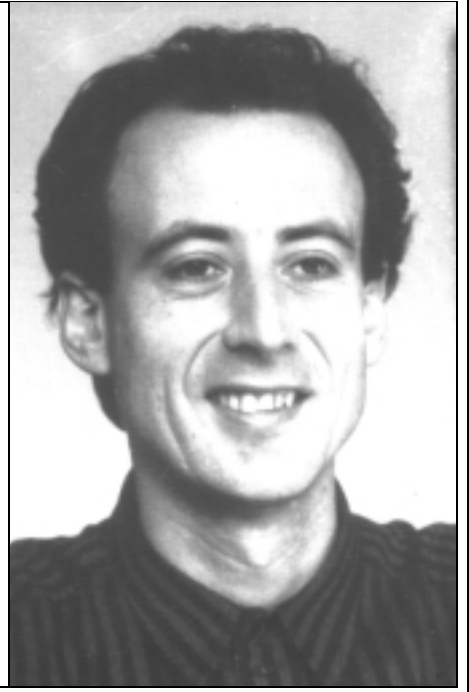


AN UNMARRIED PARTNERS ACT:

A PROPOSAL FOR A NEW LEGAL FRAMEWORK OF RIGHTS FOR ALL UNWED COUPLES, HOMOSEXUAL AND HETEROSEXUAL

PETER TATCHELL



As more and more couples choose to live together outside of marriage, the time has come for an entirely new, modern legal framework of partnership rights — an Unmarried Partners Act — to recognise and protect all unwed relationships, both heterosexual and homosexual.

My proposed Unmarried Partners Act offers a unique alternative to the standard options of marriage, registered partnerships and cohabitation law.

Seven years ago, OutRage! pioneered the first legal challenge in Britain to the ban on same-sex marriage. On 19 March 1992, it sponsored five lesbian

and gay couples to file applications for civil marriage at Westminster Registry Office in London. They were rejected, on the basis that the Matrimonial Causes Act 1973 (but not the Marriage Act 1949) specifies that marriage partners have to be of opposite sexes.

The ban on same-sex marriage is a violation of human rights, contrary to Article 16 of the UN Universal Declaration of Human Rights — the right to marry. Homosexual couples should have the option to get married, if they wish to do so. Discrimination in marriage law, on the basis of sexuality,



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Peter Tatchell is Britain's best known campaigner for lesbian and gay human rights, with a high profile as a lecturer, author, broadcaster, journalist, film-maker and activist. He first began campaigning for gay equality in 1969. In 1973 he was the Gay Liberation Front delegate to the World Youth Festival in East Berlin, where he was arrested, interrogated and beaten up after staging the first ever gay rights protest in a communist country. He was Labour candidate in the 1983 Bermondsey by-election, and during this campaign was subjected to more media smears and violent attacks than any other candidate in Britain this century. In 1987, he founded the UK AIDS Vigil Organisation — to campaign for the civil liberties of people with HIV.

His lobbying of the African National Congress of South Africa helped persuade the ANC to accept constitutional proposals to guarantee non-discrimination on the grounds of sexuality. In 1989 he was one of the founders of the AIDS activist organisation ACT UP, and in 1990 of the queer rights direct action group Outrage! Books he has authored include *The Battle for Bermondsey* (Heretic/GMP, 1983), *Democratic Defence — A Non-Nuclear Alternative* (GMP, 1985), *AIDS: A Guide to Survival* (GMP, 1986, 1987 and 1990), and *We Don't Want To March Straight — Masculinity, Queers and The Military* (Cassell, 1995).

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cannot be ethically justified in a democratic society committed to equality before the law and respect for individual choice and freedom.

Marriage is not, however, a particularly effective and beneficial way of ensuring partnership rights for same-sex lovers. What is more, even for many heterosexual couples marriage may not be the best option.

Denmark introduced registered partnerships for homosexual couples in 1989. Although mooted as a lesbian and gay alternative to marriage, these are, in essence, a form of same-sex civil marriage (and usually an inferior one in terms of rights, often excluding child adoption and access to donor insemination services).

This Danish system is not the most useful and practical way of guaranteeing legal rights to homosexual lovers. The very low take-up rate of registered partnerships in Denmark and elsewhere demonstrates the dubious benefits of this model of relationship recognition. The overwhelming majority of Danish same-sex lovers have chosen not to register their partnership. This means that despite the registered partnership law in Denmark, most homosexual couples are no better off than before. They still have inadequate legal protection. Only a tiny minority has gained from registered partnership legislation.

A registered partnership law, along the lines of the Danish system, would continue to leave the bulk of same-sex relationships without legal rights. This is the Achilles heel of registered partnership legislation: it helps a few, but does nothing for many.

