counts as knowledge. Feminist epistemology, to paraphrase Sandra Harding, addresses notions of the 'knower', how knowledge is legitimated and what is counted as truth (Harding, 1987:3). Andrew Herod (1993), comments that the popularity of open-ended interviews with feminist research is because they allow a degree of spontaneity and they provide a two-way interaction, allowing participants to introduce topics and speak in their own words. It is those qualities, Herod identifies as being gained through interviews that would enable me to capture the experiences and stories of migrants using the concession. Furthermore they allow me to explore the gaps between the policy and its practice.

Feminist researchers have used interviews to create a 'dialogic' and participatory space. For example, Ann Oakley has critiqued the traditional 'masculine' paradigm of conducting an interview, where the text book criteria for a 'good' interview, is one where the

interviewer remains objective, detached and scientific (1981:38). Feminist researchers have attempted to break down the implicit hierarchies of interviewer and interviewee and create a reciprocal relationship between these two. However, as feminist researchers themselves attest, despite these intentions, the interview process itself does not eradicate hierarchies or power relations between interviewer and interviewee. Melissa R Gilbert (1994) comments on how the lived experiences of women researchers may vary and therefore will not automatically share 'insider' status with other women. Feminists have rendered problematical the insider/outsider status proposing an inbetweeness (Gilbert, 1994; Nast, 1994) or 'halfie'[6] (Abu-Lughod, 1993:41) status. They argue such debates do not address the complexity of multiple subjectivities that can come into play between the researcher and researched. Instead they stress the importance of 'openness' and willingness to listen (Wolf, 1996:17). However this relationship cannot be conceived as equal as Judith Stacey (1991a) argues the researcher is freer to leave than the 'researched'. What these debates raise is the importance of recognising the potential differential power relations that take place in the research process and by doing so attempt to counter them.

3.c. Specific issues for the interviews with couples

To relate these arguments to my own research, the couples in my sample will occupy a range of subject positions on lines of national, racial identities, gender, class, socio-economic background. Therefore, I needed to consider these variables in the context of how they may be implicated in their particular experience of immigration; particularly in view of the exclusionary discourse that UK immigration produces and which is constructed to favour wealthy, white western migrants. How much does sexuality combined with other subject positions, affect migrants experiences of this process? Furthermore, how do I

[6] Abu-Lughod, uses the term 'halfie' to refer to her half-Palestinian, half American identity in relation to her research writing.

negotiate my own subject position as a 'researcher' and how could I ensure the interviews remained open, dialogic and reciprocal? Feminist ethics advocate the researchers continual reflexivity during the research processes. This reflexivity serves to recognise the role researchers have in constructing knowledge and that the 'objects of research' are 'subjects in their own right' (Stanley and Wise, 1993:200).

A mainly qualitative approach via interviews would provide me with the experiences of immigration practice faced by same-sex couples. There is however a place for quantitive data in this research. Statistical data that breaks down gender and nationality of those using this route has been useful in providing a picture of the 'type' of migrant making successful applications under the rule. The use of a qualitative method such as interviewing complements this by examining the impact of practice on the lives of migrants. Other qualitative methods such as surveys would not allow for an in-depth interactive process where particular issues that arose could be explored further. The use of interviews as a methodology: in the 'Families of Choice' project is commented on:

> A questionnaire survey even if a self-defining sample would fail to reveal the complexity of meanings around identity and relationships. A methodology based on semi-structured interviews, on the other hand, can provide a way of exploring shifting nuances of identity by providing brief life-histories of the subjects, and allow for the developments of narratives of 'intimate' and 'family' life (Heaphy, Weeks Donovan, 1998:455).

Interviews, for this research offer a potentially more nuanced understanding of couples' experiences. In addition: 'Qualitative interviewing is appropriate when the purpose of the research is to unravel complicated relationships and slowly evolving events.'(Rubin and Rubin, 1995). This is relevant to my research where the legislation did change over the period I was interviewing. For example I began the interviews in November 2000 through till July 2001; over that period the concession had been made into a rule. Also for many

couples in my sample there had been changes over the period they had made their application such as the reduction of the four-year cohabitation period to two. Furthermore, part of the research is concerned with establishing the events and relationships between the legal advocates, immigration officials and the couples making an application; interviews offer a framework to understand the dynamics of these relationships.

Though the aim of the interviews is to allow couples to 'tell their story', it has to be acknowledged a researcher mediates in this process. The telling of 'life stories' however, is a 'collective enterprise', pieced together with the help of another (Plummer, 2001:399). Therefore, interviewees produce a narrative that is to some extent 'framed' by the researcher (Heaphy, et.al. 1998:461). These are semi-structured interviews: there are key questions, pieces of information that I want to ascertain. These are concerned with how couples met the two year cohabitation criteria, how did they establish proof of this, where did they make their application (in the UK, outside); what were the implications on their resources and if they took legal representation. With that in mind, the intention is that the interviews allow other issues to emerge which are regarded as important by the couples. The format of interviews needs to be sufficiently flexible to accommodate new directions that may arise out of them. Qualitative research focus on 'unexplored areas' potentially could begin with assumptions that turn out to be 'incorrect'.

My initial assumptions such as the significance of proof and evidence still remained important as issues that emerged out of the interview. However, what did emerge out of the first set of interviews was the importance the Home Office attached to the couples' employability. Therefore, this issue along with policy shifts in the UK towards attracting skilled migrants became an important area of enquiry in my interviews. I tried to keep the

interviews dialogic, in that I talked about the research and the areas I was interested in learning about and asked them for their responses to my project. Were there any issues they wanted to raise? This was very valuable; one couple I spoke to shared their experiences as campaigners in South Africa for the rights of same-sex migrant couples. I learnt much from these dialogues and they provided me with a wider knowledge of their experiences as a same-sex couple in other national contexts. Though, as I have mentioned there were particular questions I had in mind I tried to keep the structure loose and allow couples to bring in areas of their experiences that they felt were important.

3. d. Confidentiality

The topic evokes a number of ethical issues centred on confidentiality and the possible sensitivity of the information I am researching. Though Renzetti and Lee state that almost any topic could be sensitive they identify how some research is particularly 'threatening': one being where it 'intrudes' into the private sphere or some 'deeply personal experience' (1993:6). The aim of the interviews was not to probe uncomfortably into the private details of the couples' lives; it did however touch on personal experiences and the implication of the process on their lives. Such ethical issues that arise from interviews are discussed in the following quote:

> The challenge for the researcher is to engage with respondents in a way that is sensitive to the extent to which they feel comfortable with the topics under discussion and to measure the value and costs of pursing particular lines of enquiry. In such considerations, of course, it is the value and costs to the respondent that must be given priority.'(Heaphy et.al., 1998:465)

Therefore sensitivity and confidentiality is needed with interviews that deal with personal information. Also, this is a legal process and admissions by the couples that are deemed illegal or non-adherence to the rules, raises a number of problems. This could range from an interviewee revealing they worked over hours they are officially allowed or they

provided false information to the Home Office or any seemingly innocuous action that could be viewed suspiciously by the Home Office. The inclusion of such admissions could effect their application or any remaining decision to be made. It also contributes to a wider and damaging discourse about migrants as 'abusers' of the immigration rules (see chapter three for a detailed discussion).

There are possible implications research has on policy: 'Issues of competency and validity are acute given that the dissemination of invalid conclusions might lead to harmful policy decisions' (Sieber, 1993:18). 'Opinion leaders' may create 'sensitivities' in response to research findings expressed via the media, to serve their own 'political purposes'(Sieber, 1993:17). With this in mind, this PhD research needed to be conducted with care, in view of the potential implications in wider public discourses. The aim of this research is to see how couples meet this rule rather than exposing any actions that could be viewed as illegal.

Though it is not possible to eradicate all issues of ethics and power in the interview process, there are a number of steps that can be taken in attempt to address these concerns. Firstly, bearing in mind the sensitive nature of the interviews in that they deal with some aspects of the interviewees' personal lives and legality- confidentiality is key. It is important to maintain that all information is dealt with in confidence by insuring anonymity (changing names, excluding personal information that may reveal their identity). 'Early in the interview you should reassure interviewees about how you will use their material' (Rubin and Rubin, 1995:102), in the case of this research it is important that the interviewees understand that this is a part of my PhD and that it will be solely used for that purpose. Secondly, checking with interviewees what information they may want to exclude or include. This is a process that can take place during the interviews insuring that

any statements made by interviewers 'off the record' are not included in the thesis. Similarly, reclarifying and checking afterwards about the inclusion of information and allowing couples to see final drafts of the way in which their interviews were used. Thirdly, encouraging couples to contact me if they have any questions or queries about the research before and after the interviews have taken place. Finally, remaining reflexive about the process, it is important to consider if the interviews are being conducted in a way that keeps intact issues of confidentiality and sensitivity.

3. e. Preparing the interviews

What has been advantageous about trying to contact same-sex couples to interview, is the existence of LGBT networks and social groups. This is in contrast to the more 'hidden population' of heterosexual cohabiting couples that I had initially hoped to represent in my sample, that are not part of a collective, political social infrastructure like that of same-sex counterparts. Furthermore, until recently, unmarried heterosexual couples were not represented by this rule, unless they had a reason why they cannot legally marry such as awaiting a divorce to finalise. Therefore, the only option remaining was for them to marry and enter as a spouse or come through another immigration route[4]. An attempt was made to contact heterosexual cohabiting couples using this rule via an advert in *The Guardian* which led to only one couple coming forward who eventually married to complete their migration.

The process of gathering the sample of interviewees began by first accessing lesbian and gay networks. 'Snowballing' has been a technique used to 'tap into' gay and lesbian friendship networks (see Weston, 1991; Heaphy, et. al. 1998). In the case of this project, I

[4] The legal 'bar' was removed in April 2003 as a result of the Home Office white paper.

used my own friendship networks and personal knowledge of the lesbian gay community in Leicester to build up a sample. However, though this drew a number of useful interviewees it was clear that a broader search was needed to draw a larger and more diverse sample. Adverts were placed firstly in *Diva* a magazine for gay women and then *Gay Times, which* tends to be aimed at a gay male readership. An advert was also placed on *Gay.com*, which has an immigration page and a message board. The advert in *'Diva'* produced a number of responses and in total 7 female couples were interviewed as result of it. Similarly, a combination of responses to *Gay Times* and the *Gay.com* adverts produced 7 male couples who were interviewed (see appendix I for the table of interviews). In addition, I also interviewed a specialist immigration solicitor whose partner made an application based on their relation, and I also include that interview in my sample.

My own personal experience as a gay woman did give me a knowledge of the various lesbian gay bisexual networks I could tap into in order to contact same-sex couples. It also gave me an empathy with issues around 'coming out' that couples spoke about in their interviews (see chapter five). Several of the couples I spoke to asked me if I was gay when I phoned them about participating in my research. When I said I was many of them said they felt more comfortable about talking to me than a 'straight' person. Therefore, in this sense I share an insider status with these couples. However, it is not possible to homogenize the experiences of such a diverse lesbian and gay bisexual community. There were differences in terms of cultural capital and these couples were fairly affluent professional people. I could be argued I was researching 'up'. In addition there were differences in gender, in terms of the male couples in my sample. Also, I have not undergone the process of immigration and therefore have no experience as a migrant. However, I ultimately had the final editorial power over the interviews. As researcher, it is

my framing and selection that has a bearing on the final outcomes of the interviews. I was very aware of my responsibility, in giving voice to the experiences and as I have stated previously sensitive to issues around confidentiality.

Some interviewees who responded to the adverts, though expressing interest were concerned about participating in the research, particularly those still awaiting a decision on their application. They were worried that participation would jeopardise their application. Such reservations are understandable in view of the importance of their applications and the stress attached to it. In addition, they would be sharing information with someone they did not know. In such cases I was clear in my conversations with them, I was in no way attached to the Home Office and stressed my affiliation with Nottingham Trent University. I also assured them the information was contributing to a PhD thesis, which would not be completed at least for another year. Some of these initial respondents, in the end decided not to go ahead with research as they were still awaiting a decision, which is probably why my sample is made up of interviewees who had successfully completed their application. Others agreed after speaking to me and were assured they would remain anonymous. Therefore I have gained an understanding of how couples have achieved their family reunion, but I have lost the experiences of those who have not been able to achieve this. To address this in a different way I have examined cases that have been rejected by the Home Office and European legal institutions (see chapter four) in order to understand the discourses that exclude couples from completing their family reunion. However, all of the couples that did participate were enthusiastic about participating in this research and felt

that by sharing their experiences they would benefit other couples going through the process[3].

The sample had a balance of female and male couples. In terms of nationality the sample represented a range of third country nationals. Countries included South Africa, America, New Zealand, Canada, the former Yugoslavia, Nigeria and Slovakia. White South African couples, both male and female, comprised a significant amount of the overall sample (for more on this see chapter 5). Figures I obtained from the Home Office (see table in the introduction) show that third country nationals constitute a large part of these making applications and granted admission under this category. The highest numbers were from the 'Americas', 58 of the 175 in total making an application and a further 77 out of 221 who were granted settlement in 2000 (Home Office, 2000). Africa is also a growing national category making zero applications under this rule (out of a total of 11) applications in 1997 but 31 (out of 175) in 2000. It is unclear, from the broad categorisation used by the Home Office in these statistics how much South Africans make up the above amount, but they are heavily represented in my sample. This is due to the way they can enter as patrials, which was the case with the white South African couples in my sample, one partner would enter as patrial and their partner based on their relationship.

The interviews were arranged initially by e-mail and through phone calls. This correspondence allowed me to explain more about the nature of the interviews and the research that I was doing and give them plenty of time to consider whether they wished to participate or not. It is respectful to arrange interviews far in advance to suggest you are assuming that your participants are busy (Rubin and Rubin, 1995: 102). Certainly, my

[3] The relevance of research to respondents lives is commented on by Heaphy et. al., (1998:456) in relation to the 'Families of Choice' project, where respondents felt that their participation made visible lesbian, gay bisexual lives and validated their own experiences.

participants were busy people and arranged the interviews in advance on the dates that were most convenient for them. The interviews took place, with one exception (we met in a public area), in the interviewee's own home. There were of course issues of safety for both me and the participants in the interview process. One way in which I attempted to overcome issues of safety was by talking on the phone to potential interviewers before arranging an interview. In these telephone discussions, we would discuss the venue they wished to be interviewed for example a public place such as a LGB meeting place or their own home. In addition, contact information was exchanged. However, the willingness of interviewees to be agreed to be interviewed was based not only their enthusiasm to contribute on this subject but the building of trust between us.

The duration of the interviews were about one to two hours in length. There were no repeat interviews though in some cases afterwards couples would send me items I might find useful such as copies of letters from their solicitors, as examples of the correspondence their legal representatives had with the Home Office. I asked permission from the couples for the interviews to be recorded and all of them agreed. During and after the interview I made notes as a reminder for transcribing and also as a backup if the tape failed. It is recommended that transcription takes place as quickly as possible after the interview itself (Rubin and Rubin, 1995:128). This is something I tried to do in terms of my own interviews. Once the transcription process was over, I organised the material around the following themes: evidence, legal assistance, resources, and applications inside UK and application outside of the UK. I felt due to the number of interviews conducted, fourteen in total, that it was not necessary for me to use a computer programme, such as NUDIST to code the interviews. Instead I drew up a grid using the categories above and numbered each interview, then organised the interviews in relation to the categories. Therefore, I was

able to differentiate or chart similarities between each couples experiences of their application e.g. those made in the UK, those outside. Within these categories I made a note of the couples national identity and gender, so I could see what bearing that had on their experience. Organising the material around these categories was in order to analyse the discourses used by couples in their applications. What discourses were used to make their case? Do they tie in with the discursive strategies of legal practioners? Also how do the discourses used by couples fit in with the normative discourses that are embedded in the immigration regulations? For example the importance of couples' access to resources, emerged from the interviews. Therefore, class was a growing variable in the ability for couples to realise their migration. Related to that was employment backgrounds and skills, which couples acknowledged had been an important factor behind their successful application. This became an important additional category with which to compare the experiences of individual couples.

Conclusion

This chapter has set out three forms of analysis that constitute my methodology. Each section has set out the aims of that particular methodology and the key questions that accompany them. Also, there has been an outline of key theoretical perspectives: critical discourse analysis, critical legal studies and feminist standpoints relating to qualitative methods that inform these types of analysis. What links all these methods is their ability to examine the dynamics of power between social institutions and practises. This is key to understanding what discursive shifts took place between legislators and those making claims for change. Official discourse analysis of parliamentary debates and legal processes offers one picture of how those shifts took place. The interviews with couples provide an account of those using the rule and what strategies they use to prepare their application.

They also may offer an account of the type of migrant that is making successful claims be it in terms of their class, nationality or their use of legal representation. Therefore, the range of analyses can provide me with a number of perspectives, on the process as a whole, which are revealed in more detail in the following chapters. The next chapter applies a detailed analysis of the official discourse, which charts the journey of the unmarried persons' provision to its present state.

Chapter 3: Official Discourse Analysis

Introduction

Following on from the previous chapter's discussion on methodology, this chapter is an analysis of a range of the discursive strategies that contributed to the unmarried partners' rule. Primarily this is an examination of the official discourse of the legislation itself, as it is set out in immigration policy, and the parliamentary debates that shaped the evolution of this rule. Critical discourse analysis will be applied to these sources. This perspective, with its Foucauldian and Gramscian influences, will provide a useful theoretical framework to examine how power is legitimised and expressed through discourse. In particular, critical discourse analysis concern with institutional settings is relevant to my analysis of Home Office and Parliamentary texts. The analysis of the parliamentary debates will be organised around four categories: 1. actor, 2. topics/themes, 3. argumentation, 4. rhetoric/narrativisation. As the previous chapter sets out these four categories provide useful criteria to identify the types of discourses that emerge out of the parliamentary debates. The analysis will also examine the interplay between solicitors, couples, judges, and activists in terms of the discursive struggles that took place during the formation of the legislation.

The methodology chapter has identified the specifics of official discourse as a 'hegemonic discourse', normative in nature that attempts to evade challenges to its dominance (Burton and Carlen, 1979). The official discourse of immigration policy is the set of instructions that is interpreted and worked with by solicitors, lawyers and migrants. It sets out requirements, criteria that construct categories which hierarchise identities for inclusion, for example white, heterosexual, European, affluent. It is these rules that characterise the 'line' the government takes on immigration. It is firmly embedded in dominant power

relations being a product of institutional discourses of Parliament and the judiciary. The unmarried partners' rule, however, illustrates that official discourse is not always able to evade challenges to its authority and coherence. It is a manifestation of a number of struggles by migrants and their 'representatives' solicitors and lawyers who are placed differentially in relation to the 'official'. Solicitors occupy a number of roles both as working on behalf of couples, but as activists lobbying MPs, attempting to shape the policy through writing and speaking and through the legal practice itself. Solicitors and lawyers often have a role of consultation in relation to policy. For example, Stonewall Immigration is comprised of both legal practitioners and migrant couples, who have a degree of influence on policy making. This analysis will consider to what extent 'counter-hegemonic' discourses have challenged the 'official' discourse and the ways in which these strategies led to the current legislation.

1. Parliamentary Debates

1.a. Foucauldian and Gramscian approaches

This chapter is concerned with analysing the discursive struggles that have characterised the process of the unmarried partners' rule. A Foucauldian and Gramscian approach is particularly useful to the examination of these discursive struggles. Discourse analysis predominant concern is with linguistic properties and it does provide some limited understanding of the way in which language constructs meanings. Applying a Foucauldian and Gramscian approach provides a more nuanced understanding of how subjectivities are differentially implicated in 'institutional' discourses. It also allows some leverage into the paradoxes of these discourses and how these paradoxes have led to a destabilising of their appearance as 'coherent texts'. This is illustrated by the role of legal texts, where lawyers and solicitors have used case law to expose such incoherence.

Epstein et al. (2000) state why a Foucauldian approach is useful to their analysis of the Age of Consent debates in Parliament:

> This is useful especially where analysis is not limited to forms of language or even knowledge merely, but reads discourses as regulative social practices which produce their own forms of 'subjectification' or identity construction' (Epstein et. al. 2000:8).

The above quotation provides a useful basis to pursue the way in which official discourses are productive in the construction of identities and how they provide regulative frameworks, for example, rules and criteria, to social practices. Foucault's work has also directed attention to the role of institutions and the production of 'disciplinary power' which 'trains its subjects' using hierarchical observation and 'normalising judgement.' Thus, individuals become 'cases' to be observed and described (Rabinow, 1986:203). Observation and surveillance is a significant part of immigration legislation: in the case of unmarried partners, it is apparent through the scrutiny and measurement of the 'stability' of their relationships, which also requires proof through the production of numerous pieces of documentation. The bureaucratic nature of this piece of legislation brings to mind Foucault's theory of governmentality. In particular, the 'policing' technology of government:

> In the first instance, this meant that policing was seen to be the integral part of State administration, on a par with the legal system, the Exchequer and the army. However, the police included these other administrative systems within its practice insofar as it concerned itself with everything to do with relationships between human beings and things: property, production and exchange' (Barker, 1998:64).

A Foucauldian analysis is useful in examining the way in which power is produced and reproduced through discourses. The productive nature of discourse is exemplified by Foucault's work on sexuality. Homosexuality was produced through medicalized and pathological discourses. Thus, the 'sodomite', the homosexual, was invented through these specific discourses (Foucault, 1978). The categorization of homosexuality allows it

to be described and examined. The regulation of sexual practices and identities is relevant to the analysis of parliamentary debates. As the debates on specific lesbian, gay, bisexual rights show (Section 28, Age of Consent, discussed later in this chapter), certain 'types' of homosexuality are produced and how they support certain discursive claims. Also, as Foucault's work on sexuality has shown, discourses produce 'counter' or 'reverse' discourses. The production of counter discourses or 'counter' stories may constitute some of the discursive strategies taken up by MPs in the parliamentary debates. Similarly, a Gramscian approach also allows for a degree of resistance, through counter hegemonic challenges. What a Gramscian approach adds to a Foucauldian approach is a particular emphasis on political change. Gramscian approaches can be used in wider contexts, as the following discussion shows it is especially useful for examining political discourses.

A Gramscian approach typified a significant amount of work within the British Cultural Studies tradition during the 1970's and 1980's (especially that of the Centre for Contemporary Cultural Studies at the University of Birmingham). Theorists such as Stuart Hall applied this approach to Thatcherism. Hall (1988) identified the way in which the discourses of Thatcherism circulated 'common-sense' values in order to secure hegemony. Importantly, the work in this period used Gramsci in terms of a 'bottom-up' analysis where hegemony was conceived of as unstable rather than cohesive, a process of struggle over consent (Martin, 1998:125). Hegemony offers a conception of power that attempts to incorporate oppositional stances and promote the appearance of 'consensus'. Thus, the achievement of hegemony is by no means without contestation, allowing the possibility of resistance and change.

Norman Fairclough (1995) discusses the usefulness of hegemony in relation to discourse analysis. He posits the way discourse embodies particular ideological ways of speaking and writing (conventions) in society. Thus: 'Naturalised discourse conventions are most effective mechanism for sustaining and reproducing cultural and ideological dimensions of hegemony' (Fairclough, 1995:94). He develops this argument to link discursive struggle with that of hegemonic struggle:

> I should add that hegemonic struggle includes struggle on the part of dominant forces to preserve or restructure and renew their hegemony in the sphere of discourse, as well as struggle on the part of dominated groups. (Fairclough, 1995:95).

Fairclough's use of hegemony offers the possibility of discursive practices to be 'reproduced, challenged and transformed' (1995:95). Challenges to hegemony can be conceived as struggles over discourse practice. Discursive change is conceived as 'cultural change' that can be achieved by a 'social community' to changing its 'ways of speaking and doing' (Lemke, 1995:31). (This chapter's analysis will be concerned with the struggles over 'official' discourse practices).

Using both Gramsci and Foucault, to examine official discourses provides ways of understanding how dominance operates through these types of texts. These texts are not monolithic but rather are a product of compromise and concession:

> Because the entire Gramscian Foucaldian 'authoritarian populist' approach to political discourse holds that right-wing hegemonies are established through the organisation of consent-rather than coercion or deception-this approach ultimately depends on studies which show the discursive effects of rightwing representations on marginal identity games. (Smith, 1994:228)

When examining parliamentary debates as official discourses, it is important to understand the ways in which speakers are attempting to gain 'consent'. What discursive strategies do the speakers use to win consent and to ward off criticism to their argument? How might they produce a 'populist' discourse? What 'identity' games are mobilised by the speakers

in these debates? These questions provide an understanding of how official discourse attempts to make its claim as discourses of 'authority' and 'dominance'.

1. b. Parliamentary space

As the previous chapter discussed, an analysis of parliamentary debates that surrounded the unmarried partners' rule is vital as 'It is in Parliament that immigration and minority policies are discussed and legitimised, and legislation adopted that vitally influences the daily life of migrants' (Van Dijk, 2000:13). The Parliamentary space is a domain that not only 'produces opinion', but 'At the same time, the cultures of the Houses are continuously reconstituted throughout their public functions' (Epstein et al. 2000:13). In addition, Parliament is also highly attuned to media discourses, therefore in debates, arguments may be espoused with a view to their interpretation and reportage. The process of Parliament has a role in constructing 'sexual/national identities' which can limit or prevent 'formal' and 'symbolic' citizenship'. 'Formal citizenship includes, for example, the right to vote, to marry and to bring a non-national partner into the country as a permanent resident.'(Epstein et al. 2000:14). Parliamentary debates provide an understanding of what discursive strategies were invoked around the formation or removal of a piece of legislation. These debates are marked by the historical, institutional domain in which they take place, Parliament as a particular site of power: 'As a body of the State (but not the State entire), Parliament is an ideological as well as legislative apparatus.'(Epstein et.al. 2000:13). The debates themselves are governed by the tradition of the House, rituals, rules, and conduct, particular ways of speaking and writing that form discursive space. For example, politicians address each other in distinct ways such as the 'right honourable Gentlemen', or refer to the member via their constituency and the addressing of the speaker 'Mister/madam speaker' before a statement.

> Together these written and unwritten rules produce a highly performative and exclusionary speech community whose coinages include posturing, innuendo, euphemism, artful and stinging asides, verbal and non-verbal heckling and stylised harassment of various kinds (Epstein et al. 2000:11).

The debates are formed by the specific institutional space and distinctive ways in which discourse is produced. It is a masculinist, heterosexist space (see Epstein et al. 2000) which produces highly normative discourses. I am predominantly examining House of Commons debates though there is also reference to questions raised in the House of Lords. The two 'Houses' represent two distinct chambers of decision making; the House of Lords historically situated in peerage/nobility and the House of Commons a democratically elected legislature. There have been a number of moves to reform the appointment process of the Lords, too detailed to go into in this chapter. However, in this chapter I am predominantly referring to the House of Commons as the primary site for legislative processes.

Parliamentary debates do not possess life just as oral exchanges but also in the written form, reproduced in the media and recorded in Hansard. Thus, statements that arise out of debates or as a result of debates are produced in the context of their role as the official recorded view, or the decision of the government. Thus; 'In as much as MPs literally speak "for the record" and are aware of it and orient towards such a record, it would theoretically become part of the context.'(Van Dijk, 2000:52). 'Speaking on the record' is normative, with MPs constrained by the presence of a public record and the possibility it will be interpreted (or differently interpreted) beyond the domain of Westminster. Fairclough comments that 'public bodies' such as MPs 'produce public information', in a 'style' that befits an image they want to 'construct for themselves' (1995:75). Public image and style are increasingly an important part of political discourse generally. Official

discourse attempts to construct a coherent, authoritative discourse. A discourse that tries to close off misinterpretation yet as this chapter illustrates is always prone to slippages and contradictions. In terms of the official discourse of the Home Office, repeated words- 'firmness', 'fairness' and 'tolerance' spring to mind, with regards to immigration policy (this will illustrated later).

1. c. Categories used in the analysis of the parliamentary debates

Wodak and Van Dijk (2000) identify a number of key categories in their study of racist discourse in European Union parliamentary debates[1]. For this chapter, which is mainly concerned with sexualised discourse, I have selected the categories that are relevant to this analysis as well as providing some additional categories (see chapter two for further details). To summarise they are actors, topics/themes, argumentation and rhetoric/narrativisation. These categories provide a starting point to structure my analysis round the official discourse of the unmarried partners' legislation. The following section will describe each category.

The actor's category is concerned with the participants of the official discourse. What actors are present; i.e. MPs in a parliamentary debate, what role and representations are they making? In addition, what actors are present in a text, be it a legislative bill, set of rules or report, e.g. Home Office ministers, immigration officers. It can also extend to solicitors, lawyers, judges and same-sex migrant couples. Also, what effect these actors have on official discourse: 'For instance, whether such participants are primarily seen as responsible agents, or rather as patients (victims) of specific acts, also tells us something about the ways in which speakers represent ethnic acts in their mental models' (Wodak and

[1] For a full description of the six categories (and those that are seen as particular useful), that are selected see Tuen. Van Dijk's chapter (3) in Wodak and Dijk (2000) pp. 57-78.

Van Dijk 2000:64). Specifically, there needs to be consideration of how these parliamentary debates and the voices of legal activists and same-sex couples will be represented or mediated by MPs, how are they given voice? How are same-sex migrant couples used 'evidentially'- as a source of information (Wodak and Van Dijk, 2000:65) to support claims around legislation? For example they may be used as 'stories' or narratives (see subsequent section) to argue for positive legislation e.g. 'a couple who have been together for X years', or negatively as a couple who made a 'false' immigration claim. Also, to pick up on the above quote, how agency and 'victim' discourses may be produced. For example, are migrants 'victims' of bad legislation or 'abusers' of the system?

