



Critical Social Thinking: Policy and Practice, Vol. 1, 2009

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Same-Sex Marriage or Partnership and Adoption: Debate for Ireland

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Abstract

The purpose of this study was to examine the social and political debate surrounding the issue of same-sex marriage or partnership and adoption in Ireland and to identify how opposing sides of the debate use values to frame the issue. In order to understand the issues involved in the debate for and against same-sex parenting, the author undertook a literature review to identify attitudes and prejudices, stereotypes and myths regarding lesbians and gay men in their role as parents. In order to put the Irish debate into perspective, the study looked at the debate in other countries and identified the key trends in the direction which legislation on the issues are taking. The study then focused on legislative and policy developments to date in Ireland. Interviews with leading proponents on both sides of the debate presented key arguments for and against the legalisation of same-sex unions in Ireland. Finally, the paper reflects on the findings that groups in support of same-sex marriage or partnership and adoption use an equal rights frame, while those in opposition use a traditional moral values frame.

Keywords: Same-sex marriage; civil partnership; adoption; same-sex parenting; Ireland.

¹ **Acknowledgements:** I would like to pay special thanks to Dr. Máire Leane who was central to the development of my original research and who provided inspiring and enjoyable supervision. I would like to thank the spokesperson from GLEN and Mr. David Quinn for giving up their valuable time to take part in the interviews. Finally, I would like to thank my Mum for her endless support and encouragement.

Introduction

Since the decriminalisation of homosexuality in 1993, Ireland has made significant progress in terms of equality for lesbian and gay people. Anti-discrimination legislation has led to gay and lesbian people being able to live their lives more openly in society. However, problems and barriers still exist, especially in the area of same-sex relationships. Same-sex couples cannot have their relationships recognised as a family unit and are therefore not protected under the Irish Constitution. In 2006, the Zappone and Gilligan Vs Revenue Commissioners High Court case (KAL case), brought the issue of discrimination against same-sex couples into the public arena. The debate on same-sex marriage rights has led to the definition of marriage being questioned and its meaning being contested. It has also led to the issue of adoption and parenting by same-sex couples being raised. In 2007, the then Taoiseach, Mr. Bertie Ahern, T.D., announced that the government was committed to full equality of opportunity for all in our society and made a commitment to introduce the Heads of a Bill for registered partnership in 2008. In June 2008, the Heads of a Civil Partnership Bill was approved.

The purpose of this study was to examine the social and political debate surrounding the issue of same-sex marriage or partnership and adoption in Ireland and to identify how the debate is framed by opposing sides of the argument. The literature review provided an understanding of the issues involved in the debate for and against same-sex parenting, by identifying attitudes and prejudices, stereotypes and myths regarding lesbians and gay men in their role as parents. A study of the debate in other countries helped to put the Irish debate into perspective. Interviews were carried out with a spokesperson from the Gay and Lesbian Equality Network (GLEN) and Mr. David Quinn, Director of the Iona Institute, to establish how the concept of rights is being used in the debate and how the issue is understood by the key actors involved.

Methodology

For the primary data collection, I chose to carry out face-to-face, open-ended, semi-structured interviews with a spokesperson from the Gay and Lesbian Equality

Network (GLEN) which takes the pro-same-sex marriage stance and Mr. David Quinn, Director of the Iona Institute, which takes the pro-heterosexual marriage stance. There were three theoretical questions addressed in this research: how was the concept of rights being used in the debate about same-sex marriage and parenting in Ireland; how was the issue of same-sex marriage and parenting understood by the key actors in the debate; and what changes to Irish policy and legislation was being proposed.

For the secondary data collection, I used numerous sources of literature, including books, journals, newspaper clippings and internet sources. Key issues from the literature included the concepts of family, parenting, children's experiences of same-sex adoption and parenting, policy and legislation, same-sex couples' capacity to parent, rights, essentialism and heteronormative ideals and the concept of homosexuality and heterosexuality.

Gay and Lesbian Parenting: A Review of the Literature

According to Smart (1991), psychoanalytical theories in the past labelled homosexuality as a 'deviant psychiatric trait'. In the 2006 KAL case, the issue of homosexuality as a psychiatric disorder arose. Professor Henry Kennedy, Consultant Forensic Psychiatrist, was asked for his opinion. He stated that in 1973, the American Psychiatric Association declassified homosexuality as a psychiatric disorder, based on medical and scientific evidence. He argued that '*homosexuality is a feature of the human condition just as one can be young, old, right handed or left handed. It is an aspect of normality*' (KAL Case, 2008: 12).

