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Title Sexuality and the Citizen Carer

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Abstract: The perceived emergence of a “care deficit” is attracting significant attention from scholars, activists and policymakers. This preoccupation with care reflects a concern with the social implications of demographic and structural changes in the labour market in the context of radical, cross-national changes in welfare regimes. Much of the debate, particularly from a gender perspective, revolves around working mothers and the difficulties they face in combining work and care responsibilities. This has led to a focus on the role of the state within the broader context of social reproduction and social care provision.

This article shifts the focus of enquiry away from the “working mother” as a privileged subject of feminist enquiry to consider some wider implications of the care debate, in particular, to explore the relationship between changes in the configuration of market, family and state with respect to care provision and the recent “success” of lesbian and gay equality-seeking strategies. In assessing the role played by care considerations in the development of “progressive” legal discourses around sexuality, we invoke the notion of the “citizen-carer”, arguing that within the context of current political and legal reform in the U.K., such developments are, to considerable extent, shaped and constrained by the state's need to manage the care consequences of post-industrial transformation. The question for gay and lesbian activists is how far equality-seeking strategies may be allied to care concerns and to what extent (and in what contexts) are they subverted by them?

Keywords:

Introduction

Today there are thousands of same-sex couples living in stable and committed partnerships. These relationships span many years with couples looking after each other, caring for their loved ones and actively participating in society; in fact living in exactly the same way as any other family.¹

In recent years the perceived emergence of a “care deficit” has attracted the attention of scholars across a range of disciplines including law, economics and social policy. This preoccupation with care reflects a concern with the social implications of demographic and structural alterations in the labour market in the context of radical, cross-national changes in the nature and function of welfare regimes.² Inevitably much of the debate, particularly from a gender perspective, revolves around working mothers and the difficulties they face in combining work and care responsibilities. This has led, *inter alia*, to a focus on the role of the state within the broader context of social reproduction and care provision.

The object of this article is to shift the focus of enquiry away from the “working mother” as a privileged subject of feminist/critical analysis³ to consider some wider implications of the care debate. Our concern here is not to deny the salience of the issues to which a focus on working mothers gives rise, in particular, the deep persistence of a gender division of labour and the denial of economic value to women's caregiving activities. Rather we wish to advance feminist analysis by exploring other structural, distributional and discursive implications of the collapse of the housewife model of work, including, for purposes of this article, the relationship between changes in the configuration of market, family and state with respect to care provision, and the recent “success” of gay and lesbian legal strategies. ,

A key focus of our analysis is the extent to which “non-standard intimacies” are being (re)conceived in law and policy, in part in consequence of care imperatives. Although the

¹ Jacqui Smith MP, “Foreword” in *Civil Partnership: A Framework for the legal Recognition of Same-Sex Couples* (Women and Equality Unit, June 2003), p.1.

² G. Esping-Andersen, *Social Foundations of Postindustrial Economies* (OUP, Oxford, 1999).

³ Brush, “Changing the Subject: Gender and Welfare Regime Studies” (2002) 9/2 *Social Politics* 161-186.

traditional site of enquiry into care considerations is the heterosexual family, within the fields of sociology and social policy, a strand of scholarship is emerging which aims to broaden and contest the foundation of “care” work with respect to heteronormative relationship models.⁴ This work focuses on intimacy patterns that do not “look like” traditional familial configurations and which, thereby, provide a basis for disrupting the heteronormative grip on family forms. Thus, Sasha Roseneil argues:

...we should seek to frame research questions from non-heteronormative standpoints, making a conscious effort to think outside and beyond heterosexual familial relations, and allowing lesbians, gay men, bisexuals and all those whose lives transgress heteronormative assumptions a central place in our analyses.⁵

A strong concern emerging from this literature is that recent attempts to re-articulate “the family” have not adequately contested its embedded heteronormativity, leaving considerable social change in this area under-theorised.⁶ Roseneil and Budgeon point out that theorising “non-standard intimacies” in terms of “families of choice” does not fully capture the counter-heteronormative pull exerted by these kinds of relationships.⁷ Consequently, recent sociological analyses have aimed to decentre the “family” and focus instead on friendship networks and other types of intimacy that, as Roseneil and Budgeon put it, exceed the “‘friend’/‘lover’ binary classification system”.⁸

Within legal analysis, where the dominant approach has been the invocation of rights discourse, it is less common to situate issues of lesbian and gay rights within discourses of care and caregiving. Moreover, as will hopefully become clear, when lesbian and gay rights *are* read alongside questions of care, a heteronormative model of the “family” is invoked. At the same time, questions of care are rarely far from the centre of gay and lesbian and politics, emerging, albeit in muted form, in the context of debate about same-sex partnerships and gay family issues.⁹ Furthermore, care is often a feature of discourses of

⁴ Roseneil “Why we should Care about Friends: An Argument for Queering the Care Imaginary in Social Policy” (2004) 3/3 *Social Policy & Society* 409-419.

⁵ Roseneil *op cit* p. 410-411.

⁶ Roseneil and Budgeon “Cultures of Intimacy and Care Beyond ‘the Family’: Personal Life and Social Change in the Early 21st Century” (2004) 52/2 *Current Sociology* pp.135-159.

⁷ Roseneil and Budgeon, *op cit*, p. 137.

⁸ Roseneil and Budgeon, *op cit*, p. 138.

⁹ Issues of care surfaced from the outset in Stonewall’s campaign to secure legal recognition of same-sex relationships. See, e.g. their pre-White Paper Briefing Paper, *Civil Partnership: Legal Recognition of Same-Sex*

legitimation around sexuality rights. Much of the discourse relating to same-sex partnerships, for example, draws on notions of care and commitment to strengthen the case for “equal” treatment of gay couples.¹⁰ Thus, it may be of some value to trace the links between current concerns about the “care deficit”, heteronormative constructions of the “family”, and the contemporary legal politics of sexuality. Specifically, what role is played by care considerations in the development of “progressive” legal discourses around sexuality?