Both marriage and registered partnerships (which are based on the marriage model) are an outdated, restrictive way of providing legal rights to partners in long-term relationships. We need to rethink partnership rights from first principles.

If marriage did not exist, it is unlikely we would invent it now. The marriage formula accords less and less with contemporary needs and aspirations, as evidenced by the declining rate of marriage (now at its lowest level in Britain since the 1920s) and by the spiralling divorce rate (nearly one in two marriages in the UK now ends in divorce).

At the end of the twentieth century, marriage is losing its relevance, even to heterosexual men and women. It belongs to an earlier, bygone era. Moreover, there is no moral or practical reason why it should remain the sole, exclusive basis on which legal rights are conferred on partnerships.

Marriage evolved historically for three main reasons. First, as a way of ensuring male domination over women and children (in particular, the sexual possession of women by men). Second, to guarantee the inheritance of property through the male line (in western patriarchal societies). And third, to regulate and stabilise the conception and rearing of children.

None of these reasons for marriage are valid for lesbian and gay people except, perhaps, in cases where same-sex partners have children, either from a previous marriage, by donor insemination, or through fostering/adoption. But even then, the key to successful parenting is surely a loving, supportive home environment, not the marital status of the partners.

The first two historic reasons for marriage are, quite clearly, profoundly oppressive and/or outdated for heterosexuals, as well as for homosexuals.

The time has come to start afresh. What is needed is a modern, democratic, egalitarian and flexible model of partnership rights, looking forward to the future, not chained to the past.

Any new legal framework ought to be universalist; applying to both same-sex and opposite-sex couples. This is important for three main reasons:

1. Unmarried partners have few or no legal rights. This is true of cohabiting heterosexual lovers, and of lesbian and gay couples.
2. By promoting inclusive legislation for all unwed partnerships, the common needs of unmarried same-sex and opposite-sex relationships can be addressed simultaneously, thereby creating a broader, stronger and more powerful coalition for legal reform.
3. The comprehensive approach — benefiting both heterosexuals and homosexuals — avoids the danger inherent in gay-exclusive partnership laws. Specifically gay legislation is always risky, because it creates a sitting target for homophobic politicians and campaign groups.

The need for a new legal framework for partnership recognition is exacerbated by developments in case law on cohabitation. This, so far, primarily affects heterosexual cohabiters, but some court judgements have also applied to homosexual live-in lovers. Case law is thus, by stealth, increasingly imposing new legal responsibilities on common-law partners, regardless of whether they want them or not.

The courts are dragooning cohabiting couples into a web of legally binding obligations, despite their obvious wish to remain outside the formalised structures and duties of marriage. In other words, the responsibilities that go with marriage are now, gradually, being imposed on lovers who have chosen not to get married.

This is a dangerous, authoritarian trend, which is usurping the rights and choices of those who reject matrimony. The only sure way to safeguard the rights of these couples whatever their sexuality is to create a new legal framework as a counterpoint to both marriage and cohabitation case law.

UNMARRIED PARTNERS ACT

My proposed solution, endorsed by OutRage!, is an Unmarried Partners Act (UPA) that would apply equally, and without distinction, to unwed opposite-sex and same-sex couples.

THE RIGHTS INCLUDED

The Unmarried Partners Act would include all the rights that go with civil marriage.

ETHICAL BASIS FOR GRANTING RIGHTS TO UNWED COUPLES

The ethical argument for granting partnership rights to unwed couples is that love and commitment should confer rights, irrespective of whether the partners are married or unmarried. Sincere, loving relationships between any two people merit legal acknowledgement. In such circumstances, unmarried couples deserve the same legal rights as married ones. What should activate a couples eligibility for rights is mutual love and commitment, not participation in the formalised regulations and official ceremony of marriage. There is no convincing ethical reason why married partners should be privileged over partners who choose not to get married.

AN OPT-IN SYSTEM OF FLEXIBLE RIGHTS

The unique, pioneering character of the Unmarried Partners Act — in marked contrast to the limitations of marriage, registered partnerships and cohabitation law — is that it is a flexible system of partnership rights which allows the partners to select which rights they do want and which rights they don't want.

It is based on the recognition that there are nowadays many different patterns of loving relationships.

While they may be characterised by a commitment akin to marriage, lots of these relationships are more informal and operate in diverse ways. Some lovers live together; others live apart. While most share their income and expenditure, an increasing number prefer to be financially independent.

By allowing partners to choose their preferred options from a range of available rights, the Unmarried Partners Act caters for the heterogeneity of modern partnerships. It offers a full menu of rights, identical to those available to married husbands and wives, including next-of-kin status for the purposes of hospital and prison visitation, eligibility for palimony settlements, and rights with regard to inheritance, company spousal benefits, guardianship of children, and so on.