MPs in parliamentary debates are important as they represent a number of 'actor' roles (Wodak and Van Dijk, 2000:51). They represent their constituency, their party, the Left, the Right (or even shades of the 'centre Left', 'moderate Right'). Also their role as cabinet minister or a backbencher, they could be supporting the government or opposing it, they could be 'speakers or listeners' (Wodak and Van Dijk, 2000:51). They could also represent tensions within political parties, such as that of 'old' Labour and 'new' Labour (Fairclough, 2000). Positionalities around gender, sexuality, ethnicity and class will also contribute to the nature of the role of MPs within debates. MPs have a role as 'symbolic elites' with 'privileged access' to a range of political discourse (Wodak and Van Dijk, 2000:17). As a result of this, MPs have a significant role in 'controlling public definitions' relating to 'social issues' (Wodak and Van Dijk, 200:17) such as immigration and 'gay rights'. However, as already stated, the multiple roles MPs take, does offer the possibility for definitions to change. MPs are 'lobbyable' representatives of their constituents and, therefore, may take up issues that affect their constituents or causes presented to them via pressure groups such as Stonewall Immigration.

'Topics informally define the main subjects, themes or upshot of text and talk.' (Van Dijk, 2000:59). Therefore, when examining parliamentary debates how are these themes, topics presented? Main topics and themes are those that are constant and repeated in parliamentary debates. They are frequent tropes that arise out of parliamentary debate. The way themes and topics are presented offer a biased way of 'defining the situation' (Van Dijk, 2000:60). For example, the way migrants are seen as a 'problem' may be one prevalent theme that 'slants' the way the issue is debated. The next section will discuss how a common topic/theme is related to for example 'bogus' versus 'genuine' asylum seekers. This links with common discursive themes that perceive migrants as 'abusing' the system, though, there may also be shifts in the way politicians define these issues: for example, there have been a recent shifts in UK immigration policy which recognise skilled migrants. In relation to same-sex migrant couples, a common theme has been marriage versus unmarried relationships. Unmarried relationships are conceived as being less stable, less committed than those with a marriage certificate. The examination of themes and topics in parliamentary debates provides an understanding of the way in which dominant constructions of social identities (migrants, sexual identities) continue to be circulated. Possible counter-hegemonic discourses may attempt to shift the topic/themes to challenge such dominant constructions.

Key to an analysis of parliamentary debates is the way MPs argue and defend their point of view on specific issues such as immigration policy. What discursive strategies do they deploy? One important component of the parliamentary process is the use of questions and answers both oral and written. Such questions are formulated by MPs in an argumentative way; a question will reveal the questioner's view on the subject. They may contain

'presuppositions', the validity of a question, 'assertions' about others, and 'attributions' about the person who is going to respond and 'propositions' which underline the questions and possible answers to it (Wilson, 1990:137-138). They may also include rhetorical questions where a desired answer is 'cued up'. Richardson (1985:28) provides some salient examples of this with regards to Mrs Thatcher's use of rhetorical questions in nuclear arms debates. Speakers may refer to a seemingly inclusive 'I' and we' in their statements (Wilson, 1990:80) [2]. The construction of a 'collective identity' can be seen more generally in statements or announcements. Statements are made to represent the whole house or comments made in debates that speak for the 'general public'. The turn taking process of the parliamentary process, which typically has a statement or question being made to be followed by a response or counter statement, sets up a dualistic argumentative encounter. The next speaker may ridicule the previous speaker's statement, in order to 'liquidate' their argument and set up their own counter-statement (Moosmüller, 1989:169). The following paragraph provides further examples of how parliamentary debates are constructed to legitimise certain arguments.

Rhetoric encompasses the use of '...metaphor, simile, irony, hyperbole, euphemism litotes, etc...' which is particularly relevant to the study of immigration debates with the repetition of 'threat-metaphors' such as 'flood' and 'plague' being used to describe refugees (Van Dijk, 2000:75). The repetition of these hyperbolic metaphors is one way in which discourse attempts to frame migrants as a 'problem'. Euphemism may be used to defend racist discourses, an example being that Britain is not racist but there is some 'resentment' towards immigrants (Van Dijk, 2000:75). Similarly, the repeated espousal of 'tolerance' or Britain as a 'tolerant' country is a rhetorical disclaimer used by public figures to defend

[2] An analysis of the 'I' and 'we' is applied to the presidential speeches in the U.S by Peter Moss in Chilton, P. (1985) *Language and the Nuclear Arms Debate: Nukespeak Today,* London: Frances Pinter.

and distance themselves from being seen as racist. The mobilisation of disclaimers, often as precursors to a 'but' statement: 'Not all refugees abuse the system but…' are often used to justify and legitimise a point of view (Van Dijk, 2000:62). They also attempt to rid discourse of any 'extreme' view, be it racism or homophobia. As Smith argues 'If a political project is to obtain a hegemonic status, it must lose every trace of extremism.' (Smith, 1994:19). Thus, hegemonic discourse attempts to 'recode' and 'centre' itself, to avoid being seen as 'extreme' (Smith, 1994:19).

An important component of debates is the deployment of 'narratives' or 'stories'[3]. Epstein et al. (2000:10) examine the relationship between narrative and discourse: 'One key way in which discourses inform narratives is by selecting, privileging or making available some themes, while concealing or silencing others'. Thus, discourses concerned with migrants may provide ample narratives about 'false claims,' yet may remain silent on narratives about the inadequacy of the system. Narratives involve 'characters', the examples given in the case of the Age of Consent debates being the 'paedophile' or the 'victim' of abuse (Epstein et al., 2000:9). They also offer 'different futures' and 'rhetorically' invoke them in counter arguments (Epstein et al., 2000:9). Thus, they supply 'predictions' of the consequences of a piece of policy change or legislation. For example, a negative narrativisation would be a change in immigration could result in 'floods' of migrants, drain on resources. A key discursive strategy is the mobilisation and privileging of certain narratives and stories. These narratives shape discourses and attempt to anchor and validate argument. They are crucial to understanding how certain topics are spoken about in a particular way.

[3] Epstein et al. (2000) make reference to Ken Plummer's notion of narratives and the telling of 'sexual stories' this is described in chapter one of this thesis in relation to sexual citizenship.

2. Characteristics of UK immigration discourses

2. a. Asylum

Wodak and Van Dijk (2000) study of European parliamentary debates identified how UK debates tended to focus on asylum policies. 'In Great Britain we were able to show that the debate was centred on the question of who is 'poor, tortured, or maltreated' enough to be granted asylum!' (2000:365). During this debate a dichotomy was constructed: 'bogus' versus 'genuine' refugees. Thus, 'An Asylum-seeker either possesses that formal identity or is bogus' (Tuitt, 1995:47). There are wider categories, such as the marking of countries from which to accept refugees. Also, gendered and sexualised categories of harm produced by asylum policies. However, a major discourse in the debates around migrants, more specifically asylum seekers that have dominated these debates, has been about 'abuse' of the system and the possibility of 'false' claims being made. One way this is illustrated is by MPs presenting stories (often quoted from newspapers) about a particular case involving an asylum seeker who has apparently abused the system in some way. These accounts serve to establish a generalised notion of all asylum seekers as abusers of the system (Van Dijk, 2000:61). Due to abuse of the system, 'genuine' asylum seekers suffer. Defenders of the system argue that they need to root out false claims, which are preventing 'genuine' refugees and asylum seekers. Much discourse about immigration then is concerned with 'proof'. This is both in debates but also in the texts of the rules themselves, which will be later illustrated with regards to the unmarried partners' rule. An asylum seeker needs to fulfil an official definition and criteria, in order to be granted that status. Debate often centres on how to measure and regulate identities such as the 'asylum seeker'.

2.b. Immigration and marriage

Immigration debates concerned with family reunion policy have been centred on contestations about proof and measurement of relationships. Such debates give rise to the notion of the possibility of 'false claims' being made through this category. Marriage, which is the dominant way in which family reunion policy is understood in the UK (and wider EU), has been seen as a potential route of abuse. Discourses have been concerned with 'sham' marriages or 'marriages of convenience'. This is encapsulated by the introduction of the primary purpose rule in 1980 by the Conservative Government[4]. 'The rule stipulated that one cannot use marriage in order to gain admission, even where the marriage is accepted as genuine' (Kofman et al., 2000: 67). As mentioned in chapter one, the primary purpose rule was underpinned by racist assumptions and as a result it was frequently used to 'test' that marriages between Asian men and women were not entered into for immigration purposes. The legislation was relaxed in 1990 after ECJ challenges and finally abolished in 1997 by the Labour Government (Kofman et al., 2000:67). This emphasis on 'testing' marriages, particularly 'arranged marriages' has returned in Labour discourse. The Home Office White Paper: 'Secure Borders, Safe Haven: Integration with Diversity in Modern Britain' (2002) proposed an increase in the probationary period (period before being granted permanent residency) from one year to two for married couples, in order to satisfy immigration of the validity of the marriage.

The parliamentary debates that surrounded the primary purpose rule illustrate the way in which immigration policy generally was often presented as 'firm but fair' and the government had to remain vigilant against 'marriages of convenience'. Charles Wardle,

[4] For more detailed commentary on this rule see Bhabba and Shutter (1994).

Home Office minister in the then Conservative government responds to the impact of EC law on the Primary Purpose rule:

> We recognise that EC law does not enable us to apply all the provisions of the immigration rules, such as the primary purpose test, in EEA marriage cases, but we do not accept that a party to a marriage of convenience has any right to benefit from EC law relating to the admission and residence of family members we intend to maintain a strong line against bogus marriage and will ensure that non-EEA nationals are not able to use marriages of convenience as a way of obtaining residence in the United Kingdom. (HC Deb (1993-1994) 243 col. 68).

Charles Wardle is emphasising how the government's policy remains tough and will tackle 'bogus' marriages. How a bogus marriage is defined and can be recognised is not elucidated on. Graham Allen, Labour MP, in the same debate, challenges this point: 'Will the Minister further define the reference to "a marriage of convenience" in paragraph 2(2)? Who is to decide what is a marriage of convenience?' (HC Deb (1993-1994) 243 col. 72). Proof that a marriage is 'genuine' versus 'bogus' is based on a '...romantically idealised love-marriage as a yardstick of legality' (Lutz, 1997:104). It requires surveillance and checking to ensue 'romantic' rituals of courtship before marriage. Couples that do not appear to comply with this construction of a marriage are thus deemed 'bogus'.

2.c. 'Firm but fair': immigration rhetoric

The removal of the primary purpose rule encouraged criticism from the Conservatives, who were now in opposition, that immigration provision was lax and open to abuse. For example, a Conservative MP, Hawkins argues that the abolition of the primary purpose rule had led to 'problems':

> Is it not quite clear that the previous Government were absolutely right to have a sensible, firm and fair policy? The minute the new Government took office they started messing about and caused enormous strains on the system through illegal, bogus asylum seekers trying to come to this country. (HC Deb (1997-1998) 299 col.566)

This statement conflates asylum policy with that related to family reunion. It also attempts to associate the previous Conservative government with a 'firm and fair' policy and the MP produces the 'bogus' asylum seeker as a consequence of policy changes. Mike O'Brien, Home Office minister for immigration, in response states, it was a 'fair' change, part of an electoral promise to ensure 'firm and fair' controls on immigration and asylum (HC Deb (1997-1998) 299 col.566). The Labour government continued the oft repeated phrase 'firm and fair' immigration, particularly during debates and questions about immigration policy changes. Mike O' Brien in a statement to the House of Commons on immigration policy begins: 'We made it clear in our manifesto that Britain like every country, must have a firm control over immigration (HC Deb (1997-1998) 313 col.49). He adds policy intends to '...take firm action against those profiting from abuse of the immigration law...'(HC Deb (1997-1998) 313 col.49). Discourse under the New Labour administration therefore still retains the emphasis on immigration policy as being firm and fair (as opposed to being seen as soft or an easy touch), and always tough on 'abusers' of the system.

2. d. <u>The role of immigration NGOs</u>

The discursive themes that arise out of parliamentary debates regarding immigration have not remained unchallenged. The abolition of the primary purpose rule has been part of a concerted effort by activists, migrants and representatives of migrants arguing for its removal. Groups such as the Joint Council for the Welfare of Immigrants (JCWI), Immigration Lawyers Practitioners Association (ILPA), are made up of legal practitioners, migrants, volunteers and academics writing on migration issues. These organisations participate both in providing information on immigration policy but also lobbying policy makers. JCWI was involved in lobbying Labour prior to them being elected in 1997 on a

range of immigration issues in an attempt to influence positive change for migrants. Many lawyers and solicitors are affiliated with such organisations and involved both in challenging practice through case law and other forms of activism. Immigration firms such as Baker McKenzie, Bindman and partners, Cameron McKenna and Kingsley Napley are involved in challenging legal practice. The way in which lawyers used case law and lobbying to change legal practice will be examined later on with regards to the unmarried partners' provision. At this point, it's important to state that JCWI and ILPA (along with many other voluntary organisations such as Southhall Black Sisters) have been very active in challenging official discourses about migrants and asylum seekers. In particular, they have been keen to counter the negative discourses around 'bogus' asylum seekers.

The Official discourse has been challenged both inside and outside parliament. The difficulty, however, is in determining to what extent those attempting to influence legal practice in favour of migrants become subsumed into the official discourse. To what extent do they either become co-opted into structures of power or end up taking on processing and informational role due to inadequate policy? The answer to this is by no means clear-cut. JCWI for example has been publishing and campaigning on a number of issues relating to government immigration policy but have also found themselves becoming part of it. Is this necessarily a bad thing? JCWI consider such issues in a bulletin article entitled 'Supping with the Devil', which debates working with the Labour government. It states that when the Conservatives were in government: 'our position was an easy one. Any new policy was opposed'. It continues 'We were in opposition, and there was no need to question our relationship with government.'(JCWI, 1998-1999). However, the article adds 'As we are pulled by contract compliance and quality measures to be more and more like business, so we are pushed by co-option to the governments

agenda to act increasingly like the public bureaucracies' (JCWI, 1998-1999). The article raises the difficulties faced by organisation such as JCWI who may recognise some positive moves by the Labour government but are also wary of doing '...their dirty work for them' (JCWI, 1998-1999). At this juncture it is useful to recall Davina Cooper's (1995) notion of multiple boundaries, multiple terrains of the state where boundary and agency can be located[5]. Cooper argues that we should question what is meant by resistance, whether it is a response to domination or an oppositional force, because if we do, the outcomes are never 'clear-cut or fixed' (Cooper, 1995:128). Does participation within official discourses mean co-option? Such ambiguities and degrees of agency and sites of resistance are more complex than they seem.

2. e. Parliamentary discourses on sexuality

The debates that surrounded the Age of Consent that are examined by Epstein et al. (2000) represent the complexities of analysing discursive shifts in terms of 'resistance'. The Age of Consent debates that took place during the first two years of the Labour administration are contextulized with a description of election night, which saw the fall of Thatcherite and Portillo and the image of the Blair family outside number 10:

> The episode recounted above encapsulate a double movement: on the one hand, a promise of substantive shifts in the hegemony of conservative moral traditionalism, on the other, the danger of recuperation, a closure around a 'modernized' version of very familial and familiar domestic ideologies' (Epstein et al., 2000: 6).

The analysis of these debates uncovers the way in which old Conservative narratives around the family, sexual morality, sexual identities, may remain 'residual discursive elements' and be recuperated into a new 'hegemony' (Epstein et al., 2000:24). These discourses became reconfigured, and reworked. The 'Age of Consent' debates saw the

[5] This was summarised briefly in chapter one of the thesis, in the section entitled 'The State and the Family'.

Labour government mindful of 'electoral opinion' (along with the reaction of the tabloid press) and the pressure to satisfy 'liberalising demands' (Epstein et al., 2000:24).

To return to an earlier point made by Smith (1994) in this chapter, that in order to gain political hegemony, the political party must distance itself from the perception of 'extremism'. Smith illustrates this in relation to the Section 28 debates, where those supporting the legislation advanced a dichotomy between 'good' closeted homosexual versus the dangerous 'queer' who 'flaunts' their sexuality (Smith, 1994: 236). Therefore, the Conservative MPs, arguing for the legislation, claimed they were tolerant of the 'good' homosexual and that this measure was to curb the activities of the 'bad militant' queer. This discursive strategy attempted to present Section 28 not as a piece of 'extreme' legislation, but one that prevents 'extremists' or militant gays from 'promoting' their ideals. The Age of Consent 'stories' saw the invocation of the good/bad activist binary by MPs (Epstein et al., 2000:19). Conservative MP Laing, in favour of equalisation during the Age of Consent debates, is quoted as making a distinction between respect for 'reasoned' and 'measured' groups such as Stonewall and 'militant' and 'publicity-seeking' groups such as 'OutRage!'(Laing quoted in Epstein et al., 2000:19). Though these two groups may have different approaches (for example OutRage as a direct action group) they both share an aim to challenge homophobic legislation. The distinction between a 'good' gay, whose sexuality remains invisible, versus that of 'bad' gays who render themselves visible, relates to a hegemony that wishes to 'silence' and 'privatise' non-heterosexual identities. It also wants to construct those using 'radical' discourses to challenge homophobia as 'extremists'.

'New' Labour's approach to sexual rights has been marked by a sensitivity to old discourses during the 1980s whilst Margaret Thatcher was in power. Conservatives attempted to undermine Labour-run councils most notably the Greater London Council (GLC), branding its anti-racist and anti-homophobic initiatives as the product of 'loony lefties' within the council. It is argued that Section 28 was introduced to prevent councils and other local authorities from supporting lesbian and gay initiatives (Stacey, 1991b). This was also coupled with a wave of renewed homophobia both from the government and popular press during the AIDS crisis. There are two points that can be made about the Section 28 debates during that period. Firstly, it is argued that Section 28 debates acknowledged that sexuality is not biologically fixed, 'it can be promoted'. It also encouraged lesbian and gay activism and therefore greater visibility in the political and cultural landscape[6] (Stacey, 1991b:302). These were outcomes that were not intended or desired by those supporting the legislation. Secondly, the association of Labour through the GLC as the 'loony left' with regards to its treatment of gay and lesbian politics has resulted in a tentative approach to such matters. More specifically this involves a fear of upsetting the popular press elements of which still remain hostile to pro-gay policies. Labour's strategy in government is to avoid the taint of 'loony 'leftism' and 'pandering' to the gay lobby.

The Section 28 debates (the proposed repeal by Labour) that took place in April 2000, provide more recent examples of how the 'old' discourses continue to reappear in the

[6] Anna Marie Smith (1994) provides a full commentary on the paradoxical nature of these debates. In particular, MPs opposing the legislation often adopted essentialist notions of sexual identities arguing that gay and lesbian identities could not be 'promoted', as they were 'born gay'. Davina Cooper and Didi Herman (1995), in their account of parliamentary debates surrounding both section 28 and legislation concerned with artificial insemination, note how such discourses produce contradictory and conflicting results for those defending and attacking the legislation.

debates regarding non-heterosexual identities. Conservative MP, Mr Robathan arguing for the section to stay argues:

> I do not think that homosexuality is an equivalent lifestyle, but I am not intolerant of homosexuals. What people do in the privacy of their own bedrooms is largely up to them'. He goes on to criticise the attention this matter is receiving 'I believe that this is because it is driven by the single-issue aggressive campaigning homosexual lobby' (HC Deb (1999-2000) 348 col. 247).

The Conservative MPs avowal that he is not intolerant to homosexuals, the privatisation of sexual identity to 'bedrooms' the identification of the 'aggressive' gay lobby, illustrate the way old discourses reappear. Shaun Woodward MP (who left his position on the Conservative front bench as they were in favour of keeping the section and defected to Labour) responds to Robathan and criticism in general that the removal of the section will undermine family values. He makes this comment after reading a letter from a mother with a gay son:

> Do we listen or do we ignore her, her son and their family? If we ignore them, what does that say about our so-called family values? After all, families are not just about structures. They are about relationships and they are about love (HC Deb (1999-2000) 348 col. 249).

Family values were a frequent discourse that was mobilised by the Conservatives and is reworked to include a young gay man. Woodward, describes families as about relationships, love not structures; it is leaving intact the importance of 'family values' but with a different emphasis and linking it with the government's ideals.

Before embarking on the next section, it is useful to summarise the cluster of discourses that have taken place during parliamentary debates that have been concerned with immigration and sexuality. With regards to immigration they have been concerned with 'bogus/genuine' asylum seekers. This has seeped into immigration policy that is not directly related to asylum such as family reunion policy, with the emphasis on identifying 'bogus' or 'sham' marriages. Governments dealing with immigration continue to assert

the 'firm' but 'fair' rhetoric to justify stringent immigration policies. Changes that overturn draconian measures (such as the abolition of the primary purpose rule) are defended in a discourse that reasserts the commitment to a 'firm' immigration policy. Immigration discourses represent the recurrence of disclaimers about 'tolerance' to distance them from appearing racist. This is a similar discursive device present in the debates regarding sexuality, where anti-gay legislation is defended by MPs who are apparently not homophobic. Another common discursive strategy is the construction of good/versus bad homosexual. The sensitivity that Labour carries with it over 'gay rights' is a legacy from days in opposition. Therefore, there is a turn towards 'moderate' discourses, to retreat from being seen as adopting an 'extremist' position. However, the framing of issues against a backdrop of family values seems to haunt those around sexual identities. It is these strands of discourse that provide the context to an examination of the unmarried partners' rule.

3. Evolution of the unmarried partners' rule

3. a. Pre-1997 concession

The current rule has evolved out of an incoherent and contradictory approach by those formulating the immigration policy that deals with unmarried persons. Before I consider the existing rule in more detail, I shall just briefly chart the shifts in UK immigration policy in this area over the last decade. The current rule has resulted from a continuing struggle, namely by gay and lesbian couples, who wished to settle in the UK, but could not to do so through the family reunion route. The historical trajectory of this policy is marked by both racist and sexist discourses, as Steve Cohen explains:

> Following the 1962 Commonwealth Immigrants Act the rules allowed a man to be joined by a common-law woman partner. The 1973 rules, echoing the colonial white man's imperial prerogative to claim a black lover of choice, required examination of

> 'any local custom or tradition tending to establish the permanence of the association' (2001:107).

Therefore until 1985 there was an immigration rule (HC169 para49), which allowed the unmarried female partner of a British man to be granted leave to enter or remain in the UK with his British partner (Gryk, 1998). Wesley Gryk remarks:

> No doubt this rule represented something of a vestige of the British imperial tradition whereby British Empire builders felt it their privilege to bring their non-British mistresses back with them from the far-flung corners of the empire (1998:3)

Due to the sex discriminatory nature of the rule, it was replaced by a 'concession' outside the rules on the 26th August 1985 (Gryk, 1998:3). '...A "concession" in the context of British immigration law can be best defined as an established practice, often in writing, which is sufficiently detailed, well known and consistently applied as to have a certain predictability' (Gryk, 1998:3). A concession is also considered to be 'outside' the main body of formal rules and is therefore more discretionary. Immigration officers were given instructions on the 8 November 1985 to allow 'common law husbands and wives/mistresses' who are already settled in the UK, to make an application based on their heterosexual relationship 'outside marriage' (Gryk, 1998:3). According to Cohen (2001:108), these instructions were leaked to the October 1986 issue of the *Immigration Law and Practice* journal. The requirements stipulated that couples had to show they had been living together in a stable relationship and intended to continue in this way. Interestingly, Gryk notes there was no time period set for this and as a specialist lawyer in this area, he successfully represented a couple who had been together for six weeks (1998:5). Furthermore, unlike the current rule it stated: 'the fact that a couple simply choose not to marry even though they are free to do so, is not in itself a conclusive reason for refusing leave to enter although more often discretion will be excised on the basis that one party is (temporarily) not free to marry' (as quoted by Gryk, 1998:5). The concession,

already stated, was for unmarried heterosexual couples and did not apply to same-sex couples.

Stonewall Immigration was set up in 1993 as a result of a number of moves by gay and lesbian couples attempting to bring partners' into the UK. JCWI remark that conversations between the Home Office and themselves revealed that same-sex partners' were less likely to have discretion exercised in their favour than for their heterosexual common law equivalents (JCWI, 1997:32). However same-sex couples began to argue their cases, indeed a high profile case involving a Swedish man and British partner (Wierdestdt V Secretary of State for the Home Department [1982] ImmAR 186) unsuccessfully challenged the government in the High Court (Gryk, 1998). The couple eventually won their appeal and Stonewall Immigration arranged an "adjournment debate" which resulted in the following comments by Charles Wardle (then Home Office minister) on 4 May 1994, 'discretion will not normally be exercised in an applicant's favour unless compelling compassionate circumstances exist' (cited in Gryk, 1998:8). These 'circumstances' included those related to the health of the partner and the longevity of the relationship (JCWI 1997) and were often cited by couples where one partner was HIV positive.

As both Gryk (1998) and Rieder (1992) argue it is as a result of the difficulties faced in this area that some same-sex couples have to resort to criminalising themselves through 'marriages of convenience'. Four couples did however attempt to make a claim based on their relationship and contacted Stonewall Immigration. Initially these cases were refused and couples entered the complex process of immigration appeals. If the Home Office refuses an application, applicants can take their appeal to the adjudicator (lowest immigration Judge), immigration appeal tribunal, court of appeal, House of Lords and

European Court at Strasbourg. If a decision is taken to deport, there is a second set of appeals (since 2 October 2000 these second set of appeals were removed, though there is a new appeal under the Human Rights Act). Lawyers and couples noted that these appeal processes were long and could allow legal professionals to construct arguments to bolster their clients' cases.

Eventually, more appeals began to be won in 1994: (Lizarzaburu-Montani [10848] and Livingstone [10964]) where the Appeal tribunal stated that the couples had a case that was parallel to married couples (Gryk, 1998 and JCWI, 1997). Couples were winning appeals, and as more appeals were won, lawyers could cite them in their own arguments. A momentum was being generated that resulted in a degree of success with the appeals process. Many of these appeals saw couples arguing that their relationships were like 'marriage' and they stressed the 'permanence' of them. JCWI (1997:31) includes an example of this involving the Australian partner of a British man, *Webb* (5387) who successfully won his appeal against deportation. His appeal was also aided by the fact he had a 'responsible job' and supported the partner's widowed mother (JCWI, 1997:31).

The examples above show, that the lack of recognition in formal immigration policy did not prevent couples eventually coming through and successfully entering based on their unmarried relationship. It is also interesting that an outcome of the slow bureaucratic process of appeals proved beneficial for lawyers constructing arguments for their appeal claims. With the support of Stonewall Immigration, lawyers who were able to use the appeal process to their advantage and with the couple's determination, cases were being won. This is despite the removal of the concession during a parliamentary debate in 1996, which is analysed below.

3. b. Analysis of 1996 debate

Stonewall Immigration on the 22 February 1996 sponsored an amendment to the Asylum and Immigration Bill. They were arguing for the insertion of 'inter-dependent' partners' in the existing concession which would put same-sex couples on the same par as unmarried heterosexual couples. The 1996 debate remains the only major debate to take place about the situation of unmarried couples in immigration. It reveals the discursive strategies used by those advocating the recognition of same-sex couples and those that were mobilised to deny those rights. Ironically this amendment led to the removal of the concession, which meant both same-sex and heterosexual couples were not formally represented in immigration policy.

A number of Labour MPs argued the amendment on behalf of Stonewall Immigration. Mr Gerrard, Labour MP begins the debate citing statistics (numbers/statistics being a perennial favourite in immigration debates). He argues that out of 400 unmarried heterosexual couples who used the concession 'a small' number of 60 applications was made by gay and lesbian couples, which were 'routinely refused' (HC Deb (1995-1996) 272 col. 533). He goes on to argue: 'In those cases, the average length of the relationship was approximately five years and, therefore, significant and of some length.' (HC Deb (1995-1996) 272 col. 533). The strategy used here by Mr Gerrard is to stress the small number of couples making an application and that they have lengthy relationships. He continues in this vein:

> The arguments for the amendments are fairly straightforward, and include the effects of the present policy on what are, by any standards, stable long-standing and interdependent relationships between people who have every intention of staying together (HC Deb (1995-1996) 272 col.534).

Mr Gerrard then provides a narrative to support his argument. This involves a 34-year-old man called Mark, who earns a 'good salary'. His tale is thus recounted:

> In 1991, he met a 37-year-old Brazilian called Paulo who was completing his PhD in London. They lived together from 1992 and, at the time, Paulo had a work permit. When the work permit ran out, he applied to stay on the basis of the relationship, but was refused. In similar circumstances, an application by a heterosexual couple would almost certainly have been accepted. The couple had been together for four years and had a stable, interdependent relationship. Paulo is now back in Brazil. (HC Deb (1995-1996) 272 col.534).

This story reveals a number of discursive themes taking shape. Firstly, the emphasis on long-standing, stable relationships. Secondly, the fact that Mark had a well paid job and his partner was studying for a PhD, presenting the couple as respectable, skilled, educated and productive and therefore not a potential 'drain' on the system. Mr Gerrard goes onto argue that other countries recognise unmarried relationships for immigration purposes such as Australia, New Zealand, Canada as well as other European countries. The MP then describes what is meant by the term interdependent partner: 'a person in a genuine and continuing relationship interdependency with one other person which involves them together and a mutual commitment to a shared life' (HC Deb (1995-1996) 272 col.534). Mr Gerrard begins to end his argument on this amendment by stating that: 'In today's world, we should recognise social realities. Many couples around the world are not formally married but have a stable, sound and loving relationship-which the law of this country and others should recognise' (HC Deb (1995-1996) 272 col. 536). He adds the 'intention' is to allow 'genuinely interdependent couples' to be treated equally. Mr Gerrard's argument retains normative discursive elements. The emphasis on 'genuine' couples and 'stable' relationships. However, his discourse is attempting to oppose perceptions of unmarried couples as less committed and thus less stable than married couples and after all they constitute a small number of cases.

