

Written evidence from Sir Paul Coleridge and Harry Benson of Marriage Foundation [HAB0007]

Marriage Foundation is an independent charity set up in 2012 to champion marriage and commitment. We work with top academics to discern and analyse family trends in UK household survey data and our own primary research. Our findings and papers on the impact of family structure on adult and child outcomes are frequently cited by policy makers and in the national media.

Summary

Automatically assigning marriage-like rights to cohabiting couples, perhaps after a suitable qualifying period, might appear to right an obvious injustice faced by a relatively small number of unmarried adults.

However forcing such rights onto adults, whether they want them or not, risks creating a far bigger injustice by undermining the importance of commitment between parents, thereby unnecessarily destabilising the relationships of a great many more couples and their children.

We also consider it profoundly illiberal to force rights onto adults who are free to choose to acquire them through marriage, civil partnerships or cohabitation agreements.

Far better to run a high profile information campaign to highlight the benefits of formal commitment which would not only boost family stability but also provides the legal rights and responsibilities should the relationship end.

If, contrary to our argument that there should be no such rights given to cohabitants, it is decided that some level of protection is fair, the rights should be nowhere near as comprehensive as for divorcing couples. A very clear distinction in the level of protection should be retained and clearly defined in the legislation.

Argument

There is a clear injustice at stake here. A couple may have lived together for many years and brought their children up together. But because they never married, each partner has no rights over the other's financial assets or income if they split up.

Most typically, a mother may have left the labour force and sacrificed her career in order to bring up their children. Yet if the father retains control of the money when they split up, the children are provided for under the terms of the Children's Act but the mother may be left with nothing, especially if there are no children from the relationship. Of course these roles are often reversed.

Were the law to assign similar rights of married couples to unmarried couples automatically, this injustice could be resolved. The mother could be treated as a divorced wife and get a share of the assets commensurate with her contribution to the marriage or her financial needs.

In reality, this problem affects only the tiniest minority of couples. Real world data from Scotland found that just 1,000 couples sought legal advice on this issue over a four year period. For England and Wales, this would translate to some 2,700 couples per year, a far cry from the claim that 3.4 million couples could be affected.

But why are we arguing that the law should NOT do this? Why should cohabiting couples NOT be protected in the same way as married couples?

We submit two major reasons:

(1) It would undermine commitment.

For us, this is the most important argument and one that politicians and the legal profession in particular fail to understand, appreciate or even consider.

The state regulates marriage for one very good reason. The act of marriage represents the intentional act of commitment that is the foundation of stable family life and society.

Academic journals are filled with articles highlighting how married couples are more likely to stay together compared to unmarried couples and their children tend to have better outcomes, such as mental health. These findings – including from our own research – remain even after taking into account factors which ‘select’ couples into marriage or cohabitation, such as age or income.

A growing body of evidence suggests that the mechanism by which the act of marriage appears to make a difference is the act of commitment represented by marriage. Agreeing to marry involves a decision, a clear signal of mutual intent that removes any lingering ambiguity, and the explicit social support of family and friends.

These factors may *occasionally* be present in a cohabiting relationship but are *necessarily* present in a marriage.

Automatically assigning marriage-like rights to cohabiting couples seriously undermines the advantages of couples making explicit commitments to each other in the first place.

The gradual trend away from formal commitment has been accompanied by an increase in family breakdown. Righting the apparent wrong done to an adult who has the opportunity to choose to marry risks exposing yet more children to the instabilities and uncertainties of parents who choose to cohabit.

(2) It is profoundly illiberal.

It is entirely fair and reasonable, and in the interests of society as a whole, that children are assigned rights under the law in order to ensure that parents fulfil their responsibilities to them when relationships fail. The Children’s Act prioritises the interest of the children and protects them from selfish adults.

It is also entirely fair and reasonable, and in the interests of society as a whole, that Divorce Law assigns financial responsibilities to married adults when their relationship breaks down and gives the courts powers to define them. Both adults freely chose to enter into the legal status of ‘married’. The same applies to adults who freely enter into a civil partnership or a cohabitation agreement. They are adults and have a choice to enter one of these three states. Couples can also design their level of financial commitment prior to marriage by means of pre-nuptial contracts which are becoming increasingly common and sophisticated. Couples can make their own personal autonomous decisions governing their position on divorce.

However automatically assigning rights and responsibilities to adults who have either chosen or neglected to choose to change the legal status of their relationship is unacceptable state interference and profoundly illiberal. It is akin to forcing adults to change their legal status when they may not be ready or willing to do so.

Nor is there any defence that couples who might have objected to marriage for whatever reason have nowhere to go if they wish to take on mutual rights and protections of marriage. Heterosexual couples now have the very sensible alternative option of entering into a civil partnership. Furthermore the option of a cohabitation agreement has been available for years although rarely used.

If rights, what level?

If, contrary to our arguments, some level of rights is to be afforded to cohabitants, it should be the very minimum required to protect against serious financial hardship caused by the fact of the cohabitation.

Under no circumstances should the rights of cohabitants match those of the married population. To impose such a level of rights would destroy the clear distinction between marriage (which is a partnership and a sharing of resources) and cohabitation (which is necessarily an independent state of two separate individuals).

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