Gender Role Models among Children of Gay and Lesbian Parents

Despite the fact that attitudes have changed in recent years, there still exists an element of prejudice regarding same-sex parenting. The assumption is that children may be prone to gender confusion, to confusion over sexual orientation or any number of social problems such as stigmatisation. However studies by Hoeffler (1981), Glombok *et al* (1983), Patterson (1995), Bailey *et al* (1995), Andreessen *et al* (2002)

and the British Longitudinal Study of Lesbian Mother Families (McCann and Tasker, 2000), found that gender role identity and sexual orientation among children raised by same-sex parents did not vary significantly from the experiences of children of heterosexual parents. Campion (1995) argues that for the most part, homosexual people have heterosexual parents.

Stigma among the Children of Gay and Lesbian Parents

The issue of whether children of same-sex parents are more likely than children of heterosexual parents to experience teasing or bullying at school was considered. Studies by Andreessen *et al* (2002) and the British Longitudinal Study of Lesbian Mother Families found that children are no more likely to experience teasing or bullying in relation to their parent's sexual orientation. However, studies by O'Connell (1993) and Tasker and Golombok (1997) indicated that children were concerned about the likelihood of being stigmatised and about being teased about their own sexual orientation. One study by O'Connell (1993) reported that several of her informants said that they experienced shame due to the conflict of being loyal to their lesbian mother and their need for self-protection, by hiding the fact that their mother was a lesbian.

Damaging Stereotypes and Myths

Homosexuality is frequently linked in the public mind with promiscuity among other negative characteristics, one of them being the fear of sexual abuse. King and Pattison (1991) and McCann and Tasker (2000) found that people often link homosexuality and paedophilia. They found this to be based on ignorance. Children are just as likely to be victims of sexual abuse from heterosexual people. When lesbians and gay men wish to care for children in their homes, there is often suspicion as to their motives. In a review of the adoption procedures in England, it was found that in some instances, gay men or lesbians were allowed to foster children first, so that their parenting skills could be assessed (McCann and Tasker, 2000).

Hicks (2006) considered the practices of kinship amongst lesbian and gay foster carers and adopters and argued that these practices challenge the conventional view of kinship i.e. relations based on marriage and blood ties. He found that those who believe in the superiority of heterosexual relationships believe that lesbians and gay men threaten the view of *'proper human relations'* (Hicks, 2006: 764). The heteronormative view that heterosexual parenting is the only form of 'natural' parenting suggests that same-sex parenting is 'unnatural' and that a child's development is adversely affected by having a lesbian or gay parent. Foucault (2000 [1982]), states that patterns of kinship are changing all the time and suggests that adoption could be used *'as a model to recognise new relationships between adults, as well as between adults and children'* (Hicks, 2006: 773).

Campion (1995) examined the traditional nuclear family and said that as it is impossible for a same-sex couple to produce a child without intervention or assistance of a third party, the assumption is made that it is unnatural for them to be parents and to care for children. According to the American Academy of Pediatrics (AAP), scientific literature shows that children who grow up with same-sex parents *'fare as well in emotional, cognitive, social and sexual functioning as do children whose parents are heterosexual'* (Robinson, 2003: 51). Children's development is more influenced by relationships and interactions within the family unit than by its structural form (Robinson, 2003).

Same-Sex Marriage or Partnership and Adoption Policies in Other Countries

In many countries, the recognition of same-sex couples is already well established. The first country to introduce legal recognition of same-sex unions was Denmark in 1989. Several other countries followed by granting some legal rights to same-sex couples in the form of civil partnership, civil union or domestic partnership, with variations in legal rights from one country to another. Civil marriage rights are now in place in eight jurisdictions, The Netherlands, Belgium, Spain, Canada, South Africa, Massachusetts, California and Connecticut. In these jurisdictions, there is no distinction between same-sex couples and heterosexual couples in access to marriage,

parental and adoption rights. In June 2008, Norway's Parliament adopted a new marriage law which will come into force at the end of this year or early next year (International Lesbian and Gay Association – Europe, 2008).

The Canadian Government introduced the Civil Marriage Act in 2005, despite objections from the opposition Conservative Party and religious groups. Quebec Archbishop Marc Cardinal Quillet said the bill *'threatens to unleash nothing less than cultural upheaval whose negative consequences are still impossible to predict'* (MSNBC World News, 01/02/2005). The court ruled that the ban on same-sex marriage violated the equal rights provisions of the Canadian Charter of Rights and Freedoms. It stated that any institution other than marriage, such as civil union, would be less than equal. The Charter protects freedom of religion and conscience and therefore respects the decisions of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs (Department of Justice Canada, 2005).

In the United States, many states have passed amendments to their constitutions, defining marriage as the union of a man and a woman. In 2004, President George W. Bush called for a constitutional amendment banning same-sex marriage. He described the union between a man and a woman as the only proper form of marriage, calling it *'one of the most fundamental, enduring institutions of our civilisation'* (The White House, 2004). In response, the Executive Board of the American Anthropological Association issued a statement saying that it did not support the view that *'civilisation or viable social orders depend upon marriage as an exclusively heterosexual institution'* and that *'families built upon same-sex partnerships, can contribute to stable and humane societies'* (American Anthropological Association, 2004).