Timothy Kirkhope Home Office minister gives the following response. Firstly he states the amendments would result in 'common-law and homosexual relationships' being accorded the same 'status' as married couples. He follows this statement with:

> The only objective test for the strength of a relationship in an immigration context is marriage. The concept of an interdependent partner is vague and ill defined. These amendments would allow any person to claim that he or she was involved in a genuine and lasting relationship and consequently qualified for leave to remain in the United Kingdom without making the commitment to the relationship that is implicit in marriage (HC Deb (1995-1996) 272 col.538).

He adds the amendment would cause 'difficulties of interpretation and more 'contested cases'. The first thing to note about the above statement is an interesting discursive shift. As previously discussed debates about marriage have often invoked a fear of 'bogus' and 'sham' marriages. The above statement reveals a discursive 'side-step' where marriage in this context becomes 'objective' and absolute. It appears to be unmarked by the possibility of 'abuse' and becomes a watertight way of testing the commitment of a couple. I am not arguing for a counter discourse, that pursues the notion that married migrant relationships are a 'sham'. Rather, I am commenting on the contradictory way dominant discourses shift in terms of the legitimacy (or not) of un/married relationships to suit particular arguments. In this context any relationship outside marriage becomes in Kirkhope's view open to question and 'ill-defined'.

Kirkhope's argument continues with the appearance of statistics and numbers. He states the numbers of foreign nationals making an application based on their common-law relationship has 'increased' from 'about 400 in 1991' to 'about 900 now' (HC Deb (1995-1996) 272 col.539). Note there is no distinction between same-sex and heterosexual applications and also that the number apparently covers 5 years, which is not much of an increase. That statistic then justifies the 'strict' enforcement of the immigration rules-

resulting in the removal of the concession. Kirkhope's argument leads to the appearance of particular cases. In these cases, they involve the apparent abuse of the concession 'An applicant who was admitted as a working holidaymaker sought leave to remain as a common-law spouse' (HC Deb (1995-1996) 272 col.539). 'Checks' revealed the applicant was not in a relationship but merely 'sharing a house' with the British citizen. This is followed by case number two, a 'visitor' wishing to remain as a common-law spouse, where 'evidence' found that the applicant 'intended a prolonged' stay to 'earn sufficient money to marry in her 'own country'. These dubious vignettes that Kirkhope alludes to are no doubt produced to stand for the potential abuse by all unmarried couples making applications. It was also used to justify the removal of the concession. The Conservative minister repeats 'The hon. Gentleman must realise that we use as the basis of our immigration rules in these cases the institution of marriage-in other words, the fact that there is a marriage' (HC Deb (1995-1996) 272 col.540). In the final throes of the debate Labour MP Maria Fyfe argues that Mr Kirkhope's argument 'makes no sense'. As she remarks the presence of an engagement ring 'will be all right' yet a common-law relationship with 'Mr X for several years' will not be successful. Kirkhope repeats again: 'As I have said, marriage is the institution which we recognise in these circumstances. It provides the only safe way, and international way, in which we can deal fairly with these matters' (HC Deb (1995-1996) 272 col.540). Kirkhope produces the phantom of 'abuse' in his argument. He repeats, several times that marriage is the only way that a 'genuine' relationship can be tested. It is the only safe way (what is the danger he alludes to?) and 'international' despite the counter-argument from Mr Gerrard that several countries have provision for unmarried couples. It is this argument which closes the debate in this amendment that results in the removal of the concession and the subsequent lack of formal recognition of unmarried relationships in the immigration rules until the 1997 concession.

3. c. 1997 Concession

Stonewall Immigration lobbied the Labour government intensively during the run up to the 1997 election. This lobbying along with couples winning their appeals culminated with a:

> Snowball effect, a few couples did it at the beginning other couples started to do it pretty soon you have a very vocal lobbying group and you have hundreds of people affected by the issues, they tended to be very articulate and decent people chosen to do this, so there developed an inevitable, that then forced the Labour government to do something when they came in....it even forced the Conservatives to allow some cases. (Gryk, interview: 2001)

The then shadow Home Secretary Jack Straw gave a commitment that if elected they would recognise gay and lesbian relationships in the immigration rules. This pressure on Labour remained when they won the election and Stonewall Immigration sought to ensure they did not renege on their promise. Mike O'Brien finally announced the 1997 concession, which is the forerunner to the current rule. Gryk notes the timing of this was not entirely arbitrary. He notes that on 9 October 1997, the Conservative Party's conference saw the leader William Hague and Michael Portillo giving speeches that expressed a more open approach to lesbian and gays in their party. Therefore, the government announcement of the concession the following day would make it difficult for the Conservative Party to attack the concession in the light of this speech (Gryk, 1998:9). An example of this can be seen during a question and answer session on the primary purpose rule, which had been abolished by the Labour government:

> However, my hon. Friend is right: it is the same old Tories. At the Tory conference, the Tory leader said that his party would now be more open and tolerant. Within hours of that statement, we made an announcement on same-sex couples, which brought rent-a quotes from people, from Lord Tebbit to the ex-Member of Parliament, Sir Ivan Lawrence. (HC Deb (1997-1998) 299 col. 567)

Mike O'Brien quite clearly uses the occasion to remind Conservative MPs of their then Leaders' statement. The significance of timing in party politics is evident in this example.

The shift on the part of William Hague left a space for Mike O'Brien to announce the reintroduction of the concession by the Labour Government to the wider public (via press release), though the apparent repositioning of the Conservative party on gay and lesbian issues announced by Hague, is not supported by other traditionalists in the party such as Tebbit. Thus a discontinuity in discourses provides a useful counter argument for Mike O'Brien in his justification of the concession in the face of Conservative criticisms.

The introduction of the 1997 concession seemed to invite a number of questions from Conservative MPs as to its definition. It is interesting to note that questions that asked about the concession invoked responses that avoided the mention of lesbian and gay (nor even same-sex couples) and repeated verbatim the concession criteria. Mike O'Brien in response to a question by Mr Malins (Conservative MP) asking to 'define' what a relationship akin to marriage is: 'A relationship akin to marriage is one which is similar in its nature to a marriage in that it involves a committed relationship which can be demonstrated by evidence such as joint commitments, financial or otherwise' (HC Deb (1998-1999) 330 col.844). Mike O'Brien goes on to stress it is applicable to those 'unable to marry' and living together for four years and they 'intend to live together permanently'. Similarly, in the House of Lords, Lord Tebbit (a politician mentioned above, who had made negative comments about the concession) asked: 'whether they are satisfied that all persons, whether homosexual or heterosexual, enjoy the same rights as married persons to nominate others for admission or settlement to the United Kingdom?'(HL Deb (1996-1997) 575 written answers col.79). Lord Mostyn in his written answer states:

> No. It is a fundamental principle of the Immigration Rules that someone already settled in the United Kingdom may bring their spouse into the United Kingdom to join them, subject to meeting clear tests as to the genuineness of the marriage and the financial capacity of the couples. (HL Deb (1996-1997) 575 written answers col.79)

He adds 'The criteria to be met by those seeking to benefit from the concession are much more stringent than those applicable to married people under the Immigration Rules'. When questioned on this new concession the Labour government was keen to assert that 'stringent criteria' (tougher than that of married couples) to ensure it is seen as 'firm' on immigration. They also, emphasised the concession applied to 'genuine' couples in 'committed' relationships-'like' marriage. Also, the importance of the 'financial capacity' is mentioned, once again assuring that couples coming through are not a 'drain' on national resources.

3. d. Legal impediment for heterosexual unmarried couples

The 'unmarried persons concession' of 1997 recognised same-sex couples as it applied to those who could not legally marry. However, as Gryk argues, it marked a 'retrograde step' for unmarried heterosexual couples who had to show they cannot legally marry, such as those 'parties' that are already married and waiting for their divorce to come through on their previous relationship. It does not apply to those who are 'unwilling' (Fiddick, 1999: 23) or who may 'choose not to marry' (IND, 2000:1). The combination of 'legally unable' to marry rather than unwilling closes off straight away the possibility for heterosexual cohabiting couples (other than the exception explained above) to use this concession. The official discourse briefly acknowledges there may be couples who are 'unwilling' to marry and in turn closes off the availability of that choice. This lack of recognition of heterosexual cohabiting couples was framed in the guise of protecting marriage and preserving family values. Gryk states:

> The irony is that the government which he is representing [Mike O'Brien, Labour] is, in the context of unmarried heterosexual couples, taking away a right which has existed to a greater or lesser extent under a succession of governments, including Conservative governments which put "family values" high on their agenda (1998:5).

This has recently changed with the legal bar being removed see 'concession to current rule 2003' section.

3. e. Four year cohabitation requirement

The 1997 concession was moulded very much on a 'married couple' model as couples must present their relationship 'akin to marriage'. The concession included a four-year cohabitation period that same-sex couples had to satisfy (see appendix II which contains the 1997 concession). This represented an anomaly in comparison to married partners' who had a two-year cohabitation requirement to satisfy (JCWI, 1999). This four year cohabitation period provided a 'catch 22' as in order to satisfy the requirement couples needed to be in living together in the same country, the very process this concession was trying to facilitate yet hindered with this requirement. As a result of vigorous lobbying by Stonewall Immigration (the government had promised to review the concession after a year) the period of cohabitation was reduced to two years.

The reduction of the four-year cohabitation requirement was a result of a 'compromise' by those seeking to change it, namely Stonewall Immigration and Home Office ministers who wanted to retain their position as possessing a tough approach to immigration. Wesley Gryk, who was involved in lobbying on this issue, recounts what took place:

> So there was very intense lobbying that went on from '97 to '99 there were a few of us who were seeing the minister regularly, there was a very important meeting which Stonewall Immigration sponsored at the house of Parliament when Mike O'Brien came, who turned up and was willing to spend an hour and a half talking to individual couples one by one, note down their details and hear about their frustrations and we were really negotiating. It was really quite in a way historic, we suggested this compromise which allowed the government to seek [inaudible].... make not a big change but a change that would make a great deal of difference. From their point of view...they can say to Parliament we have in fact increased the probationary period we've made it two years rather than one year, well as in the old days you'd have one year then permanent residency now two years and set two years, it makes...a little toughen up, made a longer probation period and we're still

> requiring four years in total before permanent residency we were able to dress it up in a way that's palatable umm, and it wasn't perfect for us it leaves out some people who clearly have relationships... (Gryk, interview 2001)

The lowering of the four-year cohabitation requirement, with the increase from one to two years of the probationary period, was a compromise for Stonewall Immigration. Though, it made a great deal of difference to couples who had found the four year requirement so difficult, it still maintains an overall period of four years for couples to meet which are not required by married couples. The compromise allowed Labour immigration ministers to retain their image as being 'firm'. Indeed when the change was announced in Parliament Mike O'Brien stated: 'The probationary period before settlement may be granted has been increased to two years, which means there will be a four year cohabitation period before the grant of settlement' (HC Deb. (1997-1998) 333 col. 164). Thus, the increase in the probationary period was used to justify the lowering of the four-year cohabitation period.

3. f. 'Akin to marriage'

Contained in the 1997 concession are the usual requirements that are present in most immigration rules, such as 'no recourse to public funds'. What is clear from official discourse that sets out the rules criteria is that it closes off the possibilities of other types of relationships and constructs a particular desired relationship. These include a cohabitation requirement of two years, followed by a probationary period of another two years, which must be proved. This obviously precludes 'shorter' relationships. The Immigration Directorates' Instructions construct an ideal relationship, for couples to satisfy. It states: 'The intention of the concession is to allow ***genuine long term relationships to continue.***' (IND, 2000 emphasis in original). The emboldened text points to a familiar discursive theme; the 'genuine' relationship, the 'long term' relationship which is continuing. The text continues:

> It is not an open door to couples who are in the early stages of a cohabiting relationship, but to provide an opportunity for those couples who are ***already living togther*** in a committed relationship akin to marriage to enter or remain in the United Kingdom on this basis alone' (IND, 2000:2 emphasis in original).

The text again closes off the notion of an 'open door' (the suggestion this rule is not a 'soft option') to couples embarking on cohabitation (these are not desired). Instead, it recognises 'committed' relationships like that of marriage. It suggests if the couple are not legally married they must be as close to a married couple as possible: ' "Akin to marriage", is a relationship that is similar in its nature to a marriage which would include both common law and same-sex relationships' (IND, 2000:2). The relationship must be 'subsisting', that is the couple has not been separated for periods that do not exceed six months. These periods apart must be for a good reason e.g. 'work commitments, or 'looking after a relative' and they need to demonstrate the relationship continued throughout with 'visits, letters etc' (IND, 2000:2). A couple that has visited each other when they can for two years does not satisfy the criteria, this is not 'akin to marriage'.

> However where a couple have been <u>living togther</u> in a committed relationship for the preceding 2 year period, barring short breaks of up to six months as set out above, but have been dividing their time between countries and may for example, may have used the visitor category, then this will be sufficient to meet the requirement (IND, 2000:2).

This part of the criteria can be tricky, as a couple may only be able to be together and accumulate their two years through multiple visits where funds and time allow. It therefore places limits on distance and cost for migrants. The interviews with couples reveal some of the strategies used to circumvent this aspect of the criteria. Its inclusion in the official discourse remains centred round emphasising the cohabitation requirement of the criteria.

3. g. Proof and evidence

The rule has always demanded proof and evidence to satisfy the cohabitation period (both when it was four and two years). It illustrates the objectivist and empiricist tone of this piece of legislation. Types of evidence encompass legal, formal documentation and more personal items. These include: 'Joint commitments, (such as joint bank accounts, investments, rent agreements, mortgage, death benefit etc), as well as: 'correspondence which links them to the same address'; 'any official records of their address (e.g. Doctors records, DSS record, National Insurance record etc)', and more personal evidence: 'letters from third parties' and 'any other evidence that adequately demonstrates their commitment to each other' (IND, 2000:2-3). In the absence of a marriage certificate, the rule has to build in some formal way of constructing proof of relationship. The production of documentation for cohabitation is one important way this achieved. The collating of this evidence can prove to be more difficult that it appears as the interview with couples will later show. Couples often feel uncomfortable about the surveillance into their intimate space in order to fulfil the criteria. The production of letters and correspondence between them, photographs of them together (this is not explicitly stated in the criteria but all the couples I have spoken to have included them) are offered up as evidence for the Home Office's scrutiny. The emphasis on joint bank accounts can also prove to be a pressure on couples particularly those who have enjoyed financial independence prior to their application (see chapter 5, for a detailed discussion).

3. h. 1997 Concession to current rule 2003

The rule, which has evolved out of the 1997 concession, has undergone a number of amendments to the period of cohabitation. The 1997 concession was formally made into a rule in October 2, 2000, on the same day as the incorporation of the Human Rights Act into

British law. The Labour government had promised to make all concessions into rule (Gryk, interview 2001). This ensured that unmarried people were formally recognised in the body of the immigration rules. Gryk (2000) comments in many ways it was useful to those campaigning on this issue to work with a concession, as they are easier to amend and change. Now that the concession is a statutory immigration rule, it is now subject to greater parliamentary process. On an administrative level there was a specific application form for couples especially for this rule [FLR(M)]. Previously couples had to use a form that subsumed them into the spousal category, which was confusing and irrelevant to their particular application, as it referred to married couples. More recently there has been the removal of the legal impediment for heterosexual couples, as a result of Home Office White Paper (Home Office: 2002) on 1 April 2003; previously couples must be 'unable to marry' which excluded heterosexual cohabiting couples (see appendix III for the current rule).

To summarise briefly, the rule is constructed on a normative ideal of what a relationship should be. It closes off other possibilities, through its criteria. It attempts to 'bind' couples, through the absence of marriage, with its requirement for joint bank and mortgage arrangements. Relationships must be seen to 'continue' during periods apart (which are given a time scale), if this cannot be shown this is deemed to be a reason to question the validity of the relationship. The government has been cautious throughout its inception to highlight that the rule is by no means an 'easy option'. The construction of what are arbitrary periods of cohabitation, four years (why four years?) to two years (why two?) are used as bench marks to determine a long standing and stable relationship. Couples and legal representatives have been creative in dealing with the difficulties of the criteria (the following chapters will illustrate this). Legal professionals have developed a range of

strategies and tactics to circumvent the requirements. The following section will provide some examples namely through the appeal process, which have been used effectively by lawyers and solicitors to advance their client's cases. It also has had a wider impact on the official discourse itself.

4. Discursive strategies used by immigration lawyers and solicitors.

4. a. Case law

The description of the evolution of the unmarried partners' rule reveals how it was a product of struggles between MPs, migrant couples, lawyers and solicitors. The importance of case law namely through the appeal procedure, was imperative to making changes to immigration policy. Even when there were no provisions for same-sex couples, couples were still making claims based on their relationship and challenging the absence or inadequacy of immigration policy. Solicitors and lawyers have used the appeal system, which is a slow bureaucratic process, to aid the couple's claim. It was used to build up more time for the couple to remain together and build up their period of cohabitation. The appeal process itself is an expensive and time consuming process and less affluent couples will therefore be unable to embark on such a process. Before discussing this in more detail, the following section sets out some theoretical consideration in examining official legal texts.

4. b. Official legal discourse

Burton and Carlen identify the linkage between common-law reasoning and the dominant empiricist theories of knowledge (1979:53). Common-law is constructed as based on '*common sense*'; its main principle of "stare decisis' (standing by past decisions) and precedent articulates a notion of 'consistency and continuity'. The invoking of past

decisions and cases provides a benchmark, a convention for similar cases. But to paraphrase Burton and Carlen, this principle is 'normative' and the invocation of past principles may not be relevant to new cases challenging established legal practice. This indeed has been a major problem for same-sex couples, who have found themselves inadequately recognised or absent in legislation and have attempted to challenge it through case law. In terms of immigration, as Wesley Gryk has testified, the gradual winning of key cases through the appeals process allowed legal professionals to create a body of law to cite in their cases (Gryk,1998). However, the initial breaking of precedent is a long process, which requires the commitment of individuals and lobby groups to mount sustained pressure on existing legal processes. Burton and Carlen illustrate how legal discourses aim to present law as rational, where past experiences consolidates present principles and attempt to 'minimise contradiction' (1979:64). A body of literature, that has emerged out of Critical Legal Studies, has deconstructed legal discourses and revealed the inherent incoherence and instability of dominant legal categories (this is discussed more fully in the following chapter).

The rooting of legal texts in the past is also commented on. 'Its forms have been shaped by its history, its institutional functions and ideologies – not the least of which are the requirements of certainty and flexibility' (Maley, 1994:17). This pointing to 'certainty' and 'flexibility' by Maley is a constant tension in legal texts. To paraphrase Gibbon's argument, legislative texts must construct themselves as authoritative to determine the meaning of a rule for example. They must also be 'flexible' to accommodate 'new circumstances' that might arise, particularly through case law (Maley, 1994:17). This tension between being 'precise' and 'explicit' and 'vagueness of reference' suggests competing oppositional pulls in the discourse (Maley, 1994:22). This can be seen in

provisions that apply to common law relationships or members of family where judges have to decide on how to interpret these terms and whether their traditional normative interpretations can stretch to include 'new' or more plural meanings. However, when new interpretations or older meanings are changed, the law must still retain its 'face' as a coherent and correct body of discourse.

Legislative discourse must retain its credibility and its 'authority' during processes, which seek to criticise it.

> The authority of the state and law are discursively maintained in legal texts by the combination and conflation, within the 'judicial stare,' of empiricism (the reliance upon the unmediated facts of legal experience) and rationalism (the dogmatic privileging of the normative content of legal concepts). (Goodrich, 1987:165)

Legal texts must always attempt to repair (when they are challenged) their authority and appearance as 'rational' agents. One of the ways this is achieved is through 'technical language a feature of legal discourses (Maley, 1994:22). Maley (1994:22) provides examples from criminal law such as 'manslaughter' and 'murder', which are terms that attempt to fix meanings and definitions. There are examples that apply more directly to immigration such as 'illegal entrant' or 'overstayer' which are used formally to describe individual migrants.

4.c. Judges

What has been crucial to the success of appeals and breaking of precedent in case laws has been the role of the judge and whether he or she is willing to make a new interpretation of existing legislation. Judges are actors embedded in official legal discourses whose image is seen as impartial, objective and rational. Though judges, like MPs are overwhelmingly male, middle/upper class and white, their position has to be seen to uphold the values of

neutrality and impartiality. Philips in her examination of trial court Judges, argues that they acknowledged political viewpoints (many of whom had been recruited to the bench after being involved in political party) yet maintained they did not 'enact' these views in the courtroom (1998:81). This, as Philips adds, is in itself an ideological stance and as a result:

> Because of the pressures on relatively ideologically aware people not to be politically ideological in the way they function as Judges, they may feel they have to pick their battles regarding what issues and in what contexts they will take a stand ideologically in or through their actions (Philips, 1998: 84-85).

Though Judges are firmly implicated in occupying dominant positions as knowing subjects and arbiters of impartiality and objectivity, because of the internal tensions there is always the possibility of disequilibrum in legal discourse. This is illustrated by the strategies deployed by lawyers and solicitors during the appeal process.

4. d. Appeals process

Appeals have been an important way in which same-sex couples have challenged the refusals of their application by the Home Office, particularly during the period when there was no formal legal recognition of same-sex couples in immigration policy. One of the key ways these appeals were won was to argue about the irrationality of Home Office decisions and the way in which they were not based on a correct procedure. For example prior to the concession when cases were based on discretion:

> ...And we began to win some appeals because the Home Office was very sloppy in the way they refused applications, even though they were outside the rules they hadn't considered there might be exceptional compassionate circumstances where they could exercise their discretion we decided when they were refused [the applicants] they hadn't gone through the proper process, in a lot of cases the Judges wanted to be helpful saw the people face to face saw they [were a] real couple, the Home Office has taken an unlawful decision and haven't given it proper reasoning and send it back to the Home office... (Gryk, interview 2001).

This strategy reveals two important factors. Firstly, it emphasises the importance of the law as being seen as logical and following a procedure, which Gryk was able to use in his argument. Secondly, the Judge meeting the couples face to face and seeing they are 'real' couples, satisfied any doubts as to their 'genuineness'. It also served to present them as 'victims' of unfair interpretation of the immigration provisions.

The arguments used in the appeal by legal professionals have been concerned with dominant discursive themes about migrants. For example, Wesley Gryk when asked what arguments he used in the appeal process during the four-year cohabitation rules states:

> These relationships are not equivalent to marriage, we do not want to abuse, we want a very strict criteria, but our argument and the argument we were using in our appeals, when we were arguing appeals on these cases were, it's totally irrational to create a concession which is an impossible concession to meet. You will be given permission to live together for one year if you can prove you have been living together for four years. (Gryk, interview 2001).

Gryk's argument is normative in nature, emphasising that his couples do not want to 'abuse' the system. He also argues that these relationships are not equivalent to marriage, thus marriage retains its dominance in the discourse and the Judge does not risk the accusation of placing same-sex couples as equal to that of married couples. The 'akin to marriage' analogy that the official discourse makes can prove to be a contradictory element in the argument. As Gryk states a number of cases in 1992 and 1993 argued that the Home Office had dealt with unmarried partners' applications 'improperly' as the Home Office had not drawn an analogy to marriage as required by 'akin to marriage' (paraphrasing from interview with Wesley Gryk 10 January 2001). However, Gryk (2001) stated that the 'akin to marriage' requirement of the category 'could be used against us' and the Judge could question how closely a same-sex relationship resembles that of a married couple. The 'akin to marriage' stipulation is problematic as it is such a subjective category. Herein lies the

paradox of the rule, where relationships have to be presented 'like' marriage yet not treated the same as marriage, with unmarried people having to satisfy periods of cohabitation and be scrutinised on the 'proof' of their cohabitation. It continues to reinforce marriage at the top of the hierarchy of what constitutes a relationship.

A further tactic used in appeal cases prior to the 1997 concession has been to point to a possible change in policy that could occur at the next general election. With Stonewall Immigration amongst others trying to obtain the promise that the Labour government would introduce legislation that would recognise unmarried people, legal professionals argued that though there were no provisions at present, there would be soon:

> Going to court trying to get an adjournment saying honestly the policy will change soon. So basically what they kept doing was going to court saying there will be a Labour government they will allow us to do something and trying to drag it out, drag it out. (O'Leary, interview 2001).

The 'buying of time' through the appeal process and the arguing of an emerging policy was a strategy used in the absence of recognition of unmarried relationships in legal discourse. A further tactic that was used was to represent a case that was previously unsuccessful. O'Leary gives me an example of the argument he would use:

> Oh obviously this wasn't presented properly beforehand, but now I'm representing it this way, it kind of gives everyone a way of getting out with their face saved, not really saying to the Home Office you're awful. (O'Leary, interview 2001).

O'Leary again is not criticising a bad decision previously made by the Home Office, the onus is on the way it was not properly presented by the previous legal representative. The discursive strategy, it could be argued is normative, but is certainly effective. The Home Office reputation and figure of authority remains intact. Now that the case is being represented, give it room to reconsider application without 'losing face'.

4. e. Ultra Vires

As the account of the unmarried partners' rule showed, the four-year cohabitation requirement of the 1997 concession was a particularly difficult hurdle to meet. Many couples, who could not quite meet the four-year cohabition requirement, appealed on the basis of the difficulty of the requirement. The 'ultra vires' argument was frequently used in these types of appeals[7]. The *ultra vires* argument means that what the Home Office is doing is 'outside the law'(as described by Barry O' Leary interview 2001). The *ultra vires* argument has been used to argue that the four year rule is unreasonable it is a 'snare and delusion' and 'indeed but a mirage' (Gryk, 1998:9). This argument was used in the *Monshoora Begum [1986] ImmAR 385* case where Mr Justice Simon Brown in the Queens Bench Division declared an immigration rule as unreasonable and therefore Ultra Vires[8]. This case was subsequently cited in appeals regarding the four year rule (Gryk, 1998:9). Gryk states to his knowledge there were four cases that used this argument:

> While an adjudicator has not yet allowed an appeal in any of the cases, in every one of the four cases, the adjudicator has recommended that the Secretary of State look again at the concession and consider granting successive periods of one year's leave to the appellant until such time as four years have been accumulated. (Gryk, 1998:9).

The argument that the four-year rule was 'unreasonable' and 'unworkable' appeals to the way in which law must be seen to be 'reasonable' and 'rational'. Therefore the Home Office is 'outside the law' by producing a requirement that is unreasonable and unworkable. This argument seems to be effective, as the apparatus of law is not questioned but rather one specific practice.

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[7] For a good example of this see Stonewall Immigration Legal Bulletin June 2000 where it was used in the case B (TH/4455/98). The four year requirement was deemed 'unworkable' and thus 'ultra vires' by the adjudicator.

[8] The rule declared *ultra vire's* required '...on the one hand , a sponsor seeking to bring a relative to the United Kingdom had to demonstrate that the relative was poorer than the average members of his or her community and yet, at the same time, had to demonstrate that the British sponsor was sending financial support to that relative.' (Gryk, 1998:9).

4. f. The role of local MPs

Ministers, as legislative actors, feature frequently in the official discourse as representatives of migrant couples. This could include intervening in cases, or recounting migrant stories in Parliament to support their argument about the rights of unmarried couples. As the later chapter will argue, migrant couples will contact their local MP to intervene when problems arise with their application. Legal professionals often use MPs to support their clients:

> Before we get to an appeal, what I will always try and do is go to an MP and short cut it by getting it reconsidered but the Home Office will do that, but they're taking such a long time about it now there is no guarantee they will give a positive decision so you get it reconsidered but by that stage if they say no again you have delayed the whole process so its a bit of a gamble. (O' Leary, interview 2001)

Using MPs can provide a quick route for the application; however, this as the above quote shows, is not fail-safe. O' Leary adds:

> MPs are useful really, umm in two ways, some MPs are very good and some MPs really are very on your side so that obviously adds weight to what you are arguing in a purely practical because there is a section at the Home Office which deals purely with MPs requests and so as a solicitor or an individual you can't put something in there but your MP can put something in there if so umm if you go to your MP, you can actually try and get rid of...because the Home Office is such a slow bureaucratic organisation you can try and get round this a bit...used to be more successful the problem at the moment is that everyone has caught onto this and so everyone goes to the MP and unfortunately because the Home Office often get things wrong so there is a lot of 'needs' that go to your MP way everyone goes to there MP. So MPs are great, [but its] getting less and less because it's taking too long. It shouldn't really be, let's get a quick reconsideration or quick help on this. (O'Leary, interview 2001)

As one 'quick' route is identified, other legal professionals use it, thus slowing it down bureaucratically. Legal professionals have to change and readapt their strategies and as O'Leary states there is the possibility that short-circuiting could conversely slow down the process. MPs however as powerful actors, are a useful resource to tap into. As O'Leary comments they can 'add weight' to a claim and access Home Office ministers directly

(more example of this will be provided in the interviews with couples). What is apparent from the sections above is that legal professionals have a number of strategies to pursue, to short cut administrative delays or to further strengthen their clients' cases. Legal professionals are agents, who can access legal structures with the authority invested in them as qualified legal practitioners, which couples are not able to.

Conclusion

The contradictory and paradoxical process that has resulted in the unmarried partner rules reveals that legislation does not automatically evolve in tandem with social change or 'progress'. The category of unmarried people in legislation discourses has appeared in a number of guises, as a 1985 concession then the 1997 concession. At varying times it has recognised unmarried heterosexual (or common-law) relationships and in turn it has not (as it does now). Other times same-sex couples has been absent in its recognition. However, the 1997 concession does show a more linear process with its gradual amendments and change to a rule.