The structure of the article is as follows. We begin by considering factors which have contributed to a rise in concern about issues of care, focusing in particular on changing configurations of market, family and state in the wake of post-industrial transformation and highlighting the (re)emergence of discourses of citizenship in this context. We then consider some recent U.K. legal initiatives in the area of work and family life, which might be said to be advance gay and lesbian rights by broadening the scope of family-friendly policy to encompass non-traditional family forms. We assess whether such provisions do, in fact, move beyond a heteronormative ideal, while addressing, *inter alia*, the extent to which they are influenced (whether implicitly or explicitly) by care concerns. We then endeavour to “marry” issues of care and sexuality by invoking the notion of the citizen-carer. Our argument is that within the context of current political and legal reform, progressive developments around sexuality are shaped and constrained by the state's need to manage the care consequences of post-industrial transformation. The question for gay and lesbian activists is how far equality-seeking strategies may be allied to care concerns constructed through dominant constructions of intimacy, and to what extent (and in what contexts) are they subverted by them?

II The Problems of Care

The perception of care as a “problem” is now widespread. Care has moved from occupying a position outside social, political and economic discourse - as a simultaneously taken-for-granted yet invisible aspect of human need - to a core preoccupation of social democratic

Couples (June 2003) highlighting the need for same-sex recognition in care contexts, including “when one partner becomes ill or incapacitated” and “rights for consultation on medical treatment” (available at www.stonewall.org.uk/campaigns/22.asp).

¹⁰ see above, fn. 9. See also the quotation, above, fn 1, which is a striking example of the way in which care concerns are invoked to make the case for gay families so long as they appear the “same as” the dominant heterosexual model.

states in Europe and beyond. The problem with care is that it is, or is perceived to be, in woefully short supply. The social impact of global economic restructuring on “informal” (mainly family-based) care arrangements alongside the contraction of “formal” care provision by states has generated a “care deficit”, a state of affairs in which care needs - care for children, the elderly, the sick and disabled, as well as the daily care needs arising from labour activity - are not being met. As the United Nations Development Programme (UNDP) have observed: “Globalization is putting a squeeze on care and caring labour”¹¹ creating “a challenge of care” which requires societies to design new arrangements for care in the global economy.¹²

Inevitably, a concern with care provision is closely bound up with changing gender roles particularly with regard to the nature and extent of women's participation in paid work. A wealth of evidence testifies to a cross-national shift, both normatively and actually, away from a male breadwinner family model in which women's primary role was to engage in unpaid caregiving activities outside the sphere of paid work (i.e. as “housewives”) towards a “dual-earner” or “adult worker” family model in which both men and women are, and are expected to be, economically active.¹³ This increase in the participation of women in paid work is generally welcomed, appearing neatly to coalesce with the feminist pursuit of gender equality by providing a route for women to free themselves from economic dependence on men.¹⁴ However, it has inevitably posed practical problems in terms of care provision. These were not initially acknowledged by policy makers, in part because the gendered nature of labour markets and the social and separation of work and family activities continued to place practical limits on women's ability to be economically active. As a consequence, women continued to assume primary responsibility for caregiving, seeking to “balance” their work and family responsibilities by assuming a “dual burden” of work and care which has arguably exacerbated rather than alleviated gender inequalities. The introduction of a “family-friendly” policy agenda, which, to varying degrees, exhorts,

¹¹ UNDP, *Human Development Report 1999: Globalization with a Human Face* (OUP, New York, 1999), p.77.

¹² *ibid.*, p.81.

¹³ See, e.g. Lewis, “The Decline of the Male Breadwinner Model: The Implications for Work and Care” (2001) 8/2 *Social Politics* 152-70; Lewis and Guillari, “The Adult Worker Model Family, Gender Equality and Care: the Search for New Policy Principles and the Possibilities and Problems of a Capabilities Approach” (2005) 34 *Economy and Society* 76-104. The male breadwinner model was always more entrenched normatively than actually. Even within a European context and taking account of differences of class, culture and race, there was considerable historical variation in the development and importance of the male breadwinner model (Pfau-Effinger, “Socio-Historical Paths of the Male Breadwinner Model” (2004) 55 *British Journal of Sociology* 377).

¹⁴ As prescribed by Friedrich Engels in *Origin of the Family, Private Property and the State* (Penguin, Harmondsworth, 1986).

encourages and compels employers to accommodate the needs of carers, particularly parents, is regarded by many as a solution to the care difficulties which women's increased economic activity creates.¹⁵ However, the ability of family-friendly policies to deliver greater gender equality, particularly with regard to the allocation of responsibility for caregiving work, is viewed more sceptically.¹⁶ Thus, increasingly, feminists are considering issues of care more closely, teasing out the social, structural and discursive parameters within which they are framed and organised and assessing the potential of different configurations of care from a gender equality perspective.¹⁷ In this way the problem of care has become a problem for feminism: it is an issue which is now integrally linked to the formulation and pursuit of gender-egalitarian strategies.

At the same time, it would be erroneous to think that the care has emerged as a problem wholly or even mainly as a consequence of feminist interventions or concerns. While changes in the gender demographics of paid work have clearly brought to the fore issues of gender (in)equality, the reasons which lie behind those changing demographics are of far greater significance. And, in this context, the pursuit of labour market flexibility, bringing with it an increase in the variety and extent of flexible working arrangements available, is deeply implicated.

The pursuit of labour market flexibility can be understood as a response to wider economic changes occurring in the last few decades. These have included greater market fluctuations, accelerated technological development, closer integration of domestic and world economies and a change in focus away from high volume mass production towards smaller, more differentiated production processes, prompting extensive labour market restructuring

¹⁵ Department for Trade and Industry, *Work and Families: Choice and Flexibility: A Consultation Document* (HMSO, London, 2005). In Europe the issue is framed in terms of a need to “reconcile” work and family responsibilities but is no less visible. See, e.g., EC Commission, *A Roadmap for Equality Between Men and Women 2006-2010* (COM (2006) 92 final, in which “enhancing reconciliation of work, private and family life” is identified as a priority area, and generally Hadj Ayed and Masselot, “Reconciliation between Work and Family Life in the EU: Reshaping Gendered Structures” (2004) 26 *Journal of Social Welfare and Family Law* 325-338.