Some rights concerning tax contributions and welfare benefits may, in some countries, have to be chosen together as part of a joint package of rights and responsibilities.

The great advantage of the Unmarried Partners Act is that it allows partners to choose some of the rights, all of the rights or none of the rights, according to their particular needs and wishes. They can devise their own tailor-made partnership agreement, and subsequently add rights, or subtract rights, in the light of their changed circumstances.

The rights are automatically available, but they have to be claimed; which means they are not foisted on couples against their wishes (as happens under marriage, registered partnership, and cohabitation law). This opt in system permits partners to pick and mix from the menu of rights. Such a system accords with modern morality, lifestyle and diverse relationship patterns.

A SIMPLE AND INFORMAL ACTIVATION OF RIGHTS

The simplicity and ease of partnership agreement, registration, certification and annulment is a great advantage over existing models of partnership recognition, such as marriage or the Danish formula of registered partnerships. There is no ceremony associated with, or required for, the registration of a partnership (although partners are, of course, free to arrange their own commitment or blessing ceremony if they wish).

PARTNERSHIP AGREEMENT

The claiming of partnership rights involves a Partnership Agreement. This is available to any couple,

aged 18 or over, in a relationship based on mutual love, affection, interdependence and commitment. Recognising that there are many different personal circumstances and patterns of relationship, the partnership need not necessarily involve cohabitation or shared finances.

A Partnership Agreement is not available to people who are married or who already have a Partnership Agreement. In other words, marriage and this system of partnership recognition are mutually exclusive, and a person can have only one Partnership Agreement at a time.

The Partnership Agreement involves a short, standard form (available from a Post Office or Town Hall). It consists of an affirmation of partnership and commitment, and lists the partners names, addresses, dates of birth and occupations. The partners select the rights they want from the list of options specified on the form, and strike out the rights they do not want. They then both sign the Agreement in the presence of a person of professional standing (such as a doctor, solicitor or teacher, as with a passport application), who also signs the Agreement as a witness. This Agreement is then sent to the Registrar of Partnerships for registration.

Amendments to the claimed rights can be made by submitting a new Partnership Agreement to the Registrar, in accordance with the original procedure.

A Partnership Agreement has legal precedence over a will, in order to prevent a person entering into an Agreement and then secretly, in their will, countermanding its provisions.

Compared to marriage, this simple, no-fuss system of Partnership Agreement is easy to enact and easy to dissolve.

REGISTRAR OF PARTNERSHIPS

On receipt of a Partnership Agreement by the Registrar of Partnerships, there is a 30-day waiting period for registration, in case either partner has second thoughts. During this 30-day period, one or both partners can revoke the Partnership Agreement by submitting a Partnership Annulment to the Registrar of Partnerships.

Once the 30-day waiting period has expired, the Partnership Agreement is legally recognised and enforceable. The Registrar issues a Certificate of Partnership, which the partners can produce to

claim their chosen rights, and which anybody can verify by contacting the Registrar. This Certificate is legally binding on the partners and on all relevant public and private authorities.

The 30-day waiting period is advisable to deter spur-of-the-moment Partnership Agreements, and to give partners some degree of protection against short-term, opportunistic lovers.

An independent, official Registrar and Certificate of Partnerships is necessary to verify the partnership and to prevent false claims being made by one partner against another, or by third parties. Without some system of choosing and registering partnership rights, case law would continue to impose legal responsibilities on cohabitantes and *de facto* partners, regardless of their wishes.

PARTNERSHIP ANNULMENT

The Partnership Agreement can be annulled at any time by one or both of the partners signing a Partnership Annulment (a standard form available from a Post Office or Town Hall). As with the Partnership Agreement procedure, they get it witnessed by a person of professional standing, and forward it to the Registrar of Partnerships. A Partnership Agreement becomes void 30 days after the Partnership Annulment is received by the Registrar (the 30-day delay being a cooling-off period to allow the partner(s) to reconsider their decision and, if they change their mind, withdraw their annulment).

DISPUTES OVER THE FACTUALITY OF A PARTNERSHIP

If a claim of partnership is disputed by one partner against another, or by anyone else, they have the right to take legal action and seek adjudication in the courts. A court has the power to call evidence and decide on the existence (or not) of a partnership. The evidence considered could include the examination of personal artefacts such as letters, cards and photographs; plus testimonies from friends concerning living, financial and holiday arrangements. The decision of the courts would be final and legally binding.

CONCLUSION

Although not perfect, this Unmarried Partners Act is a much simpler, more accessible and flexible system of partnership rights than marriage and its variations.