The parliamentary debates reveal there has been a 'normative' discourse used by those arguing for same-sex couples to be included as was illustrated in the 1996 debate. The MPs challenging the Conservative government represented the couples as good people, with responsible jobs who did not want to abuse the system and who were in long term stable relationships. They did not unpick 'marriage' as the model of relationship, which is automatically long term, and stable. In fact marriage remained the model to which unmarried couples should aspire. Marriage dominates the hierarchy of the 'desirable' relationship and remains relatively untouched. However, the arguments of the MPs in the 1996 debate did tackle the notion that relationship outside marriage and could be long

term, could be stable without the legal bind of marriage. They also presented same-sex relationships as representing long term, 'genuine' relationships, which counters a view held particularly of gay men as being predatory and promiscuous.

The normative discursive strategy used by MPs, Stonewall Immigration and legal professionals has arguably contributed to the conservative construction that official discourse makes about relationships. The strategies used by those lobbying for change, such as Stonewall Immigration have presented couples that have been together for long periods of time. The arguments used by legal professionals have been to emphasise the 'genuineness' of the relationships, and that the couple did not want to abuse the system. The amendment to the four year cohabitation requirement of the '97 concession was a result of a compromise, which was by no means ideal but made a difference to migrants who could not meet the four year rule. Does this compromise mean co-option? There still remains a discursive difference between married couples and unmarried couples through the separation under separate categories. Unmarried people also are required to meet a set of requirements and proof of periods of cohabitation, which married people do not meet.

On the other hand, the unmarried partners' rule represents for the first time a piece of legislation that recognises same-sex couples. It can also be seen that the strategies deployed by Stonewall Immigration and legal professionals alike have ultimately worked. In the absence of formal recognition in the immigration provision same-sex couples, couples have been winning their appeals and achieving family reunion. Case law and the setting of precedent has been one way in which the official discourse has been changed. Legal practice and what is officially set out in the policy are not always the same, with legal professionals making cases against the absence of recognition of unmarried couples.

It could be argued that the discursive strategies used by those arguing for change has not been a radical discourse and one that does not diverge from the official. However, it does question whether a more radical discourse that deconstructed marriage would have worked, bearing in mind Labour's sensitivity to public opinion on 'controversial' issues such as immigration and sexuality. One final point to be made is that same-sex migrant couples through tenacity, creativity and political pressure have been able to achieve their family reunion in the face of these conservative and normative discourses as examples show in chapter 5. Furthermore, couples and legal professionals have also deployed strategies utilising Human Rights and more specifically European legal instruments in order to challenge normative discourses. It is the role of international legal discourses in the claims of same-sex migrants that is the focus of the next chapter.

Chapter 4: International regimes and immigration rights for same-sex migrant couples

Introduction

This chapter engages with the notion of transnational and postnational citizenship, which suggests the ways in which national sovereignty is being challenged by international processes, such as: European discourses, human rights, mainly the European Convention on Human Rights (ECHR) and the European Court of Justice (ECJ). This notion will be considered in relation to debates and critiques about the Europeanisation of migration and the role of international regimes with regards to migrant rights. The chapter will develop these arguments in relation to sexual citizenship. It will consider the geographical unevenness of rights for sexual citizens and how this unevenness is illustrated by the recognition of partnership rights. This unevenness is exacerbated by movement across borders by sexual citizens. The chapter will then discuss the ECJ but more specifically the ECHR and how its normative discourses reflect an unwillingness to recognise unmarried migrants. To illustrate this discussion, relevant case law will be examined. There will be a focus on the difficulty same-sex couples have claiming their right to family reunion, due to the narrow way the ECHR defines the family.

1. Transnational/Postnational citizenship

1.a. Postnational and transnational citizenship and migration

There has been a relatively recent focus on reconfiguration of citizenship rights across space due to global processes. This debate has called into question the sovereignty of the nation-state and its role as a bearer of rights. Both postnational and transnational accounts consider this notion, though as will be outlined, there is a difference in emphasis between

the two perspectives. Firstly, Yasemin Soysal (1996) has argued that post war changes, including large scale migration to Europe has resulted in challenges to the sovereignty of the nation state. She posits a conception of 'postsnational citizenship' where 'globalising' influences, such as human rights discourses have become incorporated into social institutions and resulted in the 'broadening and recasting' of rights discourse (1995:19). The development of human rights, through various covenants confer 'universal rights' to an individual regardless of their membership of a nation state (Soysal, 1996:19). Identities and rights are increasingly being de-coupled, rights based in the national context are shifting to the 'transnational level' (Soysal, 1996:18). Thus, she states:

> Consequently, a variety of cultures and identities have been incorporated into the social domain and institutions of citizenship: women, gays and lesbians, environmentalist's increasingly regional identities and youth subcultures, as well as immigrants (Soysal, 1996:19).

The deterritorialised and therefore multiple levels of citizenship that Soysal presents, open up a number of possibilities for marginal groups to attain citizenship rights.

Immigrants, as the quote above shows, are considered potential beneficiaries of postnational citizenship. Immigrants in Europe, though not fully possessing formal citizenship status, are still in receipt of privileges and protection arising from transnational instruments (Soysal, 1996:21). An example that is given by Soysal (1996) of the fluidity of the postnational model is Turkish guestworkers, who enjoy rights in Germany whilst holding citizenship in Turkey. She adds that dual citizenship and universal 'personhood' replaces the national model. This argument is qualified by the acknowledgement that states continue to enforce 'strict boundaries' and privilege some migrants more than others. However, she continues that transnational pressures will 'penetrate' national boundaries and 'transform' citizenship (Soysal, 1996:22).

The transformation of citizenship as a result of the conditions of globalization is also propounded by Saskia Sassen (1996). Sassen in particular points to the role of the expanding global economy along with technology as transforming sovereignty and territoriality. Like Soysal, Sassen (1996) considers how immigration highlights the tension between nation-states' sovereign control of borders regarding people on the one hand and the transnational, global processes to facilitate economic circulation beyond national territories on the other. International human rights covenants and institutions such as the United Nations and the European Convention on Human Rights (ECHR) offer a shift of rights to individuals beyond nationality (Sassen, 1996:101). Sassen argues: 'It contributes to a redefinition of the bases of the legitimacy of states under the rule of law and the notion of nationality.' It is argued by Sassen that some 'unauthorized migrants' are able to gain access to basic rights due to international regimes. A cautious caveat is added in that it is uncertain to what extent human rights codes aiming to protect individual rights are to be effective. (Sassen, 1996:101). However, in Sassen's view immigration policy is now 'shaped' by a globalized economy, international human rights instruments taking place at the national and regional supranational level (Sassen, 1996:105). Sassen, with a degree of caution is suggesting that due to globalising influences, the terrain of rights is no longer anchored solely in national sovereignty and as a result migrants may benefit from this.

A transnational perspective shares with postnational accounts an acknowledgment of globalisation processes and its impact on citizenship. Though there is some discussion of the availability of rights across space, there is particular emphasis on the impact of transnational practices on identity. Aihwa Ong (1999) illustrates this in her discussion of 'flexible citizenship' in the context of the Asia-Pacific region. 'The multiple-passport holder is an apt contemporary figure; he or she embodies the split between state-imposed

identity and personal identity caused by political upheavals, migration, and changing global markets' (Ong, 1999:2). Migration is part of wider transnational practices that have an impact on subjectivities. Diaspora and hybrid identities all feature in Ong's notion of flexible citizenship. Ong (1999: 19) states: 'Flexibility, migration, and relocations, instead of being coerced or resisted, have become practices to strive for rather than stability'.

Hybrid identities and social networks that cross multiple boundaries characterise transnational practices. As Faist argues:

> Whether we talk of transnational social spaces, transnational social fields, transnationalism or transnational social formations in international migration system, we usually refer to sustained ties of persons, networks and organisations across the borders across multiple nation-states ranging from little to highly institutionalised focus (2000:189).

The transnational perspective Faist (2000) argues, does not de-centre global processes from the nation-state but rather is anchored in and cutting across several nation-state boundaries. Therefore, transnational accounts engage with global process and their implications for citizenship. However, this perspective does not go as far as postnational accounts that argue that state sovereignty is being challenged by international forces, enabling migrants to claim 'new' citizenship rights. Authors such as Faist (2000) along with other authors, outlined below, take issue with postnational conceptions of migration.

1. b. Critiques of postnational citizenship and migration

There are a number of problems with the notion of postnational citizenship firstly for migrants generally and secondly for unmarried migrants. Undoubtedly, there needs to be consideration of what Stychin (1998:6) calls the 'globalisation of law'. However, the extent to which these processes challenge existing frameworks of citizenship or offer new spaces of citizenship is open to contestation. Virginie Guiraudon (2000) critically assesses

the postnational discourse in her examination of European Court of Justice (ECJ) and ECHR and its impact on the rights of foreigners in the European Union. In her assessment of these arguments, she firstly suggests they tend to purport a 'golden age of state sovereignty' and '[p]erhaps more importantly, it seems to externalise normative constraints that may be internally generated' (2000:1093). As Guiraudon argues, the incorporation of European jurisprudence in domestic state law has been uneven (she compares France, Germany and the Netherlands) and tied to how it relates to existing norms in domestic law. Also, she highlights the role of pro-migrant activist groups invoking human rights legislation and creating case law and lobbying governments. Guiraudon regards these two elements as factors for changing some aspects of immigration criteria and practice in the France and Netherlands. However, these factors were less influential in Germany where the incorporation of international jurisprudence has been perceived as interference and there has been a reliance on basic German law. This criticism is also echoed by Jopkke, (1998) who compares the difference between US, Germany and Britain in relation to how international regimes challenge national sovereignty in determining asylum policies. Again, in these contexts, the varied domestic landscape has an impact on whether international regimes have any bearing on citizenship rights. The salient example of Britain, which does not have a legal constitutional framework, has continued to reaffirm its sovereignty in matters of asylum (Joppke, 1998).

Soysal refers to the emergence of 'universalistic rights' (1996:19) through transnational processes. However, there are no 'supranational institutions' granting citizenship, accept the EU (European Union), which does not cover third country nationals (Faist, 2000: 207). Furthermore, it is unclear how 'universal norms' formulate immigration policy 'on the ground' (Faist, 2000:207). European discourses do not provide universal protection, but

rather as Guiraudon states, they offer 'special' rights for particular 'categories and nationalities' (2000:1109). Such universal principles can not be applied to migrant rights where: 'State sovereignty largely reigns supreme in the elaboration of immigration policies that should be kept distinct from integration policies directed towards legally resident migrants'(Kofman, et.al,2000:93). The construction of the European Union has engendered further barriers to non-European citizens creating a 'Fortress Europe' (Kofman and Sales, 1998, Ackers, 1998). Furthermore, ECJ jurisprudence relating to third country nationals was not built upon the notion of 'human rights' but rather 'free movement clauses' (Guiraudon, 2000:1109). However, the enjoyment of mobility within the European space remains restricted to certain categories of migrants. 'Rights to mobility within the European Union are probably one of the most significant that denizens still do not enjoy. These include the right to reside and work in another European country and bring in close family members without fulfilling conditions not required of citizens' (Kofman, 2003:402). This quote is referring to the lack of rights for denizens who are foreign long term residents of a country. In terms of family reunion third country nationals derive their rights from the Community member they are attempting to join (Guiraudon, 2000:1109). The rights of third country nationals within the context of European processes have been neglected (Kofman, et.al., 2000:90).

International jurisprudence and human rights regimes, such as the ECHR, tend to make general, universal appeals to individual rights, their concern with alien's rights being 'incidental' (Kofman, et.al., 2000:90). The incorporation of the ECHR through the Human Rights Act has relatively recently been incorporated into UK law on the 1 October 2000. It means that the ECHR can be referred to in appeals against immigration decisions based on breaches of human rights. However, as I shall argue later the citing of ECHR articles in

the cases of same-sex migrants to challenge British immigration decisions has not always been successful. Guiraudon makes a comparison between the ECJ, which she argues tends to be bolder in its jurisprudence than the ECHR, which can only make a ruling, when all national appeals have been used up (2000:1094). Therefore ECHR will adopt a 'self limiting approach' avoiding 'provoking nation-states' particularly with regards to 'controversial' issues such as immigration. (Guiraudon, 2000:1094).

To pick up on another point Soysal makes regarding transnational citizenship is the notion of rights being decoupled from identity (1995:18). What this chapter along with the thesis as a whole argues is that immigration practice and policy are rooted in identity. It achieves this through the categorisations of identities, be it European, non-European, Third world, Third country, categories of worker, skilled, unskilled migrant etc. Family reunion policy in Britain clearly demarcates difference through the creation of the unmarried partners' category as separate from that of 'spouse'. So identity is not an increasingly abstract principle but rather remains a material aspect of the availability of migration rights. The chapter will go on to demonstrate how sexual identities in national contexts and international regimes namely the ECHR attempt to construct and fix these identities. For as Wayne Morgan argues: 'The identity you claim (or with which you are labelled) defines your subjectivity as a citizen and hence your relationship to government' (2000:217). The next section examines the strategies and ways in which lesbian and gays have attempted to challenge and mobilise around the construction of sexual identities through rights discourse.

1. c. Transnational citizenship and sexual dissidents

Bell and Binnie devote a chapter to transnational citizenship and its relationship to the sexual citizen (2000:108). Though the authors suggest there maybe some credence in examining the shaping of rights discourse for sexual citizens beyond the nation state, they are rightly less optimistic about how much rights will be conferred to sexual citizens. Thus, the nation-state still remains a 'legible' site in which to invoke claims for rights (Stychin, 1998). However, 'In other contexts, the transnationalization process has brought sexual citizenship into new domains' (Bell and Binnie, 2000:110). The claiming of rights through global instruments may be more effective in some national contexts than others (Bell and Binnie, 2000:110), as is exemplified by the subsequent varied arrangement of rights across space. This highlights the importance of the particular social, political and legal frameworks established in individual states.

Bell and Binnie (2000) examine immigration, as a prime example of the unevenness of the availability of rights beyond national boundaries. Despite the establishment in some European countries namely Denmark, Sweden, Germany, The Netherlands and France in recognising unmarried cohabiting couples' rights through partnership law, (there are moves in other countries to do the same), there remains a number of countries-such as the UK which has been slower to provide registered partnerships. This illustrates the disparities between nation-states immigration practice and partnership laws. Unlike marriage, partnership rights, whether for same-sex or cohabiting couples in one country, are not portable and will not automatically be recognised by another country, particularly the UK. Also, does the securing of partnership rights for nationals necessarily transfer to migrants attempting to gain residency of that country? This question and the formation of partnership laws will be considered further on in this section.

With immigration policies being organised around economic imperatives, Bell and Binnie note how wealthy, white gays and lesbians with 'marketable skills' have more chance of realising their transnational citizenship than others (2000:120). Thus, lesbians and gays who possess skills and qualifications that are in demand in nation-states may not need to rely on entry as a spouse, but rather could enter as independent workers, circumventing restrictive requirements for unmarried partners. In addition, those entering as a partner may find their employability an element that assists their application. Therefore, the social positioning of sexual citizens such as class, gender and race has a bearing on claims to citizenship. Therefore, white Europeans or nationals of wealthy western countries (such as the United States of America) may find their ability to realise their migration, overriding exclusion based on sexuality. This issue is explored in the following chapter in relation to the couples in the interview sample. For now the discussion will draw on Critical Legal Studies and queer legal theory, to discuss the way in which legal discourses categories and fix meanings around non-heterosexual identities.

2. Legal discourses and sexual citizenship

2.a. Categories of sexual identity: the homosexual in UK law

Leslie Moran (1995,1996) has traced the construction of homosexuality through British legal discourse. He examines the discourses that arose out of the Wolfenden Committee in 1954, which was established to review the law on homosexual offences and he argues that the 'homosexual' and his 'offenses' [sic], had to be 'invented' in order to create a new legal category to be decriminalised. This construction of the homosexual revealed the lack of coherent knowledge produced by the committee, and as a result allowed it to become 'vulnerable' and a site of contestation (Moran, 1995:3). As Moran identifies, in the

British legal context the Wolfendon Committee's categorisation of homosexuality as related to specific 'offences' has remained a dominant model in legal discourse[7]. Legal discourse by associating homosexuality with specific 'deviant' sexual acts paradoxically advances two types of homosexuality. One is the 'congenital' homosexual whose sexuality is immutable, the second the corrupted homosexual whose sexuality is temporary and a result of arrested development. Stychin (1998) illustrates how this dualism came into play during parliamentary debates on Section 28. He points out; those in favour of the Section advanced a view of young heterosexuality, which needed to be protected from the 'promotion' of homosexuality[8]. These examples demonstrate the construction of sexual identities particularly homosexuality in legal discourses. What I want to argue next is that family reunion policy attempts to define and fix sexual identities through its categorisations of married and unmarried people.

Family reunion in immigration policy is based on fixed categories of persons, such as married partners' or 'spouses', unmarried people both same-sex and heterosexual cohabiting couples. This is maintained not only through the formulation of the policy but also through legislation, which attempts to ward off challenges to the fixity of these categories. By examining relevant cases and appeals that challenge existing policy in this area, they reveal the arguments and strategies being deployed in legal discourse. In particular, theorists on the law and sexuality identify how the politics of identity can prove

[7] Stychin (1995) also gives the example of a case (*Bowers V Hardwick)* that was taken to the Supreme Court by Michael Hardwick in an attempt to challenge his criminalization by Georgia's sodomy law and invoke his constitutional right to engage in consensual sexual acts. Despite Georgia's sodomy law being applicable to heterosexuals and homosexuals, homosexuality came to be mobilised in order to reject Hardwick's right to privacy.

[8] This paradox is also noted by Anna Marie Smith, who remarks on how official discourse was needed to make a distinction between gay 'pretend families' and the 'natural' norm of the nuclear family (1990:204)

problematic in legal discourse. 'As long as law and legal institutions help to build and protect identity-generating social hierarchies, legal reformers must invoke identity '(Kairys, 1982:118). However, Kairys adds a note of caution, arguing that invoking identity-based strategies could result in 'coercive effects' (1982:118). He adds this strategy can not only sideline bisexual identities but their essentialist nature allows them to be co-opted by anti-gays, for example the abortion of foetuses that contain a gay gene (1982:126).

2. b. Lesbian ,Gay and Bisexual rights strategies

This highlights a major debate in critical legal theory that is concerned with sexuality 'assimilationists' versus 'queer deconstructionists'.[9] Firstly, the 'assimilationists' make claims for political rights based on a 'coherent' collective identity. It is a strategy that considers lesbian and gay claims to equality - such as the right to marry like heterosexual and to be recognised legally. It is also 'quasi-ethnic' in nature correlating sexual identities with racial identities (Stychin, 1998:14). This collective identity has often been invoked to challenge anti-discrimination articles in constitutions and conventions. For example Stychin (1995:3) remarks on one such article in the Canadian Charter of Rights and Freedoms, which aims to protect particular social groupings along race and sex. Those attempting to secure lesbian and gay rights argue the analogy between sexual orientation and race (Kairys, 1982: 124). Thus lesbian and gay identities are presented as 'discreet' and 'immutable' (Kairys, 1982:124).

This tactic of representing sexual identity along biological lines is often referred to as 'strategic essentialism' (Richardson, 2000:266). This strategy has been particularly

[9] See also Weeks et.al., (2001:192) who cite Gamson's (1994) identifying of boundary-defenders' who share the collective identity strategy of assimilists and 'boundary-strippers' who share deconstructionist, queer theorists approaches.

notable in America, where lesbian, gay and bisexual activism has been organised around 'civil rights'. The assimilationist or 'insider' strategy attempts to gain access to those in power through a 'legislative and lobbying approach' (Rimmerman, 2000:55). However: 'The central problem with this civil rights strategy is that access to the system becomes more important than the actual treatment of lesbians and gays within that system' (Rimmerman, 2000:56). This strategy could be characterised by 'Stonewall' in Britain, which has campaigned and lobbied MPs in an attempt to affect legislative change. Other critics of this strategy such as Stychin and Kairys, though able to see the logic in this analogy argue that it attempts to create a fixed notion of sexual identities and leaves hegemonic binaries untouched. Queer decontructionists as Stychin (1998) argues, have taken on board feminist critiques that challenge universalising conceptions such as 'woman' and in turn aim to destabilise boundaries around sexual categories. The opposite approach could be characterised by 'OutRage!', a British direct action 'queer' protest group, who 'zap' institutions and individuals who are homophobic, for example interrupting Archbishop George Carey's Easter Sunday sermon, to protest against his anti-gay comments on gays and lesbians. This 'outsider' strategy is often criticised as 'utopian' and 'counter productive' (Rimmerman, 2000:57).

An insider strategy may be conceived as a less radical but more practical way of affecting political change. Lisa Duggan discusses the difficulty of applying queer political strategies that attempt to destabilise boundaries into 'essentialist' public discourse (1995:185). How do you disrupt boundaries, fixed identities that are maintained in legal, political discourses? This is the dilemma that is posed by these two possible strategies. Duggan ultimately rejects strategic essentialism arguing: 'It allows sexual difference and queer desires to continue to be localised in homosexualized bodies' (1995:185). What Duggan

proposes is that analogies should not be made between race and sexual identity but rather religion. She states: 'The state may no more establish state sexuality than a state religion, a heterosexual presumption has no more place in public life than a presumption of Christianity' (Duggan, 1995:189). She advocates instead of equality arguments, activists and campaigners should engage in the way heterosexuals derive 'special rights' from the state. Duggan's proposal is certainly interesting and offers one way of applying some queer principles to mainstream rights discourse. She highlights the dilemma of how lesbian, bisexual and gay campaigners and organisations may represent the 'gay community' as a whole in public discourse, yet this may evade differences between lesbian, gay and bisexual interests.

A good critical overview of lesbian, gay and bisexual strategies in rights discourse is given by Davina Cooper (2001). She focuses on the flaws and merits of some of these strategies in relation to claims around 'spousal recognition'. Cooper not only critically assesses these strategies but also offers some proposals that potentially override the contentions in these debates. Firstly, Cooper (2001:79) raises a key criticism, that rights strategies arguing for same-sex marriage, will absorb this into the 'status quo'. She adds conservative advocates of gay marriage posit a 'pure' and 'stable' space, which further stigmatise other forms of same-sex relationships:

> The constituencies explicitly excluded are clear: the very young, single people, those in non-romantic or non-coupled relationships, as well as those who refuse to "opt in" either because they have nothing to gain or because they feel alienated by this new, official space (Copper, 2001:88).

It is a common assertion that equality claims around marriage and military can serve to reinforce norms rather that challenge normalcy itself (for an overview of these debates see Bell and Binnie, 2000, Valentine, 2003). Cooper (2001) suggests that claims for spousal

recognition, should challenge these hegemonies. To briefly summarise these involve dismantling the hierarchies around relationships and 'blurring relational boundaries' (Cooper, 2001:90), and in addition, creating 'radical alliances' with heterosexuals who may want to take up registered partnerships as opposed to the marriage. Same-sex and unmarried heterosexual cohabiting couples certainly have a shared goal in challenging the hegemony of marriage. However, as this chapter and the previous one shows that in the UK the very conservative discourses that shape family reunion policies have made it difficult for advocates to gain recognition of unmarried relationships per se, let alone expanding the scope to include the diverse range relational forms that Cooper discusses. What is clear from the debates in the literature is there remains much contestation of how political claims should be framed and further highlight the array of differences in how such claims should be approached.

The 'gay' community cannot be characterised as one neat, unitary corpus of people. It contains diverse social positionings, all with varying degrees of opinions on how and it what way homophobia in its various guises can be tackled. Citizenship claims formulated on a 'group based paradigm' can essentialise lesbian and gay identities to a simplistic shared 'core' (Cooper, 2001:86). Homogenizing the gay community can conceal the fluidity of sexual identities and the 'multiple social identities' within the community itself (Valentine, 2003). No more is difference evident in the strategies and political priorities of gay men and lesbians. Sonya Andermahr (1992), is critical of the lack of recognition lesbians have faced within European policies. She notes there is a difference in strategies between gay men and lesbians in Europe. Gay men in particular have been focusing on age of consent issues, whilst lesbians have been concerned with issues around sexism and reproductive rights. She adds there has been some success for predominately gay men's

concerns (age of consent) in the European arena but lesbians have not been incorporated in policies regarding women or those that relate to gay rights. Historically, lesbians have often felt marginalised within gay organisations, which tend to be dominated by men, where their role has been reduced to 'coffee maker' (Schroedel and Fiber, 2000:99). As a result some lesbians have engaged in 'separatist' organisations or specific lesbian organisations aimed at addressing concerns they shared with feminists such as sexism and sexual autonomy. Thus lesbians have become concerned with access to jobs, sexual harassment, low pay, sexual exploitation and pornography (Schroedel and Fiber, 2000:99). Though not 'exclusively' so, lesbian feminism has tended to align with the 'radical and revolutionary' aspects of feminism (Richardson, 2000:258). Thus as Richardson (2000) contends, lesbians and feminists have often share a perspective when it comes to rights discourse. They are less concerned with 'formal' equality but challenging 'heteropatriarchy' (Richardson, 2000:259). There has been criticism from some feminists that relationship based rights reinforces a model of citizenship that privileges 'coupledom' which is founded on heterosexist and gendered norms (Richardson, 2000:267)[10].

2.c. Partnership rights

This difference between gay men and lesbian political strategies can be illustrated by their approaches to partnership and marriage rights. Cécile Velu details the journey of this partnership law in France. She argues that the success by some activists in getting the Pacte civil de solidarité (PACS) introduced was the result of a particular strategy that appealed to French notions of universal citizenship (1999). Some PACS activists wanted the contract to include heterosexual couples and non-sexual unions, such as brothers and/or sisters, and

[10] Richardson (2000) in particular cites Christina Delphy (1996) who sustains this argument about rights based on a relationship.

to steer the debate away from gay and lesbian rights to more universal citizenship[11]. She concludes that these inclusions have diluted the issue of lesbian, gay partnership rights and particular inequalities of legal rights between men and women (she gives the example of lesbian activists in wanting more access to reproductive technology). Similarly, Judith Rauhofer (1998) traces the 'gay marriage' and registered partnership debates in Germany where the lesbian movement with its alliance to feminist politics, was critical of 'state regulation' of their relationships and sought to reject it as part of their political agenda.

As the example of the PACS shows, the process and length of time it takes to implement legislation concerning relationship rights depends on the particular political, legal, cultural discourses that prevail in the country. The strategies deployed by some of the campaigners and activists for the PACS were to relate them to French discourses of 'universal citizenship'. The passing of registered partnership law in Denmark fitted in with Danish perceptions of their country as 'progressive'. Therefore, the bill for the registered partnership was passed because legislators felt it would not harm their political careers (Dupuis, 1995:111). This is similar to the way in which Dutch law has introduced anti-discrimination legislation relating to homosexuality and the debates around legalising gay marriage. Dutch notions of 'tolerance' and individual autonomy shaped these debates and processes over sexual matters (Moerings, 1998). In comparison, America whose legal framework is based on general constitutional rights coupled with state differentiations, made the process slower and less expedient in terms of recognising same-sex relationship rights (see a full comparison of these processes and arguments in Dupuis, 1995). In Poland, cohabitation has no legal status in comparison to marriage (Kwak, 1996). A survey in Poland revealed a high level of support for non-marital unions, yet an

[11] For another discussion of the political debates that led to the PACS see Halley, J. (2001) in particular she discusses the rhetoric's of' normalisation' that constituted these debates.

'ambivalence' about whether appropriate legislation should be produced (Kwak, 1996). A public opinion survey revealed gender differences (men receptive to the idea of nonmarital unions but less concerned with the financial obligations that they engender, women perceiving such arrangements as lacking 'security') in their view of such unions and also family pressures to conform to marriage. Thus, resistance to legislation regarding nonmarital unions reflects Polish societal norms (Kwak, 1996).

Though there has been some success with the legislation of partnership rights particularly in Europe, the availability of marriage for same-sex couples remains restricted to the Netherlands. It is worth noting that the debates and processes that culminated in the introduction of registered partnerships were often seen as a 'compromise' in the face of demands for same-sex marriage. For example the introduction of registered partnership provision in Hawaii was a compromise in the face of legal moves, which saw the ban on same-sex marriage as 'unconstitutional'[12] (Goldberg-Hiller, 2000). This resulted in the passing of partnership registration in Hawaii, which was seen to contain lesbian, and gay demands that were 'out of control' (Goldberg-Hiller, 2000:123). Similarly, the passing of registered partnerships in Denmark was also seen as a compromise as public support for same-sex marriage was not high (Dupuis, 1995:111). The notion of same-sex marriages remains too 'controversial', while registered partnerships, which are broadened in some cases to non-sexual unions (as in France) and heterosexual cohabiting couples generally, are deemed more palatable in public discourse.

[12] A fuller analysis of this is contained in Goldberg-Hiller's chapter as referenced in the text. He explains how the *Baehr v Lewin* (1993) and *Baehr v Miike* (1996) cases found the states refusal to allow three same-sex couples marriage licences, violated a constitutional ban on gender discrimination, which resulted in the 'Defense of Marriage Act' being introduced.

The recognition of unmarried relationships is by no means uniform within nation states. The Netherlands has a range of ways to recognise unmarried unions. These include cohabitation agreements which are not regulated by law but contain the wishes of the partners. Registration of partnerships is available both to same-sex couples and heterosexuals; marriage is now available to same-sex couples (Ilga, 1999). Sweden offers domestic partnership that is available to both same-sex and cohabiting couples. It makes available various legal rights such as joint property rights and inheritance rights. Registered partnerships are available to same-sex couples only and apply (with some exceptions) to marriage rights. Some European states offer a range of rights at varying degrees of legality. There are symbolic rights, such as in the Netherlands, where prior to same-sex marriage being made legal was available in a ceremonial form, but containing no formal rights.