¹⁶ See, e.g. Stratigaki, “The Cooptation of Gender Concepts in EU Polices: The Case of “Reconciliation of Work and Family” (2004) 11 *Social Politics* 30-56.

¹⁷ e.g., does the solution to problems of care lie in the reorganisation of working time and, if so, is it better to encourage greater flexibility or greater standardisation of time norms? (Figart and Mutari, “Work Time Regimes in Europe: Can Flexibility and Gender Equity Coexist?” (2000) 34 *Journal of Economic Issues* 847) Is gender equality more likely to be achieved through formal (commodified) or informal (familial) care arrangements? (Pfau Effinger, “Welfare State Policies and the development of Care Arrangements” (2005) 7/2 *European Societies* 321-47; What are the relative merits of public (state) and private (market) care arrangements from a gender equality point of view? (Lewis and Giullari, *op.cit*).

in most developed economies during the late twentieth century. In this process flexibilisation¹⁸ has been central, so much so that it now almost universally recognised as crucial to successful economic performance and wealth production. At first, flexibility was largely understood in narrow terms of efficiency and employer need. However, more recently, a counter-discourse has emerged which highlights the potential benefits of flexibility to workers - particularly those with family responsibilities - in terms of the possibilities it poses for enhancing worker choice of and control over working arrangements. The enhancement of worker choice in terms of working arrangements also ensures that employers can make the best use of the pool of available talent. In this way, issues of economic productivity and gender equality appear neatly to converge and the reconciliation of work and family responsibilities and responsiveness to the needs of carers become recast as economic strategies.¹⁹ The care problem becomes an economic problem, a problem to be addressed in the context of the successful management of economies. Yet, as economic imperatives reassert themselves, the gender-egalitarian potential of reconfigured caregiving arrangements becomes at risk of being suppressed. This is a concern to which the reality of flexible working arrangements - particularly though not exclusively for women - readily attests.²⁰

III Welfare and Citizenship

There is another dimension to the care debate which offers the possibility of straddling equity and efficiency considerations while, at the same time, widening the progressive reach of engagement with care issues in terms of promoting egalitarian outcomes. Such a dimension situates issues of care provision within analyses of changes in the nature, form and function of the modern welfare state.

¹⁸ The process of “flexibilisation” includes both increased utilisation by managers of “non-standard” working practices alongside the introduction of legal and political strategies to foster the development of flexible work, resulting in greater labour market flexibility.

¹⁹ See, e.g. DTI 2005, above, fn.9. Reconciliation policies are also an integral part of the European Employment Strategy with its accompanying “flexicurity” discourse, but see Fredman in “Women at Work: The Broken Promise of Flexicurity” (2004) 33 ILJ 299-319.

²⁰ This process of incorporation and suppression of gender egalitarian concerns within market-driven, efficiency-seeking imperatives is analysed in a UK context by Conaghan, “Women, Work and Family: A British Revolution” in *Labour Law in an Era of Globalization* (Conaghan, Fischl and Klare eds, 2002) 53-73; in a European context by Stratagaki, *op. cit.*, and in the context of the policies of international financial institutions by Rittich, “Equity or Efficiency: International Institutions and the Work/Family Nexus” in *Labour Law, Work and Family* (Conaghan and Rittich, ed, 2005) 43-76.

It is widely acknowledged that notwithstanding considerable variation in welfare regimes across Europe, virtually all welfare regimes have been subject to particular pressures in the context of post-industrial transformation, requiring the recasting of the work/welfare relationship.²¹ This has led to an emphasis on “active rather than passive welfare”, and to “institutional changes... to tip the balance of priorities towards enforcing the responsibilities of those claiming social support”.²² No longer is the prime object of welfare to “secur[e] a decent level of living for those who cannot provide for themselves”; rather “the welfare state should make its aim to enable self-provision for everybody”.²³

This new conceptualization of the object of welfare fits well with what might be described as “third way” egalitarianism. This is an idea of equality which moves away from traditional strategies of redistribution (strongly characterising twentieth century manifestations of welfarism) towards efforts to eradicate “social exclusion” through the removal of barriers (economic, educational, race or gender-related) preventing socially excluded groups from participating in the full benefits of citizenship.²⁴ The idea is not to effect substantively equal outcomes but to ensure that everyone has a real opportunity to provide for themselves. In this way welfare enables independence rather than fostering dependence, and equality is reframed in terms of equal access to the rights and responsibilities of citizenship. Participation in paid work is clearly central to this new form of welfarism. For it is through work that citizens are able to secure their economic independence. In this context, family-friendly policies may be reconsidered not simply or solely as mechanisms for promoting labour market flexibility but also as a strategy for including women, and others whose paid work opportunities are limited by their caring responsibilities, within the sphere of active citizenship. The provision of care becomes part of a broader agenda of labour activation.²⁵

²¹ Esping-Andersen, *op. cit.*, Lewis, “Gender and Welfare State Change” (2002) 4/4 *European Societies* 331-357.

²² Lewis, “Economic Citizenship: A Comment” (2003) 10 *Social Politics* 176-185, p.178.

²³ Skevik, “Women’s Citizenship in the Time of Activation: The Case of Lone Mothers in ‘Needs-Based’ Welfare States” (2005) 42-66, p.43.

²⁴ Collins, “Discrimination, Equality and Social Inclusion” (2003) *MLR* 16-43. Collins elaborates the distinction between social inclusion and distributive conceptions of equality: “Social inclusion and egalitarian ideals share a concern about outcomes or distributive patterns. Yet there is also a fundamental difference. Social inclusion does not seek the same or broadly equivalent outcomes for citizens. It concentrates its attention not on relative disadvantage between groups, but rather on the absolute disadvantage of particular groups in society. The objective is not some notion of the equality of welfare but one of securing a minimum level of welfare for every citizen” (*ibid.*, p.22).

²⁵ “Activation can be broadly defined as ... a range of policies and measures targeted at people receiving public income support or in danger of becoming permanently excluded from the labour market ... and is internationally known as ‘workfare’ ‘from welfare to work’, or ‘the work approach’” (Skevik *op.cit.*, p.42).

An important goal of labour activation policies is to limit dependence on state economic support. By easing the path to paid work for socially excluded groups the state is able to reduce the costs of welfare provision and justify the further erosion of entitlements (whether in the context of income support, housing, social care, health care, education, pensions, and so forth). The economically active citizen does not need the state to provide what s/he can provide for him/her self.²⁶ However, a potential tension arises here between labour activation policies and welfare retrenchment and the heart of the tension lies in the provision of care. Put bluntly, if all those who can must be economically active, who is to care for those who cannot? The traditional model of care under twentieth century welfarism was one in which the family and the state shared (albeit not equally) responsibility of caring. However, the collapse of the housewife family model in a period of intense welfare retrenchment makes visible both our dependence on a particular care infrastructure and its current fragility (if not dissolution). The rise of an adult worker family model inevitably encourages the defamilialization of caring work but in circumstances where the alternatives to caring in a family context are limited and under strain. While family-friendly policies are an attempt to close the care gap which labour activation strategies have opened, the recasting of a new care infrastructure lags far behind the social consequences of labour activation, particularly in the UK where, notwithstanding the Labour Government's national child care strategy, the problem of child care remains pressing for most working parents.²⁷ Moreover, it is arguably not in the state's interest wholly to defamilialize care. The greater the practical reliance on informal care arrangements (which are generally family- or community-based) the less need for the state to provide formal, publicly subsidised care solutions.²⁸

As a consequence, and from the perspective of the state's interest in promoting a particular form of welfare regime, while the housewife family model is no longer a viable solution to

²⁶ For a trenchant critique of New Labour's economic citizen, see Clarke, "New Labour's Citizens: Activated, Empowered, Responsibilized, Abandoned?" (2005) 25 *Critical Social Policy* 447-463.

²⁷ Lewis, "Developing Early Years Childcare in England 1997-2002: the Choices for (Working) Mothers" (2003) 37 *Social Policy and Administration* 219-38.

²⁸ Of course the state and the family are not the only players here. Another solution to the care deficit is the development of market-based care solutions (Lewis and Guillari, *op.cit.*). In practice countries vary in terms of their reliance on family, market, and state-based care arrangement but broadly, the US approach has been highly reliant on market-based solutions while in some European states at least the provision of public care remains integral to the care infrastructure. Forms of care arrangements also vary between urban and rural environments and between areas of high and low population density. See generally H. Jarvis, *Work-Life City Limits: Comparative Household Perspectives* (Palgrave Macmillan, 2005).

the problem of care provision, it remains the case that family-based care *is* desirable. To put it another way, while current changes in the nature, form and function of the welfare state may be said to have ousted the traditional heterosexual family - comprising a male breadwinner and a female caregiver - from its position of normative pre-eminence, the need continues for stable, and intelligible, family forms capable of absorbing and discharging a considerable proportion of the care burden.

It is at this point that we confront more closely the implications of “active” citizenship within a care context. If we understand citizenship in terms of entitlement to the benefits which flow from being within the sphere of governance - whether social, political or civil²⁹ - then *active* citizenship places the emphasis on the responsibilities or duties which go with entitlement. Active citizenship clearly encompasses economic activity in the form of paid work participation. But, ideally, active citizenship should also include engagement with the broader social and political environment, for example, through community activities and participation in political decision-making.³⁰ The active citizen is a citizen who *cares*, not only for himself, but also for his family and for the community in which he finds himself. The active citizen is not conceived as “an island unto himself” or as a separate cog in the wheel that is society; he is more like a moving part of a social and political organism, in relation to which he is both simultaneously autonomous and integrated.

With regard to the problem of care, the active citizen clearly has a role to play. However, to play the role he must be admitted to the full benefits of citizenship. For women, full entry into the labour market has come at the practical price of retaining a considerable proportion of their caregiving responsibility. At the same time, the state no longer has the same vested economic interest in the heteronormative family form. As long as the family serves its key purpose in providing care, both for those who cannot easily care for themselves (children, the elderly, the sick and the disabled) and in terms of the contribution it can make to the short-term and long term regeneration of productive labour,³¹ the form can vary. As the

²⁹ See generally T.H. Marshall, *Citizenship and Social Class* (CUP, Cambridge, 1950).

³⁰ Cooper, “Active Citizenship and the Governmentality of Local Lesbian and Gay Politics” (2006) 25 *Political Geography* 921-943.

³¹ An important concern of the current childcare agenda is to ensure that children get “the best start in life” (DTI 2005, above, fn. 9) so that they “grow into responsible and productive members of society” (*Social Justice: Strategies for National Renewal* The Report of the Commission of Social Justice, Vintage, London, 1994 ,p.311). Thus, care is not just about meeting the needs of those who cannot provide easily for themselves; it is also a form of social investment. See further Lister, “Investing in the Citizen Workers of the Future: Transformations in Citizenship and the State under new Labour” (2003) 37 *Social Policy and Administration* 427-443.

Social Justice Commission observed as far back as 1994: “instead of allowing ourselves to be obsessed with family structures, we need to concentrate on family *functioning*”.³²

This shift away from specific family structures towards an emphasis on family functioning opens up a space for the reconsideration of issues of sexuality and non-standard intimacies. Like women, gays and lesbians have struggled to be admitted to the full benefits of citizenship, particularly in the context of sexuality rights and rights arising from or relating to intimate relations. However, if care needs are to be met other than through the traditional housewife model then the state needs to encourage gays and lesbians to be carers. This entails conferring on them rights, rights to care to be acknowledged as carers, but also disciplining responsibilities in relation to caring. In this way, notions of sexual citizenship become imbricated in concerns to close the care gap, captured in the idea of the “citizen-carer”. More generally, the loosening of family forms and the opening up of new possibilities for gay and lesbian “families” must be understood not just (or even) as a product of the success of liberal egalitarian strategies but also (or rather) as a response to the decline of the housewife family model in the context of post-industrial transformation and widescale welfare retrenchment. Moreover the invocation of notions of citizenship in a gay and lesbian context, as in a feminist context, must be accompanied by an openness to the possibility that citizenship, while no doubt possessing progressive and aspirational potential, also functions as a mode of discipline and a mechanism of governance.