A further point to make about rights relating to unmarried couples is the difference from the rights relating to marriage. As in the Swedish case registered partnerships are 'virtually' the same but not entirely. Registered couples cannot share joint custody of children, they cannot have access to public reproductive facilities (such as insemination) (Ytterberg, 2001). This is the same with the provision for registered partnerships in Denmark where adoption and joint custody of children is not recognised (Dupuis, 1995: 104). Dutch registered partnerships until 2001 did not allow couples rights regarding the custody of children and adoption (Waaldijk, 2001). In the Dutch case, the Kortman Commision recommended that same-sex couples be allowed joint adoption providing the adoption conditions were made 'stricter' (Waaldijk, 2001:447) leading to legislation finally being enforced in April 1 2001. Marriage still remains the main legal way in which couples can acquire automatic recognition of rights regarding children, property, insurance

etc. There still remains small but significant anomalies between registered, domestic arrangements and a disparity in the availability of the availability of these rights at the regional level. As I have already stated the registering of partnerships in the UK remains in London. Spain, makes available registered partnerships in Aragon and Catalonia but at present not nationally (Ilga, 2001). Similarly Germany had up until the passing of registered partnerships nationally, some regions offering the right particularly in Red and Green coalitions. The unevenness of rights remains inconsistent within national contexts.

In Britain, London has now made available (since the 5 September 2001) a partnership register where both gay and heterosexual couples can register their relationship and receive a certificate. There is a small civil ceremony involved which is only available to London residents, the registration has at present no clear legal status. More recently, the government has published a consultation white paper 'Civil Partnership a Framework for the Legal Recognition of Same Sex Couples in England and Wales' (DTI, 2003). This proposes a registered civil partnership that offers same-sex couples rights and recognitions in terms of: pension, tax, next of kin, death registration and property. There has been some criticism that the proposal does not cover unmarried heterosexual cohabiting couples. Peter Tatchell, gay activist for OutRage, responding to the white paper is quoted as saying: 'It is divisive, heterophobic and discriminatory to exclude unmarried heterosexual couples' (BBC, 2003). Similarly, Evan Harris Liberal Democrat equality spokesman commented: 'The decision to exclude opposite sex couples from claiming the rights conferred by civil partnerships will be a bitter disappointment to hundreds of thousands of heterosexual unmarried couples' (BBC, 2003). Whether the scope will be broadened to include heterosexual couples remains to be seen, as the consultation process ends 30 September 2003.

Jacqui Smith the minister for women and equality behind the consultation document states: 'This is not about being 'PC', but about bringing law and practice into line with the reality of people's lives,' adding 'thousands of people are in long-term, stable, same-sex relationships.' (BBC, 2003). Once again the familiar reference to long-term 'committed' relationships and 'stable families' (BBC, 2003) is made by the government minister in her presentation of the document. However, the white paper, once agreed would bring the UK in line with a number of other member states. The possible implications for immigration provision is at the time of writing unclear. Stonewall in their response to the White Paper, state:

> We believe that the Immigration Rules should also be amended so that couples intending to register a partnership are treated the same way as fiancés or fiancées. An individual coming to Britain and able to demonstrate the intention of registering a partnership should be treated the same way as heterosexual able to demonstrate to be married. (Stonewall, 2003).

Whether other nationals will be eligible to sign up and benefit from the registered partnership scheme has not as yet been clarified.

2. d. Partnership rights and migrants

Questions remain at a general level to what extent registered partnerships strengthen same-sex couple's immigration rights. As Binnie (1997:242) comments, partnership rights for cohabiting and same-sex couples in their home country will not automatically be accorded to migrants. My own analysis of registered partnerships in this section illustrates this. For example, non-French nationals who sign the PACS have to be considered by the administration; immigration rights are not automatically conferred (Ilga, 1999). In Denmark, you need to be a Danish citizen domiciled in Denmark (Dupuis, 1995:104). In the Netherlands since 1998 registered partners' are given the same immigration rights as

married partners'. However, until 2001 foreigners did not have the right to partnership registration. A 'residence entitlement' was required either to register a partnership with a Dutch citizen or with another foreigner (Waaldijk, 2001:445). A Bill that came into force on the 1 April 2001 states that only one of the couple needs to have Dutch citizenship or be domiciled in the Netherlands in order to marry (Waaldijk, 2001:451). Therefore, migrants may find that they cannot automatically obtain rights, which are available to nationals of the country. Residency status may be required in order for couples to register their partnerships; conversely in the PACS case, non-French citizens may not necessarily be afforded the rights that come with registered partnership. As these instances show there is a contradictory and discretionary element when it comes to migrants and partnership rights which are available to indigenous citizens of nation-states.

There have been a number of cases which have illustrated the way in which registered partnerships and cohabitants have not been recognised by other nation states. Once such case is *Netherlands v. Reed* (case 59/85). This involved a British woman who had been in a cohabiting relationship with a Dutch national for five years, who accompanied her partner to the Netherlands as he took up work for the subsidiary of a British company based in the Netherlands (Ackers, 1998:128 see also Elman, 2000). Her application for a residence permit based on her relationship, was dismissed, as she was considered not a spouse of a community national-as a spouse must be a married partner (Ackers, 1998:128). The case went to the ECJ where it was argued that the growing presence of cohabitation across nation states was increasing and the discrimination was preventing Ms Reed taking up rights available to Dutch nationals (Ackers, 1998:129). The ECJ took a 'broad' interpretation rejecting these arguments; 'social legal changes' must be 'visible' across the

community not just in 'one or two member states' (Ackers, 1998:129). Thus, a conservative approach is taken by the ECJ with regards to their interpretation of 'spouse'.

In another more recent case (31 May 2001) a Swedish national took his case to the ECJ *D and Sweden v Council,* (case C-122/99P and C 125/99 P)[13]. A Swedish gay man moved with his registered partner to Brussels to work for the European Council, the partner was not recognised as a spouse and could not benefit from the allowances spouses received. The ECJ in its judgement maintained a distinction between registered partnerships and marriage, thus the ECJ rejected the argument that the man's partner was being discriminated against. The court ultimately left it to the council to amend its provisions regarding spousal benefits. Even the Council of Europe in its employment provision does not regard register partnerships on a par with married couples.

Elspeth Guild (2001:680) raises the argument that the ECJ rulings that do not recognise cohabitants as spouses, should recognise them as a member of the family under article 8 'right to respect of family life'. However, this argument has not been adopted by the ECJ. Guild sets up a number of other arguments on how free anti-discrimination EC treaty articles 12 (grounds of nationality) and 13 on (sexual orientation) could provide rights for same-sex spouses. Article 13 could be used by same-sex couples for inclusion in European Community definitions of 'spouse' and 'member of the family' (Guild, 2001:688). Though, utilising article 12 is much more problematic proposal.

> The right to non-discrimination on the basis of nationality can help same-sex partners' who are moving to a host Member State whose own nationals are entitled to immigration rights for their third-country national same-sex partners'. However, this right cannot help where no such immigration rights exist for nationals of the host Member State (Guild, 2001:688).

[13] This case is reported in Euroletter 89 June 2001, provided by Ilga at www.ilga-europe.org .

Once again what this example raises is the discressionary elements of family reunion policy in the EU. The recognition of rights for same-sex couples are referred back to the prevailing situation of the Member State or as Guild puts it: 'The conditions surrounding the exercise of the right of the partner to enter are entirely in the hands of the host Member State '(2001:685). In this specific context Community law can do little to challenge a Member State that does not recognise same-sex relationships for the purposes of immigration even if they are available for marital relations.

3. International, European legal regimes

3.a Human rights discourses

European space in general is still characterised by gendered and sexualised constructs. Terrell Carver (1998) argues that citizenship narrative such as those contained in international covenants, constitutions and laws etc are both gendered and de-gendered. To summarise, overt gendered narratives aim to "protect" women and particular ideals of the family. De-gendered narratives are couched in the language of equality, universality to "evade difference" and hide the exclusion of women in the narrative (Carver, 1998:20). For example the ECHR, which deploys the language of universality, is very much a product of the 1950's when it was formulated. Article 14 of ECHR, which prohibits discrimination, does not include sexual orientation in its grounds, something that the International Lesbian Gay Association, (Ilga is a European NGO lobbying for gay and lesbian rights in European policy) is seeking to change.

Human rights discourse is constructed around universalistic and paternalistic notions of 'protection'. Tuitt in her discussion of refugee's and the Geneva Convention, describes its Eurocentric basis:

> Whilst the policy goals of Western states may have altered since the drafting of the Geneva Convention, the divisive nature of its definition of a refugee ensures that conditions are set in place for policies which increasingly prevent refugees from developing states from seeking or gaining protection within Western nations. (Tuitt, 1995:48)

The refugee, Tuitt argues, is a narrow western, European construction tailored to suit their interests, against contested definitions espoused by pro-refugee organisations (Tuitt, 1995). Human rights regimes present a particular discourse, where they are seeking to 'protect' the 'victims' from their inhuman treatment by nation-states, yet at the same time they can be 'customised' (as described by Guiraudon 2000:) by nation states to suit their interests. Though they propose general interests regarding 'humans' they remain highly gendered, racialised and sexualised. The following section will discuss human rights discourse in relation to sexual identity.

3. b. Human rights discourse and Lesbian Gay Bisexual rights

The sexualised discourses of Human Rights legislation provides a specific context in which homosexuality is placed, within '...juridical themes of authenticity, final truth, rationality, humanity and legitimacy' (Moran, 1996:175). Moran gives the example of *Dudgeon v. United Kingdom* (1982) case, which argued for the decriminalisation of homosexuality to be applicable to Northern Ireland as it was in the UK. In this case, Dudgeon's homosexuality was described as "congenital". His homosexuality was 'long-standing' and intrinsic to his identity. A judge made a distinction between those with innate homosexuality and those who are due to a lack of normal sexual development but are not 'incurable'. subject'. This subject position is one of a 'true self' an 'authentic self' which becomes embodied in the discourse of Human Rights. Moran puts in context the way in which the homosexual can have a number of meanings specific to the legal contexts that are framing them, whether it is the way legal discourse names homosexuality and relates

them to specific offences which become *homosexual* offences. In addition, in this way the legislation invokes homosexuality to mobilise meanings around moral behaviour. These contexts provide examples of how homosexuality can be utilised in a particular way to serve particular legal arguments.

Wayne Morgan (2000:218) in his discussion of international human rights law and sexuality places it in the context of westernised conceptions, which in terms of sexuality is based on discourses of 'legal neutrality', 'privacy' and 'tolerance'. Though, there have been some successes with claims of privacy (see section below) they continue to reinforce 'hetronormotivity' (Morgan, 2000:218). Claims then are referred to the realm of privacy, the unseen. Tolerance is mobilised to suggest that homosexuality is something to be grudgingly 'put up with'. Morgan argues tolerance acts as a way of maintaining homosexuality as bad and reinforces heteronormativity (2000:220). Like Moran, he picks up on the way human rights continue to place homosexuality in terms of victim, and he states: 'At best, the UN like the EC, participates in a minoritising discourse which locates the homosexual as misunderstood victim.[14]' (2000:220). To briefly summarise Morgan's argument, international regimes retain rather than challenge heteronormativity and they seemingly mobilise the same themes around homosexuality of innateness, corruption and victim.

3. c. Lesbians and Gays and the European Union

Specifically in relation to the gains of same-sex rights and the ECHR the results have been 'patchy'. As stated earlier, there have been some gains in terms of the decriminalisation of

[14] Morgan refers to a number of issues relating to UN and homosexuality. In particular he refers to their treatment of Ilga the gay European NGO, which nearly lost its NGO status due to unproved allegations of links with paedophilia, for a full examination and explanation see Douglas Sanders (1996) piece in Human Rights Quarterly referenced in the bibliography.

homosexuality *Dudgeon v. United Kingdom* in 1967 and *Norris v Ireland* (1988 Sanders, 1996:79 see also Wintemute, 1995, Moran, 1996, Morgan, 2000), all won on their right to privacy. The UK has also lifted the ban on gays serving in the armed forces, as a result of cases being won in the European Court. To turn briefly to EU law and sexuality, there have been a number of moves to place lesbian and gay rights on the agenda. In 1994 there was the 'Equal rights for homosexuals and lesbians in the EC' or as it was known the Roth report named after the author German Green MEP Claudia Roth who published it (Ilga, 1999:10). This report examined the discrimination that lesbians and gays faced within the context of the EU, and was accompanied by a resolution of the European Parliament asking the Commission to draft 'Recommendation' to abolish sexual orientation discrimination (Ilga, 1999:10). Though it received symbolic support from the Parliament, many of the recommendations were rejected because of 'legal competence' (Ilga, 1999:10). As Ilga contends it generated some interest in discrimination and led in some way to Amendment 13 of the Treaty of Amsterdam. Lesbian and gay representatives such as Ilga lobbied member states to have sexual orientation included in article 13 (anti-discrimination article on grounds of race, sex etc) into the Treaty. However, Ilga questions the scope of the inclusion of article 13 to the Treaty. They note the legal competency of such an article is weak, with no 'enforceable' rights and measures can only be adopted when the council 'see fit' (Ilga, 1999:11).

A need for strong legal protection of sexual orientation was evident in the case of *Grant V South West Trains* (case C-249/96). Here Lisa Grant, took her case to the European Court of Justice to challenge the refusal by her employees South West Trains to recognise her female partner in terms of travel benefits, usually accorded to married and unmarried opposite sex partners' (Ilga 1999, see also in Morgan, 2000:210 and Elman, 2000:237).

Cherie Booth QC, who represented Lisa Grant, argued it was discrimination; if her partner had been a man she would have received the benefit. The Court ruled there was no discrimination because had they been a gay male same-sex couple they would still have been refused. The invention of a 'imaginary' gay male couple to compare to the lesbian couple making their claim also reaffirmed their view that same-sex partnerships are not equivalent to married couples (Elman, 2000: 738). This case reveals once again the conservative approach adopted by the EU with regards to sexuality. It also serves once again as a reminder of the limitations of legal instruments such as the European Court of Justice. As Koppelman (2001) argues, the Lisa Grant case highlights that the EC treaty did not begin as a 'human rights instrument' and its function was to create a single market. Therefore, the ECJ (as it applies in the Grant case) and the European Court of Human Rights have a 'margin of appreciation' allowing states some discretion to abandon Human Right norms based on 'local conditions' especially when it comes to social policy (Koppelman, 2001:633). This conservative approach is particularly explicit with regards to the family. The discussion will now turn specifically to the ECHR and article 8 'right to privacy and family life'.

3. d. The ECHR and migrants

This section examines the ECHR and its role in relation to same-sex and cohabiting migrants. In particular, articles 8 and 14 have been utilised to defend the unmarried persons right to join their partners'. Firstly, the section will deal with how specific articles of the ECHR have been used for migrants generally. The discussion turns to how the ECHR generally deals with issues relating to sexual identity. The section will then consider specific cases involving same-sex and cohabiting couples that have invoked ECHR articles.

The ECHR is commonly used to appeal against decisions where migrants are refused entry, or threatened with expulsion. Most common articles that are invoked are articles 8, 14 and 3. Article 3 'protection of inhuman treatment' is often invoked in cases involving asylum seekers, who have their status as refugee rejected. There have been a number of cases where this article has been used: *Cruz Varas et al. Vs Sweden; Vilvarajah et al. Vs United Kingdom; Viyayanathan and Pusparajah vs. France* (Guiraudon 2000:1097). First in these cases a violation was not found, but 'public security' cannot be the grounds used by states, to rule out protection and in three of the cases a violation was found (Guiraudon 2000:1097).

Articles 8 and 14 have also been used repeatedly by same-sex migrants to support their argument of family reunion. Article 8 states that:

> Everyone has the right to respect for his family and private life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.

And in addition article 14 states:

> The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Guiraudon (2000) critically assesses these articles in relation to the rights of foreigners and cites a number of cases where a violation of article 8 has been found. In particular cases involving foreigners who have lived in their host country since childhood, with few ties to their country of origin, the court and the commission have not tolerated expulsion from the

receiving country, she cites cases *Moustaquim vs. Belgium; Beldjoudi vs. France; C vs Belgium* (2000: 1097). However, Guiraudon also makes reference to a case in Germany. This involved the Bavarian authorities deporting a German born Turkish teenager who had a criminal record, but who had lived in Germany with his parents for thirteen years. It resulted in the families' right to family life being continued in Turkey (Guiraudon, 2000:1103). The interpretation of this article resulted in the expulsion of a whole family from Germany to Turkey. In terms of British immigration law, the British government in 1985 was found to have breached articles 8 and 14 of the ECHR with regards to the rights of non-British women to bring in their husbands, (a right available to non-British men). This resulted in a levelling down of restrictions with both men and women being subject to the same restrictions (Bhabba and Shutter 1994: 76-8). Article 14 is often invoked in cases involving aliens, but is often deemed 'irrelevant' by judges (Guiraudon, 2000: 1097 referencing Krüger and Strasser, 1994). One exception was *Gavgusuz vs. Austria* in 1996, where the Court found refusing emergency assistance to a Turk in Austria was a breach of article 14 (Guiraudon, 2000:1098). The ECHR cannot then be relied on to protect migrant rights. No specific article of the text deals with migrant rights and the ECHR is reluctant to intervene in individual state law especially regarding immigration.

3. e. The ECHR and the family

A recent case (Fitzpatrick V Sterling Housing Association), involved a gay man (Martin Fitzpatrick) winning his appeal in the Law Lords, citing the ECHR where he won the right to succeed the tenancy of deceased partners' flat. This was a landmark case as Martin Fitzpatrick was described in terms of a 'family member'. If the rather conservative Law Lords could rule this, it has raised hopes that other similar judgements could follow suit (Karsten, 1999). Stonewall Immigration note the recent inclusion of 'member of family'

and 'family visitor' which includes unmarried partners' and same-sex couples (particularly useful in appealing against a refusal to give a visa to visit a family member) which became part of immigration regulations announced at the time of the incorporation of the Human Rights Act (Stonewall Immigration, 2000a).

One of the main problems with the ECHR is at the level of interpretation deployed by judges when certain articles of the convention are used to support a particular argument. This is particularly problematic for sexual citizens when citing Article 8 especially the part of the article that refers to 'right to family life'. It seems when the family is articulated in these legal arguments, judges often adopt a conservative interpretation where lesbian and gays are not included in their definition of the family. Geraldine Van Bueren (1995) examined a range of international covenants and conventions (including the ECHR) which all contain references to either the family or family life. She argues that judges will interpret 'family life' in a way that reinforces the public/private distinction (Van Bueren, 1995:765). For example, judges will often defer claims using Article 8 to the 'right to private life' provision' rather than 'family life'. In particular lesbian and gay migrants arguing their right to family reunion through this article have found the Commission reluctant to accord that with 'right to family life' (Wintemute 1995, Van Bueren, 1995). Stonewall Immigration argue that this is due to the way the ECHR invests 'the family' with a particular symbolic value which seems to warrant it 'special' protection from 'untraditional' definitions (Stonewall Immigration, 1999). A recent case involving a gay man (Nigel McCollum), citing 'right to family life' lost his appeal in the Law Lords to bring in his Brazilian partner due to the judge failing to recognise the male partner as a 'family member' (Stonewall Immigration, 2000b).

Robert Wintemute (1995, 2001) provides a detailed analysis of international conventions and sexual orientation; he argues that there is a distinction between claims being deferred to 'private life' rather than 'family life' at the level of legal interpretation. He identifies the part of the article that states 'there shall be no interference by a public authority with the exercise of this right.' The word 'interference' is interpreted in a way to justify this distinction and also to support rulings that do not recognise 'right to family life' involving migrants' family reunion. He cites four cases involving same-sex couples with partners' of British citizens attempting to realise their family reunion. Firstly, the Commission referred to the 'private life' stage of the article. Secondly it justified this in the case of X *and* Y v. *UK* (no.9369/81, 3 May 1983) involving a British-Malaysian male couple, by arguing the couple were 'professionally mobile' and 'it has not been shown that the applicants could not live elsewhere than the United Kingdom, or that their link with the United Kingdom is an essential element of their relationship' (Wintemute, 1995:104). However, if a ruling was made on right to family life, Wintemute (2001:715) argues this would not have been helpful in an immigration context because article 8 does not even 'guarantee' married heterosexual couples a right to live together in a particular state. So on one level you have resistance on the part of the ECHR to recognise same-sex couples as a family members and on a second level apply it to their rights to live together in a particular country.

This is a frequent feature of rulings involving same-sex couples using Article 8 to support their immigration claim. Stonewall Immigration has given accounts of this justification in similar cases. For example a New Zealand national wanting to remain in the UK to continue a stable relationship with his British partner:

> The Commission found homosexual relationships do not fall within the ambit of family life but rather within the notion of private life; that the inevitable disruption of a person's private life by refusing to allow him to remain in the country cannot, in principle, be regarded as an interference with the right to respect for family life,

> unless the person concerned can demonstrate that there are exceptional circumstances justifying a departure from that principle. (Stonewall Immigration, 1999:5)

The Commission added that the lack of recognition by UK law of the rights for non-nationals as 'family relationships' but as they see them as 'private relationships' is not a violation of Article 8, as the applicant and his partner had not substantiated a claim it would be 'impossible' to live together in New Zealand or elsewhere (Stonewall Immigration, 1999:5).

This line of justification, adopted by the commission, suggests that migrants can be 'dropped' anyway irrespective of why they wish to enter a particular country. It is particularly problematic for gay and lesbian migrants, as Binnie argues: 'The basic premise of lesbian and gay geography is that it is only possible to be gay or lesbian (or bisexual or transsexual) in specific places and spaces' (1997:241). This is clearly illustrated in the case of the British-Malaysian couple, where the Commission did not consider that homosexual activity between men is illegal in Malaysia and therefore it could not be an alternative country of entry (to entering the UK). Though asylum on the grounds of sexual orientation can now potentially be argued (Stonewall Immigration 2000), this is a recent development, which was probably not available in the context of that case. Wintemute, argues that the consistency of this justification, arises out of the interpretation of 'interference'. In the four cases he refers to involving gay and lesbian migrants he argues:

> The Commission's reluctance to find an 'interference' in these cases could be explained by characterising them as cases in which any lack of 'respect for...private life' lay, not in an active 'interference', but in breach of 'positive obligation' to act imposed upon a government by Article 8(1). (Wintemute, 1995:104)

Wintemute argues this 'positive obligation' characterises the claims for entitlement, in this case immigration that inadequately recognises same-sex couples, is of a highly 'sensitive'

political nature. The findings are conservative, with 'interference' not being found by the Commission, and thereby resulting in the government not being obliged to recognise the rights engendered by the claim (Wintemute, 1995:104). In the case of migrants placed in the unmarried persons categories, the success of this has depended on the interpretation of the judges in these cases and also to what extent they are prepared to apply them to a particular country's immigration policy.

One final example illustrates that even same-sex couples with children find themselves outside the parameters of family life. An Australian national with her daughter by donor insemination were denied the right to form a family with her UK national female partner. In this case C & L.M. v UK (14753/89, 9 October 1989), the Australian national referred to article 12 'right to marry and found a family'. The commission concluded: 'The first applicant's relationship with her lesbian cohabitee does not give rise to a right to marry and found a family with the meaning of Article 12' (cited in Wintemute, 2001:217). The Commission rulings led to the deportation of the Australian national. This case is another salient example of the reluctance of the Commission to confer rights or intervene when it comes to individual nation-states immigration regulations.

The examples from ECHR case law present a rather stark picture of the situation regarding same-sex couples and migration in the European arena. There is a lack of understanding on the part of the ECHR, that it is not always possible or safe for a gay couple to live in certain places. They also show there is a 'levelling' down and deferment of decision making to the nation-state. Changes within the nation-state need to occur before the court will consider a 'European consensus' (Wintemute, 2001: 729). As it stands: 'The European Court of Human Rights has not decided a single case clearly raising the rights

and obligations of a same-sex couple ' (Wintemute, 2001:713). Even when changes occur that recognise partnership rights for indigenous citizens they do not automatically apply to cases involving migrants. Same-sex couples facilitating right to family life find themselves caught in a doubly conservative discourse.

Conclusion

This chapter shows that the transnational or postnational citizenship cannot be conceived as usurping national sovereignty. Though there maybe some elements of the postnational with some successes at European level for gay rights (and some failures too), these factors do not operate in the way the postnational model suggests, as international regimes continue to harbour dominant discourses regarding migrants and sexuality. This is particularly apparent with regards to human rights which set out universalistic pronouncements about equality of treatment. This lack of definition and limited legal jurisprudence means the inability of such bodies to intervene in national legal practices. This is most apparent with regards to 'controversial' issues such as immigration and sexuality. The combination of the two with regards to the same-sex couples leads to normative and narrow interpretations with regards to right to family reunion. This is illustrated by the negative rulings made by the European Court of Justice to cases brought forward by sexual citizens. Similarly, the ECHR has continued to retain a narrow definition of family with regards to sexual citizens. It continues to cling to conservative definitions, which fail to reflect changes in familial formations and the rise of cohabitation. This is evident in rulings that fail to recognise both heterosexual and same-sex unmarried unions. With an increasing recognition of unmarried partnerships in other EU states, Britain finds itself increasingly having to 'catch up' with the overall European trend. However, countries that do offer registered partnership do not automatically allow

migrants to benefit from the rights already available to nationals. Registered partnerships, though one important step in recognising unmarried people in social polices, offer 'virtually' the same rights as married couples, therefore they still contain anomalies such as rights to adoption. This further serves to demarcate unmarried people as distinct and thus unequal in comparison to married persons.

Chapter 5: Interviews with same-sex couples

Introduction

This chapter is concerned with the interviews that took place with migrant same-sex couples. The chapter is arranged around key issues that arose out of the interviews. Firstly, there is the 'proof' element of the application, which involves collating information as evidence of cohabitation. Primarily this is illustrated by the variety of information the interviewees provided and also the bearing it has on their intimate space. The second section of the chapter discusses the two main factors that differentiate the experience of migrants; namely whether they make a claim inside the UK, and whether they make a claim outside. It explains the different experiences and implications for couples making these types of applications. The final section discusses the possible exclusion and inclusion, based on class, gender and national identity that couples may face when making their application, thereby highlighting the importance of the migrant's employment background and skills. This is relevant to current trends in UK immigration policy, where the skills category has been opened up to migrants who can fulfil certain shortage occupations.

1. Proof, collecting evidence

1.a. Proof of cohabitation

Proof is a key element of meeting the criteria of the unmarried partners' rule. The emphasis on proof and evidence constitutes the disciplinary power of dominant state institutions such as the Home Office. The production of regulative practices and criteria is scrutiny based on surveillance and observation of subjects. Couples find themselves subject to examination by the Home Office through the process of making an application. They become a case, to be scrutinised and examined. This emphasis on proof and

evidence has been an inherent part of the rhetoric that was used to justify the unmarried partners' rule. The 'tough' regulations that constituted the cohabitation period and other stipulations that featured heavily in the Labour governments discourse enabled the government to make a 'concession' (literally and figuratively) that recognised unmarried people. The proof also serves to counter the frequently mobilised rhetoric of 'abuse' that pervades immigration debates. Therefore, the proof of two years cohabitation is a distinctive feature of the unmarried partners' rule and is an important element of the criteria that must be fulfilled. It was particularly difficult for couples to meet the four year requirement. Out of my sample there were two couples that began to make an application in 1997 (who had to meet the four year period), the remainder of the couples made their application when the cohabitation period was reduced to two years. As one couple (M9)[1] illustrates the four year requirement was a major obstacle. Therefore the change to two years in June 1999 offered them the opportunity to meet the criteria:

> G: [T]he application did not turn up until a few months after I 'd met P [partner], because by [then] the law in '96, 97, there was no such a thing so I didn't even think about it and perhaps we didn't think [about it], we didn't know if [there] would be an opportunity for us because with the old law, it took 4 years to be together and I had no chance since I was a student and I was just three years in England and been with P maybe two years, around two years. And then a year '97 or '98 [1999], the law changed to two years, which gave us the chance to go for [it].

The two year cohabitation period, though still difficult, was less of a hurdle than the four years. The quantitive data (see tables in introduction) shows an increase in the number of admissions, in 1999 which were 116 and 175 in 2000. The lowering of the two year requirement, along with a general awareness of the concession, could reflect the increase in numbers as couples previously excluded could now meet the criteria.

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[1] F refers to female M to male, the number in the brackets refers to the order the couple were interviewed e.g. 1 first female/male couple interviewed, see appendix for table of interviews.

The ability to prove cohabitation relies on the production of various documents and the interviewees reveal that this documentation spans a range of sources, with most common documents relating to joint finances or mortgage/tenancy agreements. Documentation about joint accommodation and finance agreements not only provide evidence of periods of cohabitation, but they also illustrate the relationship is 'akin to marriage'. Other forms of proof of cohabitation can be correspondence that is addressed to the couple such as utility bills. Most of the couples found collating evidence difficult, as many of them had not kept bills or envelopes addressed to both of them early on during their cohabiting. In addition, many of the couples did not have joint bank accounts or jointly rented or owned property, therefore, couples who had previously been economically independent had to make adjustments to conform to the type of coupledom set out in the criteria. Couple (F3) illustrate these two points, in response to a set of questions about their proof of cohabitation:

P: But I think the key thing the most difficult thing for most people that they don't normally keep those kind of things and we actually said to people that we were thinking of applying, they said just keep everything, you never know when your going to need it and then getting M to sign my account that was the other thing erm and I, as I say one of the biggest things, the easiest thing was a bond, a joint bond, which we didn't have.

TS: What's a joint bond?

P: A mortgage, a property. We had decided anyway, right at the beginning of the relationship that we would both own property. We wouldn't buy it together, instead we would each buy our own property and live in one of them and rent the other. That was something we had decided ages ago.

Other couples in the sample, made similar statements about not possessing joint bank/mortgage arrangements and rectified this in order to fulfil the criteria. G (M9) talks about the process of collating evidence, for his proof of cohabitation.

G: I would say we worked quite early on that... I personally didn't believe something would happen [in terms of his relationship]. [My] reaction was taking things slowly. Maybe instinctively I decided I registered myself with the local authorities at my address then all the letters that my family were sending, which kept the letters from them then we went on holiday together kept photos, social occasions and birthdays.

G highlights a point raised by a number of couples about how early on in a relationship, they were unsure of their own plans for the future as a couple, therefore their approach to the application was initially tentative. However, the preparation that had been made, registering with the local authorities and keeping correspondence had been an important part of putting the application together. Another difficulty with collating evidence is that one or both of the partners', may have been in the UK a short time, and therefore may not have the requisite proof of cohabitation as couple (F2) point out:

J: We didn't have it [proof of cohabitation], because we had moved around hadn't got the utility stuff from here. And I hadn't paid for anything while I was living here; the bills were not in my name.

H: All the bills are in my name.

J: So we haven't even got those, In South Africa they were in my name but I didn't think to bring those back. We had only been living in this country less than a year, and though we had a joint account it was only for a couple of months, we had utility bills and birthdays, but its only a couple of months, trying to prove four and half years, well you have to prove two years.

The extracts above, from the couples that were interviewed all express the preparation and organisation that was needed to verify their cohabitation. They also show, that many of the couple's paperwork, was not organised neatly around joint bills etc. Though couples had been in a relationship for some period of time the actual proof of cohabitation was often difficult to piece together. However, in the absence of the formal documentation that was required (or where that documentation was scarce), couples improvised and provided other forms of proof to establish periods of cohabitation. One couple (F3) produced

delivery receipts, as evidence of where they lived. Another American-British couple (F5) had a marriage certificate from Vermont, where same-sex couples can undergo a marriage ceremony. Though, the certificate is not recognised by British law, the couple felt it was important to include it as part of the 'akin to marriage' remit of the rule. Another couple (M12) had particular difficulty providing evidence of cohabitation. A dog registered with the kennel club, from a puppy, in both their names was regarded by the couple as the strongest piece of evidence in their application as the couple themselves comment:

> A: Its quite interesting it is one of the few things, official documents that we could find originally in both our names, we rapidly joined the National Trust...membership of Stonewall Immigration...

The above quote also shows they took joint membership of other organizations as part of a process to build up evidence for their application. Though the above documents may not constitute the 'official' requirements that unmarried people need to meet, it was felt by couples that it was better to provide some evidence rather than none. As couple (F5) state:

> TS: So did you find this proof, this whole thing about gathering proof difficult?
>
> S: Yeah, because we didn't have the proof that they wanted so we took other proof, we were just lucky that they were prepared to treat that, we could have been unlucky.

Couple (M12) were advised by the solicitor to include any piece of evidence, to add strength to their case:

> A: The thing was I, we thought we needed bits of evidence which were very strong and we didn't have much that very strong, almost anything to so he [solicitor] said no almost anything you can put together as long as its presented well.

Where couples have difficulty collating the formal documentation to prove their cohabitation, as the examples above have shown, they have been resourceful and provided other evidence to fulfil the criteria. The criteria is based around very formal pieces of

documentation but couples have included material that is not usually legally recognised such as the same-sex marriage certificate or other more miscellaneous items which provide evidence of joint commitments. Further evidence also comes in the form of statements from friends and family corroborating existing evidence. Other more personal, informal evidence also becomes a necessary part of supporting an application. This more personal type of evidence is part of a process in which couples construct a story of their time together, which the next section will now discuss.

1.b. Constructing Personal Stories

Couples construct a story, a narrative to meet the requirements of the unmarried partners' rule, a narrative that starts from the beginning the couples met, to the period of cohabitation. Though these are formal stories, written in the voice of bureaucracy, they nevertheless evoke the personal and the informal. The construction of this story includes photographs, letters and cards, which are used as examples of periods of time together as a couple. They are also used to provide evidence that the relationship is 'subsisting' during periods apart, which is a requirement of the unmarried partners' rule. Therefore when couples 'tell the story' of their time together, these intimate items can be used as evidence to substantiate their story. One way to consider these items is to think of them as 'props'. The notion of props in the telling of 'life stories' is described in the context of ethnographic research: 'Then there are the *personal props*: from diaries and photo albums, to the collection of clothes, books and records, 'props' are depositied in a trail behind a life as it is lived' (author's emphasis Plummer, 2001:399).

These personal props are organised to support the narrative that the couples present in their application. Couples, through construction of these narratives open up their intimate

space to surveillance and scrutiny. It is their relationship that is being tested to conform to notions of commitment and stability. One of the couples (M11) describes their feelings about the process of obtaining statements from third parties (family, friends, employers):

> A: But there were funny stuff like we had to go to the bank to ask them for a letter stating that we both have bank accounts both our accounts are the same, same as with the Doctor. I went to the police station to get umm a signed declaration that we live [together]...[it is] quite an admission asking all these people to state we live together my mother his mother, family and friends that sort of thing saying they'd known us as a couple.

In the case of the above couple, the process was made slightly easier by the fact they were both 'out' to their family and friends. This is something they acknowledge in the interview:

> X: You have to look at it this way we were very fortunate that both our families are happy with the situation what would happen if our families didn't know about us? And we have to go and ask them please could you say we have been a couple for...that could freak them out we were just fortunate that way, a lot of people obviously don't tell their parents or don't want their families to know or too scared and they want to go down that line that's going to make it difficult.

Other couples had either faced negative responses from family and friends or felt uncomfortable being 'out' to these people. Therefore some couples could not include letters from family but as G (M9) points out:

> G: We had enough evidence without the letters from family and his family were very helpful they all wrote letters, in my case the family don't know so I couldn't I didn't (...) we can't provide letters, because my mother doesn't know.

Similarly couple (M10):

> B: We had both our names on the lease, but I was the signer and J was a witness. So they had all that and letters from my parents ummm, J did your Dad write a letter?
>
> J: No.

B: No you asked but he didn't, unfortunately he has not been too happy.

For lesbian, gay and bisexual migrants, there are real dangers about being open about their same-sex relationship to citizenship discourses. An interviewee (M8) who initially made a claim for asylum on grounds of sexual orientation (as well as an application based on his relationship) faced particular difficulties about being open about his sexuality in his country of origin Nigeria. Therefore, his friends and community were unaware of the particular way in which he applied to stay in Britain. This situation was exacerbated when his mother died in Nigeria and he was unable to return there as his passport was with the Home Office while his application was being processed. The following extract explains:

B.E: Because the complication really came when I was not out, a lot of pressure 'go to the Home Office ask for your Visa…'

B: B.E is saying from his Yoruba friends they couldn't understand why he wasn't doing that.

B.E: How come your mother die you're not able to go. Especially from the sort of background I had.

B: B.E. is very esteemed, B.E has helped loads of people through university all those kinds of things, so they couldn't understand…

The interviewee (B.E) was unable to explain fully to members of his community (Yoruba) why he was unable to return to Nigeria.

One interviewee (F4) felt uncomfortable about being 'out' at work, but was being questioned about her immigration status and her right to work, so her solicitor wrote a 'diplomatic' and general letter saying she was able to work. She also, suggested her route was 'ancestry' when work colleagues questioned her, as she didn't want to explain it was based on her relationship with her partner. A South African migrant (M11) also

comments on the implications of having his immigration status revealed to secure employment:

> A When I went to get the visa that was when I got my next shock, my visa states, it's stamped partner of [name of partner] how I am going to go to job interviews with that stamped. So when I go for job interviews I have to be out from the beginning. I had a lot of difficulty with companies I had a lot of interest. Once they see your visa I didn't have any comeback or anything.

The interviewee above felt that having his status revealed in his passport left him no choice but to be 'out' from the beginning to employees and that had implications for trying to get work. The process seems to be based on the notion that same-sex couples will be out to family, friends and employees. Also as it is concerned with proving a relationship, it requires couples to share personal information that couples do not feel comfortable with. The following interviewee (F4) feels this has particular implications for same-sex couples:

> L: I suppose also being gay your kinda closed about your relationship not a lot of people you share it with, and suddenly you've got write all those things down on paper and share it with a complete bureaucrat somewhere, that's probably sitting there laughing at all these you know all these moonings all over the paper.

Those interviewees who had supportive friends, family and work colleagues who were able to vouch for them as a same-sex couple found the ability to provide statements from third parties less problematic.

Other, personal paraphernalia that is used by couples in their application is photographs and personal correspondence. Photographs, become markers of the couple's time together they can also be used along with personal correspondence as proof that the relationship is subsisting. The unmarried partner's provision stipulates that couple's must show they have been in a relationship for two years 'barring' breaks of up to six months. During any periods apart couples must provide evidence that their relationship has continued, for

example phone bills that show calls to each other and letters. Photographs can also be used as evidence that the couple have spent holidays together or have visited each other during periods apart. All the couples that were interviewed included photographs in their application. Many of the couples described finding photographs of them together quite difficult this is best explained by the following interviewee A (M11):

> A: For instance we searched and searched for pictures of us together I mean I think there was one because...[we would] go out places with the camera I'd take the photograph, L would take the photograph they'd be a photograph me and a photograph of him but no photograph of us together.

The above interviewee was able to use pictures of each other with their pet dog, to show a time span of them together, he explains:

> A: Once she [their dog] arrived on the scene three years ago, so we got lots of photographs of one or other of us with the dog as she grew up sat on the same sofa or in the same place, so we've got a time span of her from a puppy.

Photographs of couples on holiday and key events such as birthdays and Christmas together were often included within the application. The sharing of moments together was part of the overall proof of not just time spent together but commitment as a couple, this is explained by this interviewee (F3):

> P: Things like we did the photographs of us in America, we did the photographs of the [us]...and at the awards ceremony I took M as my partner where everyone else take their boyfriend you know. Things like that, you know if you're not gay, you're not going to do that. So things like that prove it.

Photographs are part of the personal props that make up the couples' application. They are also part of the narrative that the couples are trying to supply that follows the remit of the unmarried partners' rule. Breaks in that narrative or any elements that can be perceived as an inconsistency must be explained. The application as an 'official', legal document must conform to a linear, coherent narrative that fulfils the criteria of the rule. Similarly, couples must present their relationship in a way that conforms to a coherent linear narrative of

coupledom. However, couples' own experiences, as expressed through the interviews, do not conform to this linear, coherent ideal. Legal advice is one way in which to circumvent difficulties satisfying the rules requirements. Also, couples themselves adopt various strategies to overcome these types of difficulties. This is evident, in terms of couples that have not been able to cohabit continually for two years and must show their relationship has subsisted during periods apart.

Couple (M12) were particularly concerned about fulfilling the two-year cohabitation requirement as they had experienced some periods apart. In this case, there was some difference in interpretation regarding the 'six months' limit to any periods apart. Did this mean overall no more than six months or any individual period must not exceed six months? This interpretation differed amongst the legal practioners (referred to as A and B) that offered advice to the couple as A (M12) explains:

> A: I think I mentioned in the E mail, I'd spoken to [lawyer:A], and he was quite insistent it was the 6 months rule, 6 months in total and he wasn't actually discussing it, I got a bit annoyed I don't like any professional who behave (...) I am the one who knows what he's talking about and I am telling you and rather than discussing it properly. A very different attitude to [laywer B]. After a conversation with him [referring to lawyer A] I was quite despondent.
>
> T.S: These periods apart where were you...
>
> A: It was actually in study...so there has never one period longer than 6 months because I either went over there or he came over here so there's never been longer than 4 months, though there has never been a single period of 6 months apart there was a total of more than 6 months, so [lawyer A] as very negative about that.

As the above excerpt shows, the first lawyer [A] they spoke to, interpreted the requirements as six months in total, which presented a problem for the couple in terms of their own application. However, the second lawyer they spoke to [B] interpreted it differently that was more favourable to their case, as the interviewee explains:

A: Did we speak to [lawyer B] before or after you were here? After, he was very different oh, no, no not 6 months total it's a period of 6 months [lawyer B] was instrumental in drawing up the guidance anyway.

The couple above were successful with their application despite the initial doubts they had about some periods spent apart. Part of their application included evidence that their relationship was 'subsisting' during their periods apart. The interviewee (M12) explains what this included:

A: We put in all the correspondence, all the correspondence all the E-mails, telephone bills showing calls to Slovakia, to the university, to your parents wherever. Fortunately we still got those.

A similar case can be seen with couple (F5) who also had some periods apart and had initial concerns despite being in a relationship for some time, that they may not be able to meet the two year cohabitation rule. Cohabitation for two years, with few periods apart, also relates to the 'akin to marriage' element of the rule[2]. The interviewee responds to this aspect of the rule:

S: I mean there are some couples and the husband works on an oilrig. He can be away for three months, they still married and they're living akin to marriage. So there is some debate about what akin to marriage means. The other girls [friends] had to show constant communication, and that you were living akin to marriage [but] not in the same house. So we spent a long time doing that, but they weren't interested in that. They said they weren't interested in the times you weren't together just the times you were.

As the interviewee states, to overcome the difficulty of periods apart, they concentrated on providing evidence of regular contact, but in the end they felt that aspect of the application was of less importance to the immigration officer. Anne Morris a solicitor (in an interview), discusses the notion of 'akin to marriage':

The actual law says it must be a relationship; couple have lived together [in] a relationship akin to marriage, which is two years or more. Actually, akin to marriage has worked to our advantage in some cases because we've had, as you can

[2] For a full explanation of how 'akin to marriage' is defined in the rule itself see chapter 3 .

> appreciate, on the other side of the coin loads of marriage cases where couples are working abroad a lot yeah. I mean I work abroad every other week. So if I was trying to come into akin to a marriage type of application and I was sponsoring my husband. Well its no big deal those three days a week or four days a week I am abroad because that's just my job. So with couples that are apart, whats the big deal, plenty of married couples have periods apart.

Morris's argument is that married couples experience periods apart and therefore, uses 'akin to marriage' in a critical way in terms of same-sex couples who have had time apart[3]. This underlines the paradox of the 'akin to marriage' stipulation. What does it mean to live 'akin to marriage'? This in relation to the rule is defined in terms of joint finances, living closely together as a couple under one roof. Periods apart are viewed with suspicion, so couples must have good reasons (such as work related reasons) for being apart and when they do so present evidence of communication. Yet as the lawyer and the interviewee (F5) both state, married couples spend periods apart. Therefore, there is a very strictly defined notion of what marriage is like being expressed here, behind which the possibility of 'abuse' and 'suspicion' must be repelled through proof of constant contact.

Once personal testimonies, statements from third parties are pieced together, the overall application must follow a robust chronology that fulfils the requirements of the rule. Legislation must give the appearance of cohesiveness and consistency. As an institution it must retain its claim to dominance and authority as a regulator and rule maker. This is reflected in the way in which couples construct their application. Couples and solicitors will spend time checking that all dates given and circumstances described are uniform across the application. Any inconsistencies, however unintentional, could be detrimental to the success of the application. Some of the interviewees typed up a model letter with a description of events and dates, which is then sent to third parties for them to sign and send

[3] See also chapter 3, which includes an extract from an interview with a lawyer Wesley Gryk who talks about 'akin to marriage' in his legal work.

off. Similarly legal practioners will go through the evidence and check through what should be included and what they should exclude. Dates and times must all tie up and be consistent throughout the application. Any breaks or gaps in the couple's time together must be accounted for, with evidence to support the narrative. However, couples that have difficulty meeting the criteria or any other difficulties during the application process are often able to overcome these with the aid of solicitors or MPs. The roles of these actors are discussed below.

2. Presenting the case

2.a. Applications inside the UK

Just over half the couples that were interviewed had legal representation during their application. The rest of the couples I spoke to sought some kind of informal legal advice either by initially consulting a lawyer (but subsequently made their own application), or by speaking to members of Stonewall Immigration. Legal practitioners had a role in the interviewee's application in a number of ways, which will be outlined in this section and interviewee's response to this representation has been somewhat mixed. Some of the interviewees had a very positive experience, with legal advice proving to be of great benefit to the success of their claim. For others, the experience was less than positive; examples of this will examined shortly. Generally, solicitors and lawyers are involved in checking through the form, scrutinizing the evidence and ensuring all the necessary documentation is included. Couples making a claim early on, when the rule was first introduced as a concession, particularly stressed the importance of legal assistance, as the following interviewee (F4) explains:

> L: When we applied it was such a short time after the concession that no applications had been approved yet, or anything there was limited information if your trying to do it yourself at least there's a lawyer who knows

> immigration law and know what their getting from the Home Office, it just made sense.

The interviewee above felt it was important to get legal representation, as there was little information on this new piece of immigration law. They began the process in 1997 after hearing about the introduction of the concession, completing the process (granted definite leave to remain) in May 1999. She and her partner add that the concession, as it was then, was a new experience for her solicitor:

> L: They hadn't had one where the person was in the country it was all people outside the country applying so it was slightly different she kept on saying to me I am not sure what we are going to do about this but lets do it this way.
>
> S: She was great though.
>
> L: The only sort of problem with the whole set up was the time it took, I don't think the Home Office planned for the number of applications they got.

Legal practioners, Home Office officials and couples themselves were all new to the process of the unmarried partners' concession. As a result of this, it can be noted that couples in the interview sample that made early applications found the process particularly difficult as their applications took longer to process. The guidance of legal practioners and information from Stonewall Immigration was particularly important whilst the concession was establishing itself.

The couple (F4), previously quoted, used a lawyer based in London, where some law firms were taking on same-sex couple's applications. The interviewee (M8) below, comments also on the importance of getting a lawyer as he was making an application shortly after the concession was introduced and he managed to find a lawyer outside London in Birmingham. The interviewee is responding to a question about the importance of legal representation in his partner's application:

B: Oh crucial Tracy, I mean this was new ground, there was no doubt it was new ground. They, Stonewall [immigration] was very clear they wanted lawyers in other parts to take on and succeed with these [applications], I think also, you know to bombard the Home Office it wasn't just one or two firms making these applications and also these firms would be liasing with each other building up networks of support umm I mean legal. There's no doubt [there was] loads of dependence on the legal firm and the fact that these were [in terms of their application] very, you know very attractive people to be supporting.

Stonewall Immigration, as explained by the interviewee above, was recommending solicitors and putting a list together of affiliated firms outside London.

Early on in the concessions history, there were particular bureaucratic problems as there was no individual form for unmarried couples[4]. Couples would either be sent a wrong form entirely, or a form that was not appropriate to their particular circumstances. This is illustrated by this interviewee (F4):

L: What we found was the forms were not geared to this application. It was some for application, so you had sort of figure out which bit to go in where luckily [name of solicitor] knew all of that, she said ignore that bit, fill this bit in there things like that it wasn't designed for this concession, it was the old form for something.

T.S: ....was the form geared to married couples?

L: Unmarried straight people basically.

The wrong form could result in delays and difficulties for the couple trying make an application, couple (M8) explains the how this had implications in their case:

B: The immediate thing was a technicality of when the, the wrong form having been sent that was because they were changing the forms, this is just a specious thing and they were holding out for that however, and at the same time the asylum thing had gone in so there were the issues around the asylum then there was the lawyer considering going to an appeal if they did not honour the issue raised linked to the specious matter of not having the correct form sent in...

[4] An individual form for unmarried partners' was introduced in October 2000 as the concession was made into a rule, see previous chapter for further details.

This interviewee, referred to above, has a number of issues to deal with (his partner making an asylum claim also), the wrong form was another potential complicating factor, which could delay or ultimately render their application unsuccessful. As a result of these issues, legal assistance was vital to strategising around these complicating factors.

Solicitors and lawyers provided useful initial advice, again this was particularly pertinent to those applying in the concession's infancy. As one such interviewee (F4) explains, in response to a question about what advice she received at the beginning of their application:

> L: Urrr intially? Ummm she said yeah you meet the requirements, this is the documentation you'll need the photographs and letters and she took us through the whole thing.

This couple also experienced a long delay while their application was processed. Their solicitor's role was to keep tabs on the case and put pressure on the Home Office to process the application quicker. The interviewee explains about the amount of contact she had with her solicitor:

> L: Regular, I mean she wrote letters to the Home Office every time she wrote a letter, she'd write to me I've been contacting them, luckily there was no restriction on S [her partner] travel, [name of solicitor] was very good she kept us updated even if it was a letter saying they haven't allocated your case yet you know or every time they come back and say no its going to be another 8 to 2 weeks or 4 months.

The interviewee describes how the solicitor would regularly contact the Home Office. She also adds that she would write letters, 'urgent requests' for information about the application. The solicitor also wrote to the applicant's MP:

> L: She did write a letter February 2000 to the Commons, it was the 20th January and 11 February it was approved now whether its because he [MP] got a letter or whether the case had been approved in the normal space of time anyway, we wouldn't know because we didn't even get a reply we got a reply

from the secretary or something, so whether it helped or not I am not sure. I had to write a letter to give her permission to write to my MP, which I did.

T.S: Why did she do that, just a way of speeding up the process?

L: Yeah.

The solicitor contacted the MP in an attempt to speed up the process and once again to put pressure on the Home Office to make a decision on the application. Though as the interview states, she is unsure to what extent that did speed up the process, it illustrates the ways in which legal practioners intervene in the process on behalf of their clients (the role of MPs will be discussed in more detail later).

One interviewee (M8) describes how his lawyer acted as an intermediary between him and the Home Office:

B: Of course all the correspondence comes via the lawyer and therefore the lawyer would send the letter on with a prefacing letter which caused us not to be...if you read that letter on your own you would think oh my god, you know this was suicidal stuff as it were, you know, unless... the lawyer having read it having looked at it definitely intermediary when it comes to that kind of thing, no doubt about that.

The lawyer, like the one mentioned above, was involved in an ongoing process of correspondence and contact with the Home Office. They are experienced at dealing with the Home Office officials and respond to any decisions accordingly. The level of correspondence and contact can be time consuming and by having legal representation, couples are free from that responsibility. Legal representation can also offer a certain amount of security and assurance to couples, as the following interviewee (M10) states:

J: We were going to see if we could do it, but if you had like legal assistance, it's a bit better guaranteed a little bit more safety and security. I think if you go through solicitors it takes the stress away.

The interviewee above had a successful application and was represented throughout by a solicitor. However, legal representation is not available to all migrants as the cost accrued can be prohibitive. Only fairly affluent same-sex couples can afford to meet the costs of a solicitor and lawyer. One interviewee, a South African, (M11) comments:

A: But its also quite expensive I think a lot of people wouldn't be able to afford it at that time I think it cost us one and a half thousand pound just for a solicitor.

The interviewee above had met with another solicitor before the one that took their case, whom they felt was ineffective. The interviewee describes his dealings with this lawyer:

J: He said he could help us for a fee of course, write us a letter, make sure our documentation is correct I don't need your letter I know my documentation is correct so.

The interviewee here abandoned this particular lawyer and went to another. A number of couples had negative experiences with legal professionals and felt they had not helped their application at all. One such interviewee (M9), explains his unhappy experience with his solicitor:

G: This was 9 months after we were waiting, waiting, the solicitor didn't even bother to open the letter. They just sent it through, they didn't even know, and I was very angry with them lack of professional, professionalism. Very disappointed.

G is talking about a letter from the Home Office that was not dealt with by his solicitor, as a result of this they felt it had slowed down their application. A similar example can be seen, by couple (F2) that was trying to obtain her partners' passport, but to no avail, from her solicitors firm:

J: I was just incredulous, absolutely incredulous all I wanted to do was submit my immigration process and these people wouldn't help me and I was paying for this and they just didn't get the urgency and [name of lawyer] was somewhere in the building and they just couldn't sort it and I then said look...look the only reason I came to this solicitor is because Stonewall recommended it as a fast track for gay and lesbian people to get their

> immigration status this is clearly not fast track and if you don't do something soon I am going to go straight back to Stonewall and I'm going to tell them its not fast track and this is the way I've been treated in this place.

In this applicant's case, the solicitor, who had been recommended, had not been helpful to her case. This highlights the individual role of lawyers and their own attitudes and practice, that may affect their effectiveness in relation to their client's specific case. The interviewee in the following extract, explains why she took on legal representation in the first place and the importance of the MP in her case:

> J: What he said to me, my friend said to me if you get anything wrong on the form, it could delay the whole process and in retrospect really I am pleased because of this whole debacle had happened without solicitor, even though the solicitor in the end did nothing it was the MP who did it all for us, at least we didn't fill in the form incorrectly. As it was the solicitors were getting nowhere it was the MP who had the clout.

The interviewee had taken on a solicitor as a fast track (as the previous extract revealed) but also she was concerned that if any element of her application form were filled out incorrectly it would further delay the process. The Home Office is very stringent about the type of information and how it is set out in the application form. Stonewall Immigration in a meeting I attended, advised potential applicants to be aware of this, even to the point that they must write in black ink (as is required) because if they didn't the Home Office officials would score a line through it and send it back, further delaying the process. To return to the interviewee quoted previously, she expresses the importance of the MP who had in her case been more effective than her solicitor. The MPs role in applicant's cases shall be discussed below.

One couple (F4) mentioned earlier, that her solicitor had contacted their MP to intervene in their application that was taking a considerable time to process. A local MP has the potential to directly contact Home Office officials and ministers working in the

immigration department and apply pressure to decisions that have been made or cases that are awaiting a decision. Working on behalf of their constituents, MPs can take an active role in the process of an application. Couple (F2) had contacted their local Labour MP to assist them in their application, which was taking a long time to process, despite having a solicitor representing them. The couple mainly dealt with the local MP's assistant, who would liase with MP and the Home Office on behalf of the couple. One extract explains the role of the local MP and her assistant:

> J: So then I went through to [name of MPs assistant] at the MPs office, and I walked in and (...) he was busy talking to the MP at the time, [he said]. [The MP's assistant] had phoned and spoken to the Home Office guy who was now getting more and more pissed off about being phoned by the MP and the MPs assistant and was basically washing his hands [of the situation]. [The MP] was really angry because she said he gave us that assurance on a Tuesday basically I'll put in the next tray, the next persons tray I don't even know if he went into the mail and [MP] said that's not acceptable if your asked to do something you need to follow it through the route of the thing comes to me or my client my constituent. She [MP] was getting all hot under the collar the Home office guy was getting ready to put the phone down on her. I did [get] the letter [through to the Home Office] it goes straight through they also have these MPs envelopes that go straight through a [direct] hotline.

Here, she is explaining how the MP's assistant would phone the Home Office and the MP had regular contact with an official there. MPs have direct route through to the Home Office, they can phone a hotline and in terms of bureaucracy having these special MP envelopes that enables them to get correspondence directly through to the Home Office, although, as can be seen in the extract above, the Home Office officials do not always respond efficiently to MPs pressure. It was the local MP who the couple felt had been effective in moving their application along. Though they recognised the 'clout' the MP had in dealing with the Home Office, they are less sure overall how effective she was in the decision:

> J: ...whether they [Home Office] were pressurised by the MP I doubt it as the MP said we can chivvy things along but we can't influence decisions, we cannot actually influence it.

Local MPs have some degree of effectiveness, but it is important to recognise they also have their limitations when it comes to decision-making. It also depends on the individual attitudes of MPs, whether they are homophobic or not and their effectiveness as a constituency representative and their seniority in the party will have a bearing on how they can help in these matters. Therefore, there is no uniformity in their usefulness in these type of scenarios and they will vary in particular local contexts.

2. b. Applications outside the UK

Local contexts also apply to couples that make applications outside the UK. Four of the couples that were interviewed made their application outside the country. In these cases, the application is made to a British Embassy or a Consulate in whatever country the applicant is applying in and officials working under UK law process the claim. The applicant does not necessarily have to have a link with the country they apply from, though some may apply from their country of origin. However, liberal 'pro-gay' countries, that are more familiar with this type of application, are more likely to a make a swift and possibly favourable decision. As a result, as will be illustrated, some consulates and embassies have a backlog of applications and legal professionals have to find alternative locations from which to make an application. There are a number of technical advantages and disadvantages in applying outside the UK some of which are illustrated by Barry O'Leary, an immigration solicitor I interviewed in the UK; he and his Israeli partner made their application in Tel Aviv:

> When we came to the end of our two years, obviously I am lawyer who specialises in this so we really decided what out options were, perhaps other people wouldn't do this, because he is a student and came in many times declaring himself as a student we decided he should leave at the end as a student, because that was his intention was every time he entered the country so he left the country as a student and we went to Tel Aviv and applied to re-

> enter, and applied from Tel Aviv to enter from there as my unmarried partner. That is so strict and by the book just completely (...) its completely not an option, an option to a lot of people for many reasons, big queues at embassies finance if they live miles away concern if they got a straight forward application or not, if its wasn't straight forward your appeal will be outside the country and you're in all sorts of problems.

His partner had entered the UK to do a Masters degree, therefore he left the country as his student status was about to expire and re-entered based on his relationship with his UK partner. Barry O'Leary outlines some of the disadvantages of the process. If the application fails the applicant is outside the UK and may have difficulty returning. There are potential delays at embassies, there is the cost of making an application abroad and if this fails your appeal is outside the UK. The advantage of this process is that a decision can be made on the day of the application. In his case it took two hours and he got a positive decision. He comments on the process of applications abroad:

> I think you do have to be very careful if you're going outside the country I think you do have to make sure you speak to the embassy in advance, they're not all used to doing these types of applications.

T.S: What about somewhere like Tel Aviv?

B.O: Tel Aviv was actually you know, from speaking to people I think its obviously one of the best, very cool, very umm they apologised the forms you had to fill in were not very PC, they just referred to spouses they were obviously very pleased to do it...