IV Sexuality and Citizenship

There is now a wealth of literature exploring notions of citizenship from queer or lesbian and gay perspectives.³⁴ The object of this scholarship is, broadly, to trace the effects of heteronormativity on dominant constructions of citizenship and interrogate claims for inclusion and recognition by sexual minorities. Such claims vary with geographic and

³² Social Justice Commission, *op.cit.*,p.312.

³⁴ We make the distinction between “queer” and “lesbian and gay” to emphasise variations in theoretical approach between those who articulate an approach aimed at problematising binaristic approaches to sexuality and gender difference, on the one hand, and those who advocate a more assimilationist, rights-based approach, on the other. See further D Bell and J Binnie, *The Sexual Citizen: Queer Politics and Beyond* (Polity Press, Cambridge, 2000) p.37.

political context. For example, scholars have highlighted how, in Northern Ireland, religious discourses contribute to the “highly regulated sexual landscape” within which sexual minority rights have been presented as part of a project of nation-building.³⁵ Consequently, the value of sexual citizenship to lesbians and gay men is contested. Some approaches to sexual citizenship focus largely on its potential benefits. Weeks, Heaphy and Donovan, for example, writing about configurations of same-sex intimacy in Britain, situate their analysis in the context of two defining moments in the lesbian and gay movement: the moment of transgression and the moment of citizenship.³⁶ For them, the moment of citizenship is a necessary development because it recognises sexual diversity and validates difference.³⁷ Other, more critical approaches within the field point to the disciplining effects of claims to recognition and inclusion that constitute the move to become “full citizens”. Carl Stychin draws attention to the normalising function of citizenship, which, he argues, has the capacity to produce disciplining effects for lesbian and gay legal subjects as well as the means for their resistance.³⁸ Similarly, David Bell and Jon Binnie, whilst arguing that “everyone is a sexual citizen” - i.e. that ideas about sexuality are always at hand in constructing citizenship, nevertheless are extremely cautious of what is required of sexual dissidents in order to access rights:

We may all be sexual citizens, but we are not *equal* sexual citizens.... Citizenship discourse has interpellated sexual dissidents as citizens – or at least as potential citizens. In some cases, this is a liberating moment, in that the platform of rights claims can deliver certain kinds of sexual rights by appealing to the logic of citizenship. At the same time, however, we have to remember that the fundamental articulation of citizenship matches rights with responsibilities – and we need to be mindful of the responsibilities that sexual dissidents are made to carry in the trade-off for rights.³⁹

³⁵ Kitchin and Lysaght “Sexual Citizenship in Belfast, Northern Ireland” (2004) 11/1 *Gender, Place and Culture* p. 83-103.

³⁶ J. Weeks, B. Heaphy and C. Donovan, Catherine *Same Sex Intimacies: Families of Choice and Other Life Experiments* (Routledge, London, 2001).

³⁷ *ibid.*, p.197.

³⁸ C. Stychin, *Governing Sexuality: The Changing Politics of Citizenship and Law Reform* (Hart Publishing, Oxford, 2004), p.13.

³⁹ Bell and Binnie, *op.cit.*, p.142.

The point about these critiques is not that claims for inclusion are always wrong or strategically naïve, but that in the context of what Diane Richardson would term the “neo-liberal politics of inclusion”, these claims must be scrutinised for their potential effects on those who live outside heteronormative constructions of intimacy – specifically their potential to reinforce the “norm of heterosexuality”.⁴⁰ Richardson argues that the very dominance of citizenship as a mobilising concept within sexual politics mirrors current neo-liberal approaches to social governance which emphasise individual rights and self-surveillance.⁴¹ This convergence is producing a new social category of the “normal lesbian/gay”, which prioritises certain forms of activism, for example, the demand for “marriage-like” rights – over others.⁴²

Within this context the Civil Partnership Act 2004⁴³ has emerged as a key site for contestation over the meaning and desirability of sexual citizenship. The C.P.A. which introduced relationship recognition for lesbians and gay men, mirrors marriage in virtually every way except by name and, according to Stychin, “is designed to encourage ‘responsible’ relationship behaviour by lesbians and gay men”.⁴⁴ This responsible behaviour, as Nicola Barker points out, involves maintaining a monogamous long-term relationship, preferably including the care of children.⁴⁵ Depending on how the call for “citizenship” is framed, the trade-off for relationship recognition therefore includes adopting sanitised and privatised relationship patterns that are intelligible to the heteronormative mainstream, but which have considerable economic and affective consequences for sexual minorities. This has arguably been the case with the C.P.A.: lesbians and gay men have simply been accommodated into the heterosexual marriage

⁴⁰ Richardson, “Desiring Sameness? The Rise of a Neoliberal Politics of Normalisation” (2005) 37/3 *Antipode* 515-535; Seidman, “From Identity to Queer Politics: Shifts in Normative Heterosexuality and the Meaning of Citizenship” (2001) 5/3 *Citizenship Studies* 321-328.

⁴¹ Richardson, “Locating Sexualities: From Here to Normality” (2004) 7/4 *Sexualities* 391-411.

⁴² *ibid.*, p.394. One consequence of demanding “marriage-like” rights, according to Davina Cooper, is that activists are inherently arguing for a “private-oriented space”, which constructs a direct link between romance and social and economic rights and obligations, and which devalues relations with strangers (Cooper, “Like Counting Stars?: Re-Structuring Equality and the Socio-Legal Space of Same-Sex Marriage” in *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law* (Wintemute and Andenaes, eds, 2001) 75-96, p.92). This reconstructs the stranger as an outsider, reinforces the assumption that one should normally owe obligations only to one’s kin, and bolsters class inequalities (*ibid.*, p.93).

⁴³ Hereinafter cited as “C.P.A. 2004”.

⁴⁴ Stychin “Not (Quite) a Horse and Carriage: The Civil Partnership Act 2004” (2006) 14/1 *Feminist Legal Studies* 79-86, p.83.

⁴⁵ Barker, “Sex and the Civil Partnership Act: The Future of (Non) Conjuality?” (2006) 14/2 *Feminist Legal Studies* 241-259, p.249.

model, with similar expectations about financial dependency, dissolution, and spousal support.⁴⁶

The concern with such developments is that recognition is gained on the back of normative assumptions about the conjugality of same-sex relationships: assumptions about whether lesbians and gay men consider themselves to be “couples” as such, whether they have shared bank accounts, and whether they regularly share domestic space. The “reality” of lesbian and gay relationships, by contrast, evidences a variety of configurations of intimacy, which include friends, lovers, former partners, “fuck buddies”, many of which clearly range beyond the nuclear model.⁴⁸ And there are stark economic consequences for assuming that a nuclear model dominates in lesbian and gay relationships. One example cited by Boyd and Young is the Canadian Income Tax Act, under which same sex-couples are now treated as spouses. The result of such “equal treatment” is that same-sex couples on lower incomes are likely to pay more tax than they would if they were treated as individuals, whilst those on higher incomes are likely to pay less, thereby exacerbating class inequalities amongst lesbians and gay men.⁴⁹ Another example closer to home is that same-sex couples have been treated as spouses in the U.K. for benefits purposes under the C.P.A. whether or not they have obtained a civil partnership.⁵⁰ Hence, relationship recognition in Canada and in the U.K. has not produced uniformly beneficial financial effects for lesbians and gay men. Furthermore, it has resulted in a large number of same-sex couples becoming financially dependent on each other in ways that feminist critics of marriage, for example, would find intolerable.⁵¹

These consequences of relationship recognition link with a recurring theme in critical responses to same-sex relationship recognition: privatisation. As previously indicated, with the “rolling back” of the welfare state, the discursive appeal of individual freedom is

⁴⁶ See Stychin, above, fn.38 and Barker, *op.cit.* Writing in a Canadian context, Susan Boyd and Claire Young argue that many Supreme Court cases evidence an assimilationist approach which maintains the heterosexual norm through treating cohabiting same-sex couples in an equivalent manner to straight married couples (Boyd and Young “‘From Same-Sex to No Sex’?: Trends Towards Recognition of (Same-Sex) Relationships in Canada” (2003) 13 *Seattle Journal of Social Justice* 757-793). Canadian law now permits same-sex marriage.

⁴⁸ Weeks et al, *op.cit.*

⁴⁹ Boyd and Young, above, fn.46, p.774.

⁵⁰ Barker, *op.cit.*

⁵¹ See Young and Boyd “Losing the Feminist Voice? Debates on the Legal Recognition of Same Sex Partnerships in Canada” (2006) 14 *Feminist Legal Studies* 213-240; Auchmuty, “Same-sex Marriage Revived: Feminist Critique and Legal Strategy” (2004) 14/1 *Feminism & Psychology* 101-126.

deployed alongside the market imperative to shift the care burden back into the “private” arena.⁵² In this context, recognising same-sex relationships as conjugal and requiring some form of mutual financial commitment or dependency reduces the burden on the state for providing welfare benefits to individual lesbians and gay men. Another Canadian example in this context is the case of *M v H*, in which a lesbian successfully brought proceedings against her former partner of ten years for spousal support.⁵³ In this judgement, as Brenda Cossman points out, the Supreme Court explicitly acknowledged that the spousal support provisions in Canadian law aimed to reduce the burden on the public purse by transferring it to spouses.⁵⁴ As she puts it:

The victory for gay and lesbian legal subjects, as narrowly construed, was the right to sue each (sic) for spousal support once their relationships break down. It was a highly privatized right and a highly privatized responsibility. The ruling reflects a privatized conception of citizenship, in which the family is being recast as the natural site for the care and support of dependent persons, responsible for bearing the costs of social reproduction.⁵⁵

Here, the lesbian and gay “family”, modelled in heteronormative terms, is cast as a private, caregiving sphere, which will pick up where the neo-liberal state leaves off. Looking to the UK context, Nicola Barker has criticised the Law Commission’s recent consultation paper on cohabitation for reinforcing the conjugal model through, as the Law Commission puts it, focusing on relationships that bear “the hallmarks of intimacy and exclusivity” instead of thinking more carefully about the distributive consequences of relationship recognition.⁵⁶

From the current literature on sexual citizenship, therefore, it is possible to delineate some of the central characteristics of how the state views the “citizen-carer” and her/his relation to privatised care. She (or he) will be in a monogamous, two-person relationship.⁵⁷ She will

⁵² See Conaghan, *op.cit.*; Richardson, above fn. 40; Boyd and Young, above, fn.46.

⁵³ *M v H* (1999) 2 S.C.R. 3.

⁵⁴ Cossman, “Sexing Citizenship, Privatizing Sex” (2002) 64 *Citizenship Studies* 483-506.

⁵⁵ *ibid.*, p.490.

⁵⁶ Law Commission 2005 “Cohabitation” (<http://www.lawcom.gov.uk/cohabitation.htm>), cited in Barker, *op.cit.*, p.244.; see also *ibid.*, p.256.

⁵⁷ For a critique of conceptions of monogamy in the context of Canadian family law, see Calder “Penguins and Polygamy: The Essence of Marriage in Canadian Family Law” (2006), work in progress, on file with the authors. It should be noted that under Canadian law, same sex marriage, alongside heterosexual marriage, does contain an assumption of monogamy (*ibid.*, p.16), whereas under the CPA 2004, there is no such

be cohabiting with her partner. There will be an assumption that one partner earns more than the other, and/or that one partner is more domestically oriented than the other, thereby mirroring the heteronormative gendered division of labour within the home.⁵⁸ The partners will act as one economic unit, sharing finances and expecting to take responsibility for or depend on the other partner in the case of illness, unemployment or if the partnership breaks down. Despite the absence of sex in the C.P.A., that is the lack of any provision dealing with non-consummation or adultery, the presumption is that the partners will have a romantically-defined sexual relationship.⁵⁹ If either of the partners has children, the assumption will be that they are raised as if part of a two-parent nuclear family model, with little or no input from other potentially relevant adults (for example, sperm donors or surrogate mothers).⁶⁰

V Work, Family, and the Citizen-Carer

Within the area of work and family, a large proportion of the theoretical and policy literature is focused on the “working mother” with academic critique directed at illuminating the shifting, and gendered, relationship between family, state and market in a gendered context.⁶³ In this section, we broaden the interrogative lens beyond an exclusive focus on gender, to consider the implications of work and family policies for gays and lesbians, particularly where they have children. By so doing, we aim to draw a link between government policy in the area of relationship recognition and employment initiatives, bringing together apparently separate concerns in a focused exploration of care imperatives..Our approach then is to “read” developments in the area of work and family against the background of the potentially disciplining aspects of the C.P.A., arguing that the “citizen-carer”, delineated by the rights and responsibilities of the C.P.A. and the Law Commission’s consultation paper on cohabitation, provides an implicit normative basis for

requirement (Barker, *op. cit.*). We are referring to the requirement for monogamy as a norm which nevertheless animates UK government policies in the field of work and family.