Barry O'Leary is highlighting the different response that embassies have in dealing with the unmarried partners' provision. In his case Tel Aviv was very positive about his application and seemed up to speed with this kind of application. What is revealed by the interviews with couples that made their claim outside the UK is that some embassies are perceived to be less used to these types of applications than others. Therefore, solicitors will advise couples to make applications in countries familiar with these applications; as a result they become 'jammed' and may have to apply elsewhere. Solicitors will also

monitor which embassies are 'jammed' and which ones are able to take on applications. It also highlights the geographic dimension of sexual citizenship. There is a varied degree of difference between some capitals that have a large and visible gay community and therefore are used to processing these applications (and potentially less homophobic) in comparison to consulates in cities where the gay community is less visible. Though officials working in these embassies and consulates must follow UK regulations, it is local people who are employed to work there. The local practices have a bearing on how the applications are processed, as the following example will explain.

The interviews with the South African couples reveal that Pretoria was perceived as a place that was not used to dealing with these types of applications. It had also been considered homophobic, as the following extract, from a couple (M11) who made an application there shows:

> X: When we spoke to the chartered solicitor in London, he gave us some options do you want to do it through Pretoria or Athens? And I said to him why are you giving us the options? He said well if you are going through Pretoria it will be a nightmare so we said fine we'll do it through Athens and we were quite prepared to fly to Athens, meet her [solicitor] then maybe put her in a hotel and go through the British Embassy there but of course they had the earthquake.

The interviewee making the application based on his relationship describes the first time he went to Pretoria and how his first attempt was rejected:

> A: Then I had to take it to the embassy.... then they started laughing at me and then he called the other guys and said look at this and then they were all laughing at me and I felt so embarrassed...

His application was met with derision by the officials at the embassy and was rejected without any initial clear reason. As a result of this, the couple's solicitor became heavily involved:

X: Well appararently, this, [name of the official at Pretoria] is the guy A [partner] was dealing with in Pretoria had never done this before and from what we can gather from our solicitor. (....) it was the first time in Pretoria this had actually happened [an unmarried partners' application was made] umm, so it was very uncommon, it wasn't common for them and they didn't really know what to do so, basically I went back to South Africa. I wasn't going to stay here [UK] it was very expensive to stay here after I went back to South Africa umm then our solicitors got heavily involved umm she was in touch with Pretoria, she was still wasn't happy the answers they were giving her and she went straight to the top of the Home Office and er put her case to the head of the Home Office, and probably lost it and got in touch with Pretoria and said do it there is no way you can't...[talk over each other] we sitting down on that side waiting day by day...

T.S: Yes I have heard that Pretoria was really sticky on this, its quite notorious, is it that it's quite homophobic?

X: I think that they are homophobic I mean South Africa has I'd say has a the best constitution I'd say in the world, I think it was just the British Embassy not knowing because our solicitor had said to us she had, since we had been, you know been in touch with her she had four/five couples waiting in line for us, you know to get it through once ours was through obviously it would be a lot easier for the other couples whether they were just saying to that to us or not but their were probably were other couples she had such problems it wasn't the Home Office in here in London at all it was the British Embassy in Pretoria.

The above quote highlights how local factors have a bearing on how embassies and consulates deal with this type of application. The homophobia of those working in these institutions can make it difficult for same-sex couples as the case above shows. Another couple (M10) who were taking a similar route to the couple above, in that they were both South African and one was entering on an ancestral visa and his partner through his relationship, describe a consultation with a lawyer about where to make an application:

B: [the lawyer said] (...) for we could try Europe somewhere Amsterdam, doesn't know what the waiting lists are, because ninety-nine per cent of the time they will want an interview with you, it could be a short interview, could be a quite lengthy one.

Amsterdam was suggested as a potential place to make an application; one can assume its embassy will be familiar and sympathetic with these types of applications. Once again the

couple were advised it was best not to got through Pretoria (incidentally the couple used the same solicitor as the previous couple), they explain:

B: ...not that we would necessarily get the Visa, apparently the British consulate in Pretoria is very homophobic, so, so lawyer we finally went through said she had five complaints against them.

As a result of Pretoria's reputation the couple went to Bulgaria and made their application there. They explain why their solicitor chose Bulgaria:

B: She deals with a lot of Bulgarian, Bulgarians coming to England umm she knows the High Commissioner of Bulgaria deals a lot [with them], she goes to the embassy two or three times a month, she flies to Bulgaria,

J: Normally on a Wednesday I think, fly there on a Tuesday does all her interviews on a Wednesday...

B: Yeah, so we had an interview date everything was all set they had all the information then (...) because they [embassy] had admin problems apparently [and there were] nine Bulgarian applications so we got all our information, got our interview date but its one of those things so there was a bit of rushing around because my ancestry visa is going running out of time ummm she tried Amsterdam, Amsterdam could have taken us and didn't but there was queue and still waiting and Amsterdam were going to make a plan umm they were really trying for us and the British in Amsterdam were really trying umm because they knew what had happened at Bulgaria.

The couples also mention the administrative difficulties that arose and how they may have to switch to another embassy in Amsterdam. A new High Commissioner was taking up a post there and their solicitor was concerned that any mistakes in the process could make their visa 'null and void'. The administrative problems were sorted out and the couple had their interview in Sofia, Bulgaria and were successful with their visa. The other couples in the sample that applied outside the UK made their application in Wellington New Zealand and New York.

3. Exclusions/Inclusions

3.a. Costs

One potential disadvantage making an application outside the UK is the cost. In the case of the couple making a claim in Bulgaria, they had to pay for themselves, their solicitor to fly out there, plus costs for their own accommodation. Also, when an application is made abroad couples have to pay a fee. The interviewee (F1) who made her application in Wellington, explains how the cost nearly put her off:

> C: I've got a partner and wanted to bring her and I started ringing the UK, the British Consulate Office and when I first sent the forms there was no concession for unmarried partners' but the cost for me the price of my application was 120 dollars and the cost of my unmarried partner was 600 and something dollars. Something exorbitant anyway and I thought holy smoke, that was makes it prohibitive. I really didn't have any money, I was a student, K [her partner] was a student. I rang up again and asked why the application was only 120 dollars if you were married. ...

She adds:

> C: I got on the phone to the British Consulate again and lo and behold both application visas were going to be 120. So I said why has it changed now why is my partner is being charged the same as me and they said oh well the reason is the dollar has decreased in value that'll be it. (Laughter) And I said I don't think anyway I didn't want argue with her as she had only answered the phone you know. And so that was when I considered it.... The cost was going to allow us to actually apply.

The couple (F5) who made their application in New York describe the fee they had to pay up front in cash, when they made their application:

> TS: so you said... that you had to pay £400 before they even made a decision?
>
> S: that was funny we had to pay before we even got it, and I had no idea what would have happened if we hadn't got it. I don't think they would have given it back.

Similarly, a female couple that applied in South Africa (F3) describe the fee they had to pay:

TS: So did you have to pay any money when you were applying from South Africa?

P: Yeah it was 20,000 Rand which is about £200 and then 400 for something else. So that was the equivalent of £240 ish. We paid in Rand, exchange rate 2:1.

As the extracts show, couples have to pay a fee up front whether the decision is negative or positive. The couples were in a position to pay that fee, but obviously couples in a less viable financial position would have had difficulty meeting those costs.

3.b. 'No recourse to public finds'

The couples that had legal representation all acknowledged that they were lucky to be in a position to afford such costs. Along with legal costs, those making an application outside the UK, as explained earlier, incur particular costs of travel and a fee upfront taken by the embassy or consulate. Immigration generally places more exclusions based on class, by requiring migrants to have certain amounts of money on entering the UK. A South African couple (F3) explains:

P: So we basically just started off checking one thing at time so I tried to find things that we filed, things like things we had delivered to the place we were living in umm things that showed we had joint interests things we'd been together places, that kind of thing and obviously put some money aside because the money seemed to be one of the biggest really...main criteria

M: They wouldn't tell us how much, how much we needed, we would say how much do you need and they'd say its up to you to prove that you have enough and that you won't be dependent on benefits.

P: On benefit, yeah.

T.S: So do they mean in terms of savings?

M: Yeah to carry us really, not even assets they wanted liquid cash, liquid assets.

P: Then we had to show for three months running that money was never affected that we had the same amount continuously for at least three months.

T.S: But they didn't say a particular amount?

P: Yeah, It was difficult because if you converted it to pounds, It had to be a significant amount so, umm I think we got about 40,000, 40,000 Rand, which managed to, tried not to spend (laughter).

The couple provide a picture of the type of finance that was needed to meet their immigration requirements. This is part of a general immigration requirement that states 'no recourse to public funds', where couples must show they are able to support themselves. This requirement is part of a wider political rhetoric that represents migrants as a 'drain on resources'. Indigenous citizens (who tend to be constructed as constituting the white population) must be seen to have priority to national resources; therefore migrants (especially 'othered' migrants asylum seekers and non-western, non-white identities) are deemed to have less legitimacy in terms of access to welfare services. This is built into the 'no recourse to public funds and other stipulations that require a certain amount of savings and assets before citizenship can be claimed. As chapter three sets out, a counter narrative is to legitimise migrants claims to citizenship by emphasing their class position as professional, skilled and high earning individuals. The claim to citizenship is also accompanied by a claim to citizenship based on recognised skills and economic resources. This is reflected in the discourses produced by couples when they made their application. In most cases these couples were able to show the necessary financial resources and skills, as the following section will explain.

3.c. Skills

Affluence is certainly a factor that can allow same-sex couples to meet their immigration requirements more easily. The first chapter has discussed that inclusion and exclusion into citizenship frameworks is based on economic imperatives that cut across class, race and

gender[5]. Affluent sexual citizens may find they are less excluded by the financial imperatives of immigration rules. The 'pink pound' which is often used to refer to the affluence of some sections of the gay community can be seen as one way in which sexual citizens can be included and excluded in modes of citizenship[6]: 'The pink economy could be the unaccountable motor of a new conformity that packages the desirable and rejects those who do not fit in as vigorously as did any traditional community.'(Cant, 1997:12). Part of this affluence is of course based on a migrant's employability and skills, which work alongside national identity and gender. To focus on skills and employability, the couples that were part of the interview sample, all possessed either formal higher education qualifications or had considerable vocational experience in areas such as the medical profession, teaching and technology[7]. These elements fit in with skills categories, sought by UK immigration to fill shortages in the welfare sector. The following examples from the interviews in this section, emphasise how skills featured in their applications.

(F3) were a white, female binational couple from South Africa. One (of the couple) was able to enter as a patrial with her partner coming through based on their relationship. They both had nursing backgrounds and made their application at the British Embassy in South Africa. One of the reasons they felt they were successful is that skills fitted in with the shortages of nurses in the NHS:

M: We figured that little 3 hour stint [securing a job]...I think we did so well, is because England as you know that very month, England was trying to recruit,

[5] In particular see Jon Binnie and David Bell, in 'The Sexual Citizen', which is referred to in Chapter 1.
[6] See also David Evans, Sexual Citizenship: the material construction of sexualities, that also considers economic imperatives with regards to sexual citizens, also discussed in chapter 1.
[7] There is little work on occupations and lesbian and gays. Badgett and King (1997) examination quantative data in the US point to how gay men are over represented in 'professional/technical/clerical/sales' and service sector categories. Whilst, lesbians are concentrated in craft/operative positions. As the authors acknowledge, qualitative data may provide a clearer picture on this issue. However, it does provide one indication where sexual citizens may be placed in relation to certain occupations and specifically shortage occupations.

Tony Blair had those ads in the papers that they wanted to recruit 20,000 foreign nurses, do you remember that? Was it August, around July and August when we made the application? He promised that he was going to recruit 20,000 foreign nurses and then surprise surprise these.... two nurses walked in. So possibly we don't know that for a fact, we were amazed it was so quick the fact that we were both nurses could have influenced on the fact we got it so quickly.

TS: When you spoke to the embassy did they ask you about your occupation?

P: Well that my job was a medical job and if you look at our CVs, nursing for the last 15-20 years, M as well. And I think as well the other thing that might have had a positive bearing was that we were both in our thirties and that we are not youngsters. It gives the impression that you are more responsible, you know those kinds of things. We thought that had a positive bearing; our age, our profession.

Two of the couples making an application outside the UK, attended a short interview. This is usually to check through the application and ensure all the details are correct. The couples remark how they were asked about their employment history as the interviewee explains (F5):

A: I said that S [her partner] was a teacher and that her contract ended at the end of August and that fortunately we had some letters from headhunters, one environmental and one advertising asking for supply teachers. I showed him those and said as soon as she gets back she'll do supply and ironically you were making more at supply than as full time teacher. I had kept my wage slips from when I had temped here and I showed him that when I worked here before at a temping agency. I am employable and he wanted to see my CV and I showed him that and he was like yeah you definitely have skills and then I offered to show him bank accounts and stuff like that, that we had money between us. ...

Similarly with this couple (M10):

J: Yes, he did ask me where did I work, I explained I was working for ....at the time, he asked where B works and what B does, he asked a few personal questions about him and stuff like that where does he work and how long has he been working there for.

An interviewee (M9) from the former Yugoslavia talks about his qualifications and work experience:

G: It was like okay not just coming to this country is going to be useful so everything is related to [your] profession and everything. Okay...because I

achieved qualification and urrr all my stay everything was legal, I had no criminal records, I was working…had national insurance number everything; I wasn't in anyone's pocket.

T.S: Where did you work what were your qualifications?

G: I had finished my first degree at college, university, business and technology and I did an MBA, and I worked for company for nearly three years permanent job and now I can work for five years more and for Social services…

G had undertaken some work, within the limitations of his immigrations status and had taken higher qualifications, which made him employable in the information technology sector. Barry O'Leary, an immigration solicitor, is reflecting on his own application and comments on the importance of a professional occupation and work experience

B: For us it was quite easy one because I don't earn like stacks of money but I am in a very like regular job also whether it makes a difference or not because I am a solicitor, they do think your going to be able to support yourself and [name of partner] my boyfriend, is in a different situation to start with because he speaks fluent English he's always been working as a teacher in the UK on the weekends and was able to get letters saying we desperately want to give him a job when he comes back, so we had a lot going for us, its all those things I can see creating problems for my clients, it's a nightmare.

Barry O'Leary describes how he and his partner were in a positive situation he had a full time job and his Israeli partner had plenty of offers for work as a teacher. All these factors contributed to a good overall chance of them having a successful application. But as Barry O'Leary adds at the end of that statement, clients who do not have those factors in their favour face particular difficulty. This relates back to the increasing importance of skills in the context of UK immigration. As I have already stated immigration is relaxing entry for those who can fill specific shortages areas in the welfare sector and IT. The relaxing of these regulations by many OECD (Organization for Economic Cooperation and Development) countries (which the UK is member of) is seen as a response by nation states to increasing global competitiveness (Raghuram forthcoming). Therefore shifts in domestic policy like the UK are contexualised by these wider global shifts. The migrants

in my sample were able to fit the criteria of the unmarried partners' rule and the current immigration trend towards skills. Skilled sexual citizens may well be able to circumvent the intrusive and rigid criteria of the unmarried partners' regulations and enter via the skills route instead. However, it of course is doubly excluding to couples that do not fulfil the skills category or the family reunion provisions for unmarried couples.

3.d. National Identities

A positive factor in favour of couples in my sample is their national identity. Binational couples had an added difficulty as one of them would have to find a route into the UK first before their partner is able to enter based on their relationship. If of course they are from an EU country this process should be much easier. However, the binational couples interviewed were visa nationals (third country nationals that require a visa for entry into the UK), the bulk of them being South African who featured heavily in my sample. They commonly used an ancestral route into the UK and were then followed by a partner. This has its own complications, as both couples have to activate two immigration processes. Also the patrial route is premised on a relative, grandparent who was from the UK, therefore information needs to be gathered to show that. One interviewee (M10) describes the slight complication that he experienced entering via an ancestral visa:

> B: Yeah, yeah, that is where it becomes even more confusing my mum was given for adoption years ago in South Africa. She's also got a South African passport umm her biological mother is actually in Greenwich so we actually got it through her and not through my, well her adopted parents so to speak, not her adopted grandparents that's her biological mother got it through her, who she tracked down many years ago she was quite happy to sign a letter she's 93 now.

The interviewee above was concerned about being able to get the necessary information, he explains:

> B: And where she [his mother] thought we'd have a problem but apparently birth certificate, not a problem, a guy questioned me actually and said no you've got

to have her birth certificate or the adoption certificate and of course in South Africa they won't give it out [name of official] or whatever it is held they won't give it out, they've never asked for it usually they phone and request for it but they never did.

Another interviewee (F1) a Canadian who had been living in New Zealand, describes her route into the UK via grandparent entry:

C: ...it was tricky because I was born in Canada, grandparent born in Liverpool so I had to get my birth certificate from Canada which I didn't have with me, the Canadian government screwed up as well, getting that to me, then New Zealand immigration screwed up because they couldn't find my records,

K: they lost them

C: They lost everything but what they said was.... It was weeks and weeks since I'd heard from them, so I rang up again I said oh (laughs) have you sent me my stuff yes we have already sent it and I said I haven't received it but yes we sent it three weeks ago but sorry this is my immigration file I don't want it to get in the hands of anybody, but I don't know where they'd sent it.

This couple (F1) faced particular difficulties as the British High Commission in Wellington, New Zealand lost documents from Canada and the birth certificate from Liverpool. As a result of this, it delayed their unmarried partners' application. Another interviewee (M11), a South African who entered by an ancestral visa, approached a company called 'Global Visas' to process his immigration:

X: I was really lucky because once I knew which line I was going down, there's a visa company here in Oxford Street called Global Visas, erm and I just approached them and [said] I don't have my grandfather's birth certificate, what is the procedure. (...) they were charging us 4,000 Rand, erm [saying] we'll get the birth certificate for you, we offered them all the papers and we'll get your visa. I know it was a lot of money but I didn't want to go down the line of I didn't know who to contact here to get my grandfather's certificate. If I had the birth certificate it would have been a lot cheaper so they did it all and I had no problems. It took about three months didn't it? and then I had my visa

TS: So you didn't know where your grandfather's records were?

X: My grandparents were dead, my father was dead as well so it was a matter and I have a half-sister that lives in Port Elizabeth- her children had just come over

> and got the certificate. I didn't know which office to contact. They obviously know the right people to get the birth certificate so then it was obtained through the right channels. I had no problems going just for me – get on the plane and activate the visa for 4 years.

Those extracts refer to binational couples and the routes that they used to enter, whilst their partners entered via their relationship. There still remain difficulties for the partners of those indigenous to the UK, as although the rules say that the 'foreign partner' can be a third country national, there are obvious advantages if they are EU citizen. Migrants who have not built up the two years may choose a number of routes to build up the two years in the UK before making a claim based on their relationship. In terms of my sample the commonest route was as a student. Others include an interviewee who stayed in the UK as an Au Pair, another a postgraduate training visa and the remainder on working holiday visas. The interviewee (M12) entering as an Au Pair was from Slovakia and managed to escape visa requirements:

> L: Shortly after I got into the country they introduced visa requirements because it was thought there was many gypsies, from Slovakia, Czech republic from Central Europe coming to Britain they wanted to stop it so they decided you need a visa to come, you need to get the visa from your country in my case I had to go the British Embassy in Bratislava... I was lucky enough to get mine the day before, the following morning they announced it.

What the above quotation highlights is how immigration categories based on national identity are not static and shift from time to time. In the case above the shift was also influenced by the move to exclude gypsies which results in a shift in practice that affects those applying under other categories like family reunion. Although the majority of the migrants in my sample were 'third country' nationals, they were all with one exception white. They were from countries such as South Africa (6 nationals), America (three), New Zealand (one), Canada (one) the former Yugoslavia (one), Nigeria (one) and Slovakia (one). The third country nationals, originated from countries that are perceived as 'wealthy' such as the US and South African applicants. As the first chapter considered

access to citizenship is premised on assumptions about national identities, these third country nationals bring with them positive assumptions as white, third country nationals. National identities also reinforce assumptions about skills and qualifications as this chapter will explain.

The one non white migrant in my sample, from Nigeria (M8) made a claim based on his relationship and a claim for asylum. Sexual orientation has relatively recently been included as one of the grounds that an individual can make in a claim for asylum[8]. In the end it was his application based on his relationship that was successful, I ask the couple about this:

TS: So out of curiosity you were successful with your relationship application so what happened with you asylum application?

B: it was rolling up, we weren't sure the basis on which (...) we were all the time trying to gather issues in support of the asylum application, I mean I remember appealing through the peace corp. I used to be in the peace corp., appealing for information as well that kind of thing they're were organisation, in the States that follow up some of those issues Ilga as well, follows that up.

The interviewee is talking about the process of gathering information to support the asylum application. Evidence is needed to support such an application and: 'An initial hurdle to be overcome in pursuing such cases is the collection of information confirming the persecution of homosexuals in the country concerned' (Barlow, Bowley, Butler, Cox., Davis, Gryk, Hamilton, Smith and Watson, 1999 :141). Therefore, the couple were gathering as much information with the help of their lawyer and organisations such as Ilga about the situation in Nigeria regarding sexual orientation. In addition to this, the interviewee explained how they wanted to use B.E's skills and qualifications 'positively' in both his asylum application and the one based on his relationship:

[8] Chapter 4 provides further details on asylum applications based on sexual orientation.

B: One of things they wanted some explanation about some financial things so forth, I wrote a letter, there because that was an occasion for me to write a letter I wrote letter saying ta dadi dah I thought it was appalling that someone like Mr [Surname of partner] who was so inordinately qualified and would make such a profound contribution in this country was being scrutinized unnecessarily, you know what I mean.

B. E. had university qualifications and had teaching experience both in Nigeria and in the UK. Therefore, his qualifications and experience was one way to overcome possible racist assumptions that may arise as a Nigerian national.

Legal representatives and local MPs are some of the ways in which couples attempt to circumvent difficulties with their same-sex application. What is also evident is that couples work very hard to gather the information they require for their same-sex application. Migrants are part of wider communities, the gay community and migrant communities. They share information, advise each other informally and recommend lawyers and useful websites that may provide further information. This was particularly important when the concession (now rule) was introduced. In fact many of the couples were unaware there was any provision for same-sex couples. Some of the couples found out almost accidentally through friends, one couple (F1) explains:

K: Was it through that website that [name of friend] mentioned to you casually that you actually found out about same-sex entry?

C: Yeah, we were at a party and I had just come back from Canada and she was trying to get in the UK and they said try this website I am sure that it...the concession made to recognize unmarried partners.

K: Because the previous information was that C and me would not be able to come.

The couple above were living in New Zealand and in the course of the interview talked about the fact that many of their friends had travelled and therefore had some knowledge about immigration issues. They found one particular web site by an immigration firm which they downloaded and they felt was very useful. Some of the couples that had access to the Internet used it to find information, in particular sites such as that of Stonewall Immigration. Interviewees also talked to migrant friends as this couple explains (F3):

P: The only thing we honestly thought we would have problems getting it. I must be honest I thought we ... especially having spoke to Shane, he's my boss now and when I came for my job interview in July and he said good luck, your going to really really battle. It took me ten months. So I was expecting the worst. Someone advised us to look on the Internet,

M: I think it was [name of friend] wasn't it?

P: Stonewall. They are like an immigration help thing and... it sounded like a nightmare and when I read...

In the case of the couple above, a friend's migration experience was rather off putting. However they mention Stonewall Immigration's web site, which was recommended by this friend and was a useful resource. Many of the couples obtained advice from Stonewall Immigration, particularly as contacting someone at the Home Office difficult and information was often unclear. An interviewee (F5) provides another example of the importance of Stonewall Immigration in finding out about the unmarried partners' concession:

A: I don't think we would have found it if it hadn't of been for Stonewall. Every time I log in to, I was quite an avid web user at the time, still am, I remember looking up UK immigration, looking through all the different ways to do it. When I think back at it the one word was frustration.

In addition to using 'Stonewall Immigration's web site', the couple also obtained some information from a friend:

S: ...[a] friend who had been through immigration in New York gave in a folder of evidence and was allowed to stay and that was exactly the situation with us. We got into contact with them.

By contacting a friend in a similar situation, they were able to have some idea of what was required of them when they made their application. The couples in the sample used web resources, informal advice from friends as well as more established information from legal representatives. There are exclusions on wealth in terms of legal representation and also potential in having access to web resources. However, it is important also to emphasise the efforts of couples to gather information, in the absence of official information, as well as their resourcefulness when they put their applications together. Access to resources is key to the couples in my sample being able to achieve their family reunion.

Conclusion

The previous extracts reveal a number of issues that arose out of their applications based on their relationships. They reveal the difficulties in collating the 'proof' of cohabitation, a key component of their application and the mixing of 'official' formal documents with more personal intimate items. The type of proof that is required forges a notion of 'coupledom' and assumes that couples will have joint and shared financial responsibilities. As the interviews show, this is not always the case and couples often make changes to conform to the proof of joint commitments stipulated in the immigration criteria. It also illustrates the way in which couples have to put together a coherent, linear narrative that conforms to the rules requirements. However, the couples own experiences are far from linear and were often complex. They also show the element of surveillance and intrusion into their personal space that the application implies. Those couples that were 'out' to family and friends had less difficulty in providing statements from third parties. This is in

contrast to migrants who were unable or uncomfortable about coming out and this raised further complications as the example of B.E shows.

A further outcome of these interviews illustrates that the type of application has different implications depending on the geography of the application, whether it is made, in the UK or outside and what city it was processed from. Immigration lawyers will make an application from a consulate or embassy that is familiar with this type of immigration practice. Other factors that have a bearing on the application is the time it was made. The cohabitation requirements also were reduced to two years, which did allow some couples to apply who could not meet the previous four year cohabitation period. Also, when the concession was first introduced couples and legal practioners were unsure about the process. Such an initially small amount of information made any resources valuable, the work of Stonewall Immigration was vital in the face of little information from the Home Office. Couples were proactive in seeking and sharing information (be it web based resources or speaking to friends). They are part of wider communities and networks and informal advice is often a useful part of preparing their application. Two clearly discriminating factors are the couples' affluence and national identity. It can be seen from the interviews the whole process can be very costly. Applications made abroad can be costly in terms of travel and fees that need to be paid up front. Legal representation is very expensive and therefore is only available to those willing to pay expensive fees. The immigration provisions of this rule also require an ability to show 'no recourse to public funds' therefore, couples must show they have considerable funds to support themselves whilst in the UK. The sample mainly comprised white third country nationals, with only one non-white person in my sample. They were able to present themselves as viable skilled, experienced professional people. All these positive factors, no doubt helped their

cause. This is reflected in the sample that is comprised of successful cases, which highlights how these elements worked to include them in UK immigration practices. However, it is these factors that can maintain lines of exclusions for other migrant couples.

Conclusion

This thesis has examined the legal, political and social discourses that have shaped the UK unmarried partners' rule. Three conceptual layers ran through this analysis: sexual citizenship, the family and immigration. This thesis has drawn together these areas and addressed a number of theoretical gaps in the literatures that address these three issues. It has also provided detailed analysis of the processes and practices of the unmarried partners' provision, an area that has been little developed in existing literature. The analysis involved the examination of relevant legal and political texts as well as interviews with lawyers working with and challenging immigration legislation. The scope of this analysis involved postnational and transnational perspectives on citizenship and applied them to case law taken up by migrants and sexual citizens mainly in the European arena. The final area of analysis that comprised the methodology presents new empirical research in the form of interviews with same-sex couples entering through the unmarried partners' category. This analysis explored the actual strategies that same sex partners' employ in their immigration applications. The interviews also highlighted the importance of economic resources and skills in successful completion of their family reunion. This factor is very relevant to current UK immigration policy developments, which is actively engaged in attracting skilled migrants to the UK. The following sections will set out the important and original insights this thesis makes to the current debates in sexual citizenship and immigration literature.

1. Citizenship as a normative discourse

Citizenship discourses are highly gendered, raced, classed and as the literature on sexual citizenship has argued (hetero)sexualised. Forms of family and relationships are highly regulated by heterosexist policies such as pension rights, next of kin and custody of children, which render sexual citizens 'partial citizens' (Richardson, 1998). Recognising the heterosexism of citizenship debates suggests the need for incorporating the intimate sphere into Marshall's three tiered model of citizenship as the intimate sphere offers a significant site for the recognition of sexual citizenship rights (Plummer, 1995). These rights include the recognition of and rights for same-sex relationships and family forms in state policies. However, discussions of rights for same-sex couples have largely focused on the claims being made by indigenous sexual citizens and their attempts to challenge public policy. The exclusionary discourses of citizenship are particularly evident in the context of immigration. As Binnie (1997) has argued immigration policies that base rights to residency primarily through marriage and essentialist definitions of the family severely restrict citizenship rights for same-sex couples. Therefore, as this thesis has shown, the way in which immigration discourses regulate citizenship rights through heterosexist and normative discourses is pertinent to key debates in sexual citizenship literature.

This thesis has also raised the importance of family reunion migration, which is marginalized in immigration literature, within contemporary migration streams. The discussion of family reunion in immigration literature is largely concerned with heterosexual transnational kinship ties and therefore neglects same-sex familial forms. In order to address these gaps the broad theoretical work on the family has been drawn on. Though this literature, largely stemming from sociology and cultural studies disciplines, does not examine immigration policies, it does provide useful theoretical perspectives to

engage with family practices and policies. It has been argued in this literature that the monolithic presence of the family is eroding, giving way to diverse family practices outside traditional structures of marriage and nuclear forms (Giddens, 1992, Beck and Beck-Gernshein, 1995). However, the empirical research on 'families of choice', illustrates the disparity between social policies based on a dominant model of the family and the diverse practices of non-heterosexual familial forms. This is especially evident in family reunion immigration policy. As this thesis has argued, there is a disjuncture between European legislation which aims to recognise changing social practices in terms of rising cohabitation, non-nuclear family norms for its citizenry and the increasing application of a conservative, traditional model for migrants. This is evident in European community law on family reunion where a spouse is still defined as a married partner. Therefore 'traditional' structures such as marriage are still firmly embedded in family reunion policy.