⁵⁸ Young and Boyd, above fn.51; see further C. Carrington, *No Place Like Home: Relationships and Family Life among Lesbians and Gay Men* (University of Chicago Press, 1999).

⁵⁹ Barker, *op. cit.*, p.247-248.

⁶⁰ See further McCandless “Recognising Family Diversity: The Boundaries of *Re G*” 13 *Feminist Legal Studies* 323-336; Kelly, “Nuclear Norms or Fluid Families? Incorporating Lesbian and Gay Parents and their Children into Canadian Family Law” (2004) 21 *Canadian Journal of Family Law* 133-178.

⁶³ See, e.g. essays in Conaghan and Rittich, *op.cit.*

the state-envisioned (re)configuration of sexuality around concepts of work, family and care. .

The Work and Families Act 2006 (W.F.A.), which received royal assent on 21 June 2006, reforms the law governing maternity, paternity, and adoptive leave in both Great Britain and Northern Ireland.⁶⁴ As a consequence of the Act, regulations have been introduced: extending the period of statutory maternity pay, maternity allowance and adoption pay so that it now runs for 39 (previously 26) weeks;⁶⁵ widening the right to request flexible work to include carers of “certain adults”;⁶⁶ and removing the length of service requirement governing additional maternity leave so that all employed women are now entitled to a total statutory maternity leave period of 52 weeks.⁶⁷ The Act also provides for the extension of rights to paternity leave and pay in the context of both birth and adoption. Currently, “fathers” (a term which includes the same-sex partners of birth mothers and adoptive parents) are entitled to two weeks paternity leave (paid at the lower level of statutory maternity pay) to be taken within 56 days of the child’s birth or adoption.⁶⁹ The W.F.A. provides for the enactment of regulations granting “fathers” the right to take up to 26 weeks “additional” paternity leave, which, if the “mother” goes back to work, could be accompanied by a paid (but not fully paid) element.⁷⁰

From the outset it is apparent that the government’s approach to work and families is already based on an explicitly heteronormative model, which juxtaposes “maternity” against “paternity” and favours a traditional gendered division of labour. The W.F.A. does

⁶⁴ See also the Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2006, S.I. No. 2014; the Statutory Maternity Pay and Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendments) Regulations 2006, S.I. No. 2379; and the Statutory Paternity Pay and Statutory Adoption Pay (General) and the Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates)(Amendment) Regulations 2006, S.I. No. 2236

⁶⁵ In fact, the W.F.A. 2006 allows for the period of pay to be extended to up to 52 weeks (ss.1 & 2). The enactment of regulations setting the limits at 39 weeks is presented by the government as a step towards the longer term goal of providing one year’s statutory maternity and adoption pay by the end of the next Parliament (DTI, *Work and Families, Choice and Flexibility: A Consultation Document*, February 2005).

⁶⁶ This is in addition to the existing right to request conferred by the Employment Act 2002, s. 47, on parents of children under 6 or disabled children under 18. See also the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 as amended by the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2006.

⁶⁷ Maternity and Parental Leave etc Regulations 1999 as amended by Maternity and Parental Leave etc Regulations 2006 (see above, fn. 64).

⁶⁹ Regulation 5 of the Paternity and Adoption Leave Regulations 2002.

⁷⁰ A proposal to introduce additional paternity leave and pay in line with the W.F.A. provisions is currently under consultation. See DTI, *Work and Families, Additional Paternity Leave and Pay Administration Consultation*, May 2007 (available at www.dti.gov.uk).

little to challenge such a model. As Grace James points out,⁷¹ even with 26 weeks additional paternity leave, there remains an assumption that one parent will continue to work, normally full time, whilst the other remains at home to look after the child. Economic considerations will inevitably play a role here in determining couples' decisions and given the persistence of a substantial pay gap between men and women,⁷² it is difficult to envisage that many heterosexual couples will choose to forgo the pay of the higher earner for any substantial period. Thus, it is likely that women rather than men will continue to take the bulk of the available leave. This entrenchment of gender roles means that even in a same-sex context, parental relationship roles are likely to be similarly gendered.⁷⁴ Retaining different entitlements for different parents bolsters the idea of "primary" and "secondary" caregivers, importing an "ideology of motherhood"⁷⁶ into same-sex relationships and fostering a broader social perception of women's caregiving functions which threatens to collide with any equality-seeking goals of the legislative framework.

This becomes particularly apparent in the context of adoption where, despite the absence of any necessary link between the need for leave and the birth of a child, the law maintains a distinction between the parent who takes adoption leave and the other parent, who is left to take paternity leave. As James points out,⁷⁸ the challenges associated with adopting children are so radically different from the challenges associated with giving birth that does not necessarily make sense to model the adoptive leave framework on the maternity rights regime. In this context, the family model which the law reflects is not only heterosexual, it is built around the needs and concerns of biological reproduction and its accompanying social relations.

⁷¹ James, "The Work and Families Act 2006: Legislation to Improve Choice and Flexibility?" (2006) 35/3 *Industrial Law Journal* 272-278.

⁷² On the persistence of a gender pay gap, see especially the EOC's equal pay campaign "It's Time to Get Even" (available at www.eoc.org.uk).

⁷⁴ James, *op. cit.*, p.273.

⁷⁶ On the "ideology of motherhood" see *ibid* and also McGlynn, "Reconciling Family and Work: the EU Agenda" in Conaghan and Rittich, *op.cit.*,

⁷⁸ James, *op. cit.*, p.274.

Since the introduction of paternity leave in April 2003, same-sex partners of birth mothers or same-sex adoptive parents have been able to make a claim.⁷⁹ In order to be eligible, the same-sex partner must have a civil partnership with the birth mother or other adoptive parent or have, or expect to have the main responsibility (apart from the “mother’s” responsibility) for the upbringing of the child.⁸⁰ The Paternity and Adoption Leave Regulations 2002 (“the PA Regulations”) state that: “partner”, in relation to a child’s mother or adopter, means a person (*whether of a different sex or the same sex*) who lives with the mother or adopter and the child in an *enduring family relationship*” but who is not an immediate relative.⁸¹

Clearly the standard of “enduring family relationship” is intended to act as a more flexible indicator of relationship status than marriage or civil partnership. And it could be surmised that the rationale for this wider definition is the large and increasing number of children born outside marriage in the U.K. Forty per cent of live births were born to a parent or parents outside marriage in 2001, compared with twelve per cent in 1980 and six per cent in 1960.⁸² Indeed, in its consultation on the PA Regulations, the government restrictively explained the inclusion of partners within the eligibility for paternity leave as drawing the line for eligibility “slightly wider than just the biological father of a child”.⁸³ Beyond that, the phrase “enduring family relationship” has not been defined, yet it has clear connotations of a standardised long-term, monogamous relationship, ideally between two people. And this fits extremely well with the state’s interest in promoting family-based care through stable, nuclear family structures. This leads to the conclusion that when rights are extended to lesbians and gay men within the context of work and family, it is on the basis that they can be easily slotted into existing gendered structures and not permitted to pursue alternative, more radical, configurations of intimacy and child-rearing.

Lesbian partners of new mothers, and gay and lesbian partners who adopt, are granted paternity leave on the tacit understanding that they assume responsibility for rearing children in a manner that fits with the state’s heteronormative conception of what a family should be. Unpacking the phrase “enduring family relationship”, we see once again the

⁷⁹ See regulation 3 of the Paternity and Adoption Leave Regulations 2002 SI 2002/2788.

⁸⁰ See regulation 4 (2) (c) (ii). Claimant of paternity leave must also meet certain employment requirements.

⁸¹ Emphasis added. Regulation 2(1), PA Regulations.

⁸² Source: Office for National Statistics report on Child Population, 30 March 2004.

⁸³ Department for Trade and Industry, *Work and Parents: Competitiveness and Choice* Consultation Paper (HMSO, London, 2002).

contours of the citizen-carer: two parents (no more), cohabiting in a monogamous, long-standing relationship, acting as one economic unit with the associated assumptions around financial dependency, and involved in a romantically defined sexual relationship. Crucially, whilst appearing on the outside to grant entitlement to a financial benefit, these provisions, when taken alongside the responsibilities of the CPA, assist in the privatisation of the care burden. Indeed, the heteronormative ideology of motherhood has considerable financial effects on same-sex parents. Just as fathers in heterosexual couples are expected to make do with a shorter period of leave than mothers, so same-sex partners of biological mothers or adoptive parents are expected to make do with a lower entitlement to statutory pay whilst they are on leave and to return to work earlier, thereby both reinstating within lesbian and gay couples the current heteronormative division of labour within the family and also re-emphasising the family as the “natural” bearer of the financial burden of rearing children. The fact that a length of service qualification is in place for paternity leave where no such qualification exists for maternity leave only serves to underline the relatively marginal role that “fathers” or same-sex partners are supposed to play in the upbringing of children, ruling out financial support for other, more equitable arrangements.⁸⁴

VI Concluding Remarks: The “Good Gay” and the Third Way⁸⁵

In his recent book *Governing Sexuality: The Changing Politics of Citizenship and Law Reform*, Carl Stychin argues that the family unit is a central plank of New Labour’s Third Way ideology.⁸⁶ Within this ideology, the traditional family form may have failed, but families can become more flexible and democratic through education, and, presumably, through responding to suitable policy initiatives.⁸⁷ The place of lesbians and gay men within the family as a “social unit” is still being negotiated and, as we have seen, this has considerable consequences within U.K. employment law. For as the state is clearly able to visualise lesbians and gay men as the subjects of law and policy in this area, it remains the case that such visibility is constructed on heteronormative terms. Just as rights require

⁸⁴ See regulation 4(2) of the PA Regulations.

⁸⁵ The term ‘the good gay’ is derived from C. Stychin *A Nation By Rights: National Culture, Sexual Identity Politics, and a Discourse of Rights* (Temple University Press, Philadelphia, 1998).

⁸⁶ Stychin, *op cit*, fn. 36.

⁸⁷ *Ibid*, at p. 34.

responsibilities within New Labour policy on the family, so do rights for carers require an intelligible model of the family that has no space for non-standard intimacies: polyamory, non-standard parental relationships, independent financial arrangements between partners, and close ties between friends.

Third Way ideology responds to the pressure of global economic restructuring by privatising the care burden. In order to do this, a “family” is required, and recent New Labour policy initiatives in the area of work and family evidence an intention to encompass a greater range of relationships within this target group. Nevertheless, for the many parents, and friends and lovers of parents, who exist outside the dominant heteronormative conception of the family, widening this circle of policy subjects does not bring with it the full “benefits” of the law. Even for those lesbian and gay “family” relationships that are covered, the trade-off for new rights is a greater degree of financial dependency and gendered parenting roles.

Against this background, the concept of the “citizen-carer” invokes many of the tensions at play in New Labour’s work/family policies: its move away from redistribution as a central goal of economic management, its negotiation of market fluctuations through the concept of worker flexibility, and its discourse of egalitarianism. Privatising the care burden whilst recognising lesbians and gay men as “carers” and awarding them rights raises more questions in terms of equality than it answers. In years to come, changing configurations of intimacy will continue to impact on state policy around the “work/life balance”. It will be up to lesbians and gay men to decide how best to respond to these developments.