As this thesis has set out (in chapters one and three especially), a frequent refrain in British political discourses is the importance of marriage and the family. Successive Conservative and Labour governments have used the family to support nationalistic discourses. The family is presented as the foundation of a good society-the heart of the nation. However, it is this particular type of family that is valued in these political discourses. Thatcherite discourses have used legislation to maintain and regulate a traditional notion of the family, though Section 28 - a heterosexual, conjugal unit, to be protected from gay and lesbian 'pretended' family forms. A key strategy used by politicians to justify this legislation was the production of 'good' homosexualities: which are conservative, assimilative in opposition to 'bad' homosexual identities which are: queer, militant figures (Bell and Binnie, 2000). This dichotomy has also appeared in the Age of Consent debates from MPs

both in favour of and against gay equality (as illustrated in chapter three). They reflect a change in gay rights strategies with the visible and direct public campaigns of OutRage!, used in these debates as an example of a group of militant 'bad homosexuals' in comparison to the more 'insider' lobbying tactics of Stonewall. Speakers making the distinction between good gays/bad gays use it to support claims to tolerance and distance themselves from the more radical positions. For example, MPs recognition of the demands of the 'moderate reformers' can be used to disavow that they are homophobic (when they are defending gay inequality). They thus make a claim for tolerance of 'good' homosexuals who are given a bad name by 'militant' homosexuals. This claim for 'pseudo' tolerance distances the speaker from an apparent extreme position of homophobia and places them in a moderate position as tolerant. It can also be used by those arguing for equality, to frame their claims as 'reasonable' and not 'extreme' like the demands of 'militant' groups such as OutRage! These discursive strategies are in the Gramscian sense, appeals to 'consensus' and 'common sense'. To paraphrase Smith (1994) right-wing hegemonies establish themselves through the appearance of 'consent' rather than 'coercion' in relation in the politics of identity. Such strategies also call upon Foucauldian perspectives, in that these discourses produce disciplinary practices that regulate and maintain dominant categories of sexuality. This can be seen in the debates that shaped the unmarried partners' rule, where the notion of good homosexuality is produced.

In terms of the unmarried partners' debates, advocates of same-sex couples offer narratives of 'good' gays in terms of their class, and long standing genuine relationships. These couples fit it into norms of respectability and normative models of coupledom. This is indicative of the wider discussion in chapter three about how official discourse operates. As I argue, such is the conservative nature of official discourse, that by recognising one

type of relationship that fits in with dominant norms (long standing same-sex relationships) it closes down the validity of relationships that do not conform to this model. The conferring of rights for same-sex couples has resulted in some important recognitions but it has ultimately been a conservative exchange. For the discourse has produced a 'desirable' form of relationship through the dominant category of marriage in family reunion policies in the EU space and the UK.

The historical trajectory of the provision for family reunion immigration in the UK has always categorically differentiated between the married and the unmarried. Marriage has always been hierarchised above 'other' relationships and maintained as the ideal way to formally recognise relationships in terms of family reunion. The particular notion of marriage constructed by immigration discourses is one that is normative, traditional and western centric. This is illustrated by the restrictive practices applied to the entry of foreign born husbands from the 1960s onwards, which was particularly enforced against Asian men. Similarly, the primary purpose rule, that was introduced in the 1980s (till it was formally abolished in 1997), was used to scrutinise the genuineness of Asian marriages. This was based on an assumption that 'arranged marriages' were entered into for the purposes of immigration. Therefore, racist assumptions mobilised against 'third world' migrants are underpinned by the construction of western norms around marriage. The continuation of this can be seen currently with attention being paid to so called 'sham marriages' (especially mobilised in relation to couples from the Indian sub-continent with arranged marriages outside the UK) and accompanied by the increase of the probationary period for married couples. Thus, family reunion policy produces an exclusionary and narrow type of marriage model in its discourse.

It is this problematic marriage model that has formed the basis of the unmarried partner's category. Though unmarried people constitute a separate category governed by a particular set of requirements, the relationship is framed by marriage, most notably in its 'akin to marriage' stipulation. This is a central paradox of the provision, that unmarried couples are obliged to present themselves as a married couple (like 'man and wife') despite the subordinate position these relationships occupy. The major difference is the two year cohabitation period and the concomitant proof that is required, which as chapter five showed, still remains a difficult measure to meet. The emphasis on the 'akin to marriage' and set cohabitation periods results from the particular types of arguments that have shaped this rule.

There is a real reluctance to critique marriage as the ideal form of relationship to be recognised in social policies. No more is this evident in the debates that led to the unmarried partners' rule. As chapter two shows these debates were characterised by a recuperation of the dominance of marriage. The mainly Labour opposition MPs (pre the 1997 concession) arguing for recognition of unmarried couples, asserted the long standing and stable nature of these relationships, they were as good as 'married' and needed to be recognised as such. Proponents arguing for recognition substantiated this through stories and narratives of unmarried couples in lengthy relationships. One such narrative, in the 1996 debate presented a stable couple, a chartered accountant and his Brazilian partner who was studying for a PhD in London. This narrative attempts to fend off criticisms that unmarried relationships are less durable and committed as married relationships. For same-sex couples it has particular roots in the construction of gay male sexuality as promiscuous, therefore eschewing heteronormative notions of coupledom. Furthermore, the couple here are presented as productive and skilled, counteracting anti-immigration

rhetoric that portrays migrants as unskilled and a drain on resources. Thus, the couple in the narrative fulfils a number of discursive strategies on the part of those arguing for change, focusing on the validity of unmarried relationships and the validity of couples as migrants.

What is apparent from these arguments, particularly the 1996 debate featured in chapter three, is that the hegemony of marriage is not challenged. Marriage is not critiqued by those seeking recognition of unmarried relationships in the face of Conservative MPs arguments that posit it as the 'ideal' and objective form of relationship in an immigration context. For those defending the status quo, marriage is the best fail-safe way to test a relationship and broadening the criteria would only open up the provision to abuse. The possibility of abuse figures heavily in these debates, and is used to justify the stringent measures adopted by the Home Office both under Conservative and Labour administrations. As I argue both Conservative and Labour have reiterated the importance of a 'firm' but 'fair' immigration policy. This is most apparent in relation to asylum, which continues to dominate UK immigration debates. The emphasis on restricting immigration through 'tough' regulations in these debates has seeped into other categories of immigration. The formulation of the unmarried partners' provision has been marked by genuine relationships versus bogus relationships. This rhetoric is part of wider claim by empirical discourses such as immigration to 'know' who is 'genuine' and who is 'bogus'. The claims to dominance official discourses make are constructed on the basis they can differentiate between those who 'genuinely' fit a prescribed criteria and those who cannot. The citing of rules and regulations in this rhetoric are a chief way in which immigration discourses maintain their dominance and appearance to seek those who are deemed to 'abuse' the system.

The rhetoric of abuse features heavily in the debates that led to the unmarried partners' rule. For the Conservative government, unmarried people constituted an 'unknown quantity', a category that lacks the legal and familiar weight of their married counterparts. This in their view could lead to abuse of the family reunion legislation and counter narratives in the 1996 debate were used to support this claim. Narratives are supplied by the then Conservative Home Office of apparent cases of abuse, where the applicant's relationships following 'checks' were deemed not to be genuine. These narratives along with a rise in applications, constituted a rhetorical device to justify for the removal of all unmarried partners' provision.

Despite the very conservative discourses that have characterised these debates, the provision has not remained static and advocates have managed to enact change. For lawyers and same-sex couples this has been as a result of tapping into structures of power. Stonewall Immigration lobbied (the then opposition) Labour MP's and gained an assurance that they would produce legislation that would recognise unmarried people. It tabled an amendment which resulted in the 1996 debate over the inclusion of 'interdependent partner' to be introduced to cover unmarried couple. Though, as the 1996 debate illustrates the outcome of these strategies for change can lead to the opposite outcome for Stonewall Immigration, with the removal of all rights for unmarried couples. The Conservatives were clearly resistant to change, however the promises made by Labour in opposition offered the real chance for a concession to be introduced. The possible change of Government was reflected in the strategies of legal professionals. As chapter three shows, legal professionals cited in their appeal arguments that a prospective Labour government would offer a concession that would recognise unmarried couples. Thus, it was argued that

an eventual change in the Official discourse should be reflected in current legal decision-making. Stonewall Immigration, along with associated specialist lawyers, used political shifts to secure recognition for same-sex couples.

Same-sex couples and legal professionals were able to use the appeals process successfully to change the existing legislation. Firstly, the long and bureaucratic process gave lawyers and solicitors time to construct robust legal arguments. Also, it allowed couples to remain in the UK together; a downside of this was no doubt the cost and anxiety as they awaited a decision. Secondly, when the appeals were made it provided an opportunity for the Judge's to meet couples and therefore it gave a 'human face' to the predicaments of these couples. As Wesley Gryk a specialist lawyer and campaigner said in one of my interviews, these were 'articulate' decent couples in long-term relationships which no doubt helped their case in such a conservative environment. Legal professionals also stressed that these couples did not want to 'abuse' the system and wanted to make an honest and open application. Therefore, there was a recognition by those arguing for change of the types of rhetoric and narratives that are circulated in immigration debates. The discourses of Stonewall Immigration and legal professionals address this rhetoric and attempt to counter it by arguing for the right to make an honest and open application. However, this discursive strategy pulls the couples' back into the genuine/bogus binary which serves to reinforce it dominance in these debates.

A third specific legal argument was used in the appeals process which is referred to as 'ultra vires' (meaning outside the law). This was particularly used to challenge the four year cohabitation requirement. By using this argument it appeals to a notion of the law as 'rationale' and 'reasonable'. It is also through these technical terms that the law can

'repair' itself when it has been challenged. In this case the four year rule, was 'outside the law', citing 'ultra vires' allows it to be pulled back into the gaze of the law in order to enact change. The four year requirement, was unreasonable as it was 'catch 22' couples needed four years cohabitation, yet could not be in a country to build up the time together. Fourthly, the winning of appeals by couples during a period when there was no provision for same-sex couples (a number of appeal cases were won in 1994 as described in chapter three) allowed lawyers to cite each successful decision and set legal precedent. A momentum was created through the case law, which put pressure on the Home Office to recognise the applications made by same-sex couples. Finally, as the discussion in chapter three argued official legal discourse must retain its credibility and authority, particularly when it is challenged. When decisions or practice are changed there appears to be a process of 'saving face' for legal institutions. Legal professionals represent this in their arguments. For example one lawyer I interviewed (cited in chapter three) took on cases where the couples' applications had previously been refused. In this context, the lawyer argues that the case was not presented properly (by the previous legal firm) and he 're-presents' the appeal case. This serves as a 'face saving' exercise, which avoids criticising the Home Office's decision but rather suggests it was due to the way the case was presented. This tactic provides a space for the authority of the Home Office to remain, yet reconsider the appellant's case. These strategies and tactics deployed through the appeal process added weight to the claims for change being made by campaigners.

The introduction and subsequent amendments of the unmarried partners' concession were marked by the normative discourses that preceded it. For campaigners the outcome of the concession at last meant that same-sex partnerships were recognised in an immigration context. However, heterosexual couples that had previously been recognised were

excluded. Furthermore, the four year cohabitation period stipulation (from 1997 to 1999) as mentioned above was a major hurdle for couples to overcome. These moves were used to justify the introduction of this concession and this is reflected in the parliamentary and legal discourse of the concession. The 'stringency' of the concession was used to defend the Government's position as having a 'firm but fair' immigration policy. It was also used to defend them from criticism namely from the Conservative opposition and rightwing discourses in the press, that they had not gone 'soft' on immigration nor had they undermined marriage. As I have argued, the validity of marriage in parliamentary discourse remains largely unchallenged and Mike O'Brien in his statements in the Commons stressed this concession was for relationships 'similar' in nature to marriage (therefore retaining a marriage model). The four year cohabitation requirement also demonstrates the difficulty of this concession and emphasis on 'long-term' relationships. Ironically there were many couples in lengthy relationships (up to ten years) that were not recognised as they had not formally cohabited and didn't possess the required proof. Therefore, making this category more difficult through the proof and cohabitation period than the married partners' route was a key way the introduction of the concession was justified. Clearly, Labour was attuned to the possible criticism they would receive on the combination of two controversial areas of immigration and sexuality. As a result the deliberate timing of the announcement of the concession, a day after the speech by William Hague (then Conservative leader), which he stated his party would be tolerant on issues of sexuality, was a strategic move to counter such criticisms.

The reduction of the four year cohabitation period to two demonstrates further the way in which campaigners adopted specific discursive strategies. In addition, Stonewall Immigration was regularly lobbying the Home Office minister Mike O'Brien arguing for

the reduction of the four year requirement. The ensuing reduction was a result of a 'compromise'. Stonewall immigration sponsored an important meeting with Mike O'Brien, where he met couples who expressed their difficulties with the four year cohabitation. It is at this meeting, as one lawyer I interviewed explained, that Stonewall Immigration was able to suggest a way the government could reduce the four year requirement. They suggested two years cohabitation with an increase of the existing probationary period of a year to two years. This compromise proved successful and the Home Office adopted the suggestion. What is telling about this compromise is that it was through this discursive movement that the Labour government could then make an announcement to Parliament that the four year requirement had been reduced. The increasing of the probation period made the reduction 'palatable' and the Home Office could say it would take four years in total to reach permanent residency. Therefore, Labour incorporated some change whilst maintaining its 'firm' immigration discourse and its overall claim to hegemony on immigration matters.

As chapter three describes, the development of the unmarried partners' provision has been constantly shifting and changing in often paradoxical ways. It has been marked by highly normative and conservative discourses yet it was the first piece of legislation to recognise same-sex relationships for the purposes of immigration. The concession has now been formally made into the rule and the legal impediment has been removed, at last recognising heterosexual cohabiting couples. There still remains the discursive difference between married couples and unmarried couples in the immigration provisions. Proof and evidence over a two year period is a key difference, with unmarried couples having to supply a range of documentation. As one lawyer I spoke to argued, he would like to see unmarried couples treated much the same as fiancé(e)'s, who do not have to fulfil the two year

requirement. There also remains an important difference at the EU level. The definition of spouse in Community law is still defined as a married partner, despite as I state in chapter four, a number of moves by European states to recognise partnership rights for unmarried people. More generally, as my discussion in chapter four argues, primarily European and international regimes have provided patchy results in rights strategies mobilised by sexual citizens and migrants. In the section below I shall bring together the key insights from my analysis of postnational and transnational perspectives.

2. Postnational and transnational discourses

In chapter four, I set out how postnational perspectives question the nation state's sovereignty, as a bearer of rights, due to a growing significance of human rights and other international rights regimes. Soysal (1996) argues that the broadening of rights discourse from the nation-state, could allow traditionally excluded groups, migrants, lesbians and gays to be incorporated into citizenship frameworks. As I point out, transnational perspectives do not quite make the same claims as the postnational model, but they do emphasise the way in which social practices cut across multiple state borders. These two debates acknowledge global processes and offer a number of implications for citizenship. Citizenship rights decoupled from national territories (postnational) to 'flexible citizenship' as exemplified by the 'multiple passport holder' in transnational accounts (Ong, 1999). Chapter four covers a number of criticisms of the postnational model, namely the claim of 'universalistic rights'. The role of supra-national institutions in relation to migrant and sexual citizenship rights illustrates the limitations of the postnational model.

Firstly, the ECHR does not specifically offer protection for migrant rights and is reluctant to intervene on migration matters. Nation-states continue to reaffirm their sovereignty in the areas of migration. In addition to these criticisms, I also examined the inconsistent way in which European instruments (EU and ECHR) have dealt with sexual citizenship rights. There have been some successes at the European level such as equalising the age of consent but a less even response to the recognition of lesbian and gays in terms of family rights. What both these criticism highlight is a conservative interpretation of the family, particularly by the ECHR in its 'right to family life' provision (Article 8). On one level there is a reluctance to recognise migrants' rights to form a family when they move to another state (especially third country nationals) as a number of examples in chapter four illustrate. On another level, there is an unwillingness by ECHR rulings to include lesbian and gays in article 8's definition of the family. They also assume a degree of mobility on the part of same-sex migrants, arguing they do not have an essential link with a specific state. However, this ignores the fact that it is not always possible or safe for same-sex couples to live openly in certain countries (as I discuss in the introduction). Therefore these issues are doubly compounded for same-sex migrant couples that find their rights to family reunion unrecognised by the ECHR.

Such narrow interpretations lie in the paternalistic discourses produced by these covenants. For example, the ECHR founded in the 1950s is grounded in universalistic discourses that are highly gendered and heterosexualised. Critical Legal studies and queer legal perspectives outlined in chapter four have engaged with the way in which legal categories construct and mobilised fixed sexual identities. This is also evident in human rights discourses which produce two competing categories of homosexuality in their discourses: One that posits a fixed immutable, homosexuality and another that is open to 'corruption'

from predatory homosexuals. As I argue in chapter four, a fixed homosexual identity has been used to support the decriminalisation of homosexuality in Northern Ireland. A discourse of tolerance was mobilised in the ruling to decriminalise homosexuality founded on the notion of victim-hood (homosexuals as victims of their sexuality, 'they cannot help it'). This is also reflected in asylum discourse which (as discussed in the introduction and chapter four) constructs distinct categories of harm and victim-hood. For asylum claims of discrimination based on sexual orientation, proffer a fixed and distinct notion of homosexuality which must be proved. The proof of homosexuality must appeal to stereotypical notions of homosexuality (e.g. gay men as 'effeminate') and also specific physical notions of harm (e.g. 'torture'). Therefore, supra-national institutions produce normative and 'universalistic' discourses of homosexuality. This is despite the diversity of experiences of sexual citizens across space.

Chapter four has shown the geographical variance of sexual citizenship. There is diverse local, national and regional availability and recognition of rights for sexual citizens. A clear example of this is the availability of partnership rights. Britain has only recently proposed the possibility of partnership rights and at present only offers a more symbolic registered partnership scheme in London. A number of countries (I list these in Chapter four) have provided a range of partnerships rights that recognise heterosexual cohabitants and same-sex couples. The securing of these partnership rights has been as a result of the particular national discourses on sexuality. The Netherlands is a prime example of a liberal approach to lesbian and gay rights as the first country to allow same-sex couples to marry. They also apply at the regional level, with for example certain German states with Green and Red political coalitions, being the first to provide registered partnerships. Therefore the domestic context is important to how lesbian and gay rights strategies work.

However, there are varying degrees of contention between lesbians and gay men about exactly what and how such rights should be recognised (as illustrated by the PACS in France). These are part of wider debates within the lesbian, gay bisexual community about partnership and gay marriage right strategies. Such debates are broad and highly contentious and this thesis has attempted to engage with a number of these perspectives most notably queer deconstructionist perspectives (particularly chapters one and four). What I would like to argue is that partnership rights provide 'almost identical' rights to marriage but do not fully incorporate them. The main example of this being custody rights for children and joint adoption. Furthermore, partnership rights conferred in one state will not necessarily be recognised in another such as the UK. Nor will partnership rights available to citizens in a particular state be available to migrants. There is a lack of uniformity in the availability and type of rights available in partnership schemes, which still leave marriage as the primary form of relationship recognised across national spaces.

3. Interviews with same-sex couples

My interviews have provided accounts of the lived experiences of same-sex couples that have made an application based on their relationships. Couples have to provide a narrative of their relationship that fits the criteria set out in the regulations. This includes the periods of cohabitation and the production of documentation to prove it. Applicants have to fulfil an 'akin to marriage' model, which in most cases does not reflect the actual practice of their relationships. The interviews have also shown how couples have utilised a number of resources and social networks in order to fulfil their family reunion. Similarly, the interviews illustrate the role of MPs and legal professionals in some of the couples' applications. In addition, how the intersection of class, gender, race with sexual identity

have a bearing on the degree of agency couples can exercise over their family reunion. Therefore, it provides a picture of the 'type' of couples coming through this route. I set out these outcomes from the interviews in the sections below.

The official, legal discourses that shaped the unmarried partners' rule produce a certain 'type' of same-sex couple. As I have stated there was much emphasis in the rhetoric and narratives about the potential abuse of the family reunion provision and the importance of recognising long-standing stable relationships. In addition, anti-immigration discourses that posit migrants as a drain on national resources. This is evident by the cohabitation period, the 'no recourse to public funds' requirement and the emphasis on 'employability' in the discourse of the unmarried partners' rule. The type of couples in my sample reflects this.

The couples with one exception were white and able to demonstrate they had substantial funds to support themselves to meet the 'no recourse to public funds' requirement. They were all third country nationals, able to speak English and able to demonstrate their employability to the Home Office. As was shown in chapter five, the interviewees felt the success of their application was not only due to fulfilling the criteria of the rule but also the experience in particular areas of employment. Also in the analysis of the interviews, those making an application fulfilled particular shortage occupations that included the healthcare sector (from GPs, nurses to social workers) and teachers. A key example was a female dual nationality couple, with considerable nursing experience, had no problems securing employment in advance of their migration to the UK. This couple were able to fit into the feminised shortage occupation of nursing. Other occupational skills, present in the sample included IT, experience in business (mainly male applicants in my sample) and many

possessed a degree or masters qualification (this was present in both male and female applicants). With these skills and work experiences, they argued that it did help their case to enter and stay in the UK. These applicants therefore fit in with the types of migrants the Home Office is trying attract, in terms of specific skills (especially shortage occupations in the welfare sectors). In that respect the couples in my sample also echo the couples that appear in the narratives of politicians arguing for recognition of unmarried relationships during the 1996 debate, where class position was in important element of their validity as migrants.

Resources, economic and social, were a key element of how couples were able to complete their migration. In the introduction I referred to Goss and Lindquist's (1995) structuration perspective, which places migrants in wider social networks which share information and utilise resources. The analysis of the interviews reveal that couples do exploit informal networks, passing on information and advice from their experiences of migration, either through social networks or as can be seen through voluntary work for Stonewall Immigration. Advice on successful strategies, or recommendations of lawyers are some of the ways in which couples have used informal networks. Information about the introduction of the unmarried partners' concession was often discovered in an ad hoc way through social networks. Many of the applicants used web resources such as Stonewall Immigration's web page and associated legal firms web sites to find out information about the concession. This was particularly vital, as it was often difficult and expensive to get through to the Home Office by phone. Though couples could not always fully rely on general information in relation to their specific circumstances, it did allow couples a chance to see if they could enter through this route. It also gave them an idea what kind of information they needed to start collecting for their application. It was also through

networks that same-sex couples and specialist immigration lawyers were able to campaign collectively for same-sex migrant rights as Stonewall Immigration

The resourcefulness of couples was also demonstrated throughout the interviews. As I have mentioned, access to economic resources and information were all important factors in the agency couples. In addition, couples were also resourceful when it came to supplying evidence of their periods of cohabitation. When couples could not supply the more 'official' form of documentation set out in the criteria, they included other miscellaneous items such as delivery receipts, photographs to demonstrate their cohabitation. Therefore couples provided a range of items to meet the proof criteria: personal items (photographs, letters), more official documentation (mortgage agreements) and more miscellaneous items (receipts, joint membership of organisations). Through these items couples construct a narrative of their period of cohabitation, which conforms to the criteria set out in the policy. Many of the couples did not have joint finances or have their paperwork organised in the way the Home Office stipulated. Therefore, couples had to conform to the coupledom model set out by the Home Office even if it was not representative of how their relationship actually was.

When couples had problems constructing this narrative, gaps in documentation for example, couples have used legal representation that could help piece information together and present it in an authoritative way. Legal representatives also acted as a mediator between the Home Office and applicants able to directly access officials and circumvent bureaucratic problems. Also this is illustrated by the way lawyers and solicitors making an application outside the UK monitor queues at embassies, to avoid delays. Similarly, they keep a track of embassies in particular cities that are well practiced and therefore efficient

at processing these types of application. Couples also use other actors like local MPs to intervene when difficulties occur with their application. Therefore there have been a number of strategies and resources couples have used to overcome potential problems with the rules criteria. However, couples using legal representatives needed the financial resources to meet the cost, which again highlights how class is implicated in questions of agency.

The emphasis on proof and evidence in the immigration regulations is part of the surveillance and policing of state discourses. The couple's relationships become subject to examination and analysis by Home Office officials. It also illustrates the placing of sexual citizens on the public/private divide through the scrutiny of their relationships via public institutions such as the Home Office. This includes the production of letters and personal correspondence to prove a subsisting relationship over a period of two years. Therefore, these couples are moving between constructions of the private (intimate space) and the public (claims for citizenship and recognition). For many of the couples in the sample this surveillance was an uncomfortable part of their application. The process often involved written declarations from family, friends, employers and 'authority' figures (e.g. local doctors, the police) to support their status as a couple. For some couples this meant making visible their relationship on a wider social scale which could incur possible rejection or hostility. In some cases this was not an issue with couples already 'out' to friends, employers etc, but for others it was more problematic with a lack of acceptance from family members. This illustrates the transgressive move sexual dissidents make across the public/private divide when claiming citizen rights.

Finally, these interviews provided accounts of the lived experiences of same-sex couples that have been absent from the literatures on the family, immigration and sexual citizenship. It also provides a full analysis of the formation of this policy through analysis of political legal sources, which is not present in current literature. It also raises a number of important issues relevant to contemporary debates in the above literatures. These include the diverse and varied arrangement of sexual citizenship rights across regional, national and international spaces. This thesis also illustrates the particularly conservative interpretation of sexual citizenship rights in the context of immigration and the heterosexist, as well as racist and sexist, discourses that underpin family reunion policies. I would also like this research to encourage wider discussions of heterosexism, that currently do not feature in the theoretical work on family reunion, and emphasise the importance of immigration practices to the lively and growing theoretical debates in sexual citizenship. This research has left me with a profound appreciation of the range of struggles and discrimination that still remain when sexual citizens cross borders. This research, through the co-operation of my interviewees has given voice to some of these experiences and I hope illustrates the sheer determination and tenacity of those same-sex couples who simply wanted to remain together as a couple in the UK.

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Appendices

Appendices

Appendix I

Table of interviews with same-sex couples

INTERVIEWS	DATE	NAMES/ KEY
F.1 female same-sex couple	26/11/00	C and K
F.2. female same-sex couple	4/3/01	J and H
F.3 female same-sex couple	10/3/01	P and M
F.4 female same-sex couple	15/3/01	L and S
F.5 female same-sex couple	26/4/01	S and A
F.6 female same-sex couple	28/01/01	G and K
F.7 female same-sex couple	28/7/01	M and G
M.8 male same-sex couple	3/6/01	B and B.E
M.9 male same-sex couple	23/6/01	P and G
M.10 male same-sex couple	3/11/01	B and J
M11 male same-sex couple	18/11/01	X and A
M.12 male same-sex couple	8/12/01	A and L
M.13 male same-sex couple	10/11/01	V and I
M.14 male same-sex couple	18/11/01	D and B
Legal Professionals		**Firm**
1 Anne Morris	18/10/00	Gherson and Co.
2 Wesley Gryk	10/1/01	Wesley Gryk Solicitors
3 * Barry O' Leary	15/08/01	Wesley Gryk Solicitors
* also contributed his own experience of his partner's application when I interviewed him individually.		

Appendix II

Home Office 10 October 1997

1997 Unmarried partners' concession

Requirements for leave to enter the United Kingdom with a view to settlement as the unmarried partner of a person present and settled in the United Kingdom or being admitted on the same occasion for settlement

295A. The requirements to be met by a person seeking leave to enter the United Kingdom with a view to settlement as the unmarried partner of a person present and settled in the United Kingdom or being admitted on the same occasion for settlement, are that:

(i) the applicant is the unmarried partner of a person present and settled in the United Kingdom or who is on the same occasion being admitted for settlement; and

(ii) any previous marriage (or similar relationship) by either partner has permanently broken down; and

(iii) the parties are legally unable to marry under United Kingdom law (other than by reason of consanguineous relationships or age); and

(iv) the parties have been living together in a relationship akin to marriage which has subsisted for four or years or more; and

(v) there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and

(vi) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds; and

(vii) the parties intend to live together permanently; and

(viii) the applicant holds a valid United Kingdom entry clearance for entry in this capacity.

NB. Four year cohabitation requirement reduced to two years 16 June 1999.

Source: http://www.ind.home office.gov.

Appendix III

Current Unmarried Partners' rule

Under the Immigration Rules overseas nationals may seek leave to enter or remain in the United Kingdom with a view to settlement as the unmarried partner of a person present and settled here or being admitted on the same occasion for settlement.

Paragraphs 295A -295G of HC 395 as amended by HC 538 set out the provisions for leave to enter or remain for persons in this category. The relationship may be same-sex or heterosexual, but may not be a consanguineous relationship.

3. LEAVE TO REMAIN AS AN UNMARRIED PARTNER OF A PERSON PRESENT AND SETTLED IN THE UNITED KINGDOM

The requirements to be met by a person seeking to remain in the United Kingdom as the unmarried partner of a person present and settled here are:

(i) the applicant has limited leave to remain in the United Kingdom; and

(ii) any previous marriage (or similar relationship) by either partner has permanently broken down; and

(iii) the applicant is the unmarried partner of a person who is present and settled in the United Kingdom; and

(iv) the applicant has not remained in breach of the immigration laws; and

(v) the parties have been living together in a relationship akin to marriage which has subsisted for two years or more; and

(vi) the parties relationship pre-dates any decision to deport the applicant, recommend him for deportation, give him notice under Section 6(2) of the Immigration Act 1971, or give directions for his removal under section 10 of the Immigration and Asylum Act 1999; and

(vii) there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and

(viii) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds; and

(ix) the parties intend to live together permanently.

Source: www.ind.homeoffice.gov.uk