In November 2003, the Supreme Court of Commonwealth ruled that same-sex couples are legally entitled to civil marriage under the Massachusetts Constitution. Catholic Bishops wrote to parishioners throughout the state requesting them to

express their opposition to same-sex marriage, while Pastors in local churches spoke about the immorality of same-sex marriages (Dillon, 2004). The Court ruled that only marriage rights, not civil unions, would provide equal protection under the State Constitution. In May 2004, Massachusetts became the first state in the United States to allow same-sex marriage (Padgett, 2007).

In May 2008, California's State Supreme Court ruled that limiting the designation of marriage to a union between a man and a woman was unconstitutional. It said that the right to form a family relationship applied to all Californians regardless of sexuality (BBC News 15/05/2008). Connecticut followed suit in October 2008. The Court ruled that the law limiting marriage to heterosexual couples was unconstitutional as it discriminated on the basis of sexual orientation (BBC News, 11/10/2008).

Some states ban same-sex marriage, but allow same-sex adoption. According to Gibson (1999) and Padgett (2007) allowing gay and lesbian couples to adopt children could be due to the fact that there are many abandoned children needing homes, and not because of equal rights issues.

In 2006, same-sex marriage was legalised in South Africa. There was strong opposition from religious groups and traditional leaders; however, the ruling was based on South Africa's 1996 Constitution which stated that discrimination on the grounds of sexual orientation is illegal. The Act states that when a marriage officer objects on the grounds of '*conscience, religion and belief*' that person will not be compelled to perform marriage ceremonies (South African Government, 2006).

In 2005, same-sex marriage was legalised in Spain. The Spanish government decided to grant full marriage rights to same-sex couples in the first instance by adding just one sentence to existing law, '*Marriage will have the same requirements and results when the two people entering into the contract are of the same sex or of different sexes*' (McLean, 2005). Spain is a predominantly Catholic country and there was strong opposition from the Roman Catholic Church. The Spanish Bishops said they

did not feel that homosexual rights should be discriminated against but they felt that social institutions had to be protected. The Vatican also condemned the bill and denounced the legislation as '*profoundly iniquitous*' (BBC News, 18/06/2005).

In the United Kingdom, civil-partnership legislation came into force in December 2005, giving same-sex couples similar rights to married couples, including adoption rights. In 2007, Cardinal Cormac Murphy O'Connor, head of the Roman Catholic Church in England and Wales, described the legislation as '*a new kind of morality*' (BBC News, 30/01/2007). He wrote to Cabinet Ministers saying that the Church's teaching prevented its adoption agencies from placing children with gay and lesbian people on the grounds that '*Catholic adoption agencies would be acting against the teaching of the Church and their own consciences*' (BBC News, 23/01/2007). The British Association of Adoption and Fostering (BAAF) responded by saying that same-sex couples made a vital contribution to the pool of adopters which still needed widening (British Association of Adoption and Fostering, 2007).

Same-Sex Marriage and Adoption: Contemporary Ireland

Ireland has made significant progress in terms of equality for lesbian and gay people in recent years. Initiatives such as the enactment of the Employment Equality Acts 1998 and 2004 and the Equal Status Acts 2000 to 2004 were introduced to outlaw discrimination and to ensure greater equality and participation for gay and lesbian people in Ireland. In 2002, the Equality Authority report on partnership rights recommended that legislation be introduced providing rights on an equal basis to individuals, same-sex couples, married and non-married heterosexual couples, in relation to adoption, parenting and fostering (Equality Authority, 2002).

In 2006, Dr. Katherine Zappone and Dr. Ann Louise Gilligan sought to have their Canadian marriage recognised under Irish law. In the judgment of the High Court case, the Court stated that '*marriage in Ireland has been interpreted in the Constitution as being between a man and a woman and that therefore the Revenue Commissioners were not breaching the rights to the recognition of foreign same-sex*

marriages' (Pillinger,2008:27). Their Council argued that the Constitution has been changed a number of times to correspond with social change. It also argued that they have a human right to marry under the Constitution. Currently, the court case is being appealed and is waiting to be appointed to the Supreme Court. In 2006, the Irish Council for Civil Liberties (ICCL) launched a report called 'Equality for all families'. In response to the outcome of the KAL case, the ICCL stated that '*The High Court had missed an opportunity to place equality considerations ahead of marriage that is grounded in the past*' (Irish Council for Civil Liberties, 2007:9).

In 2006, The Tenth Progress Report looked at the changing family forms in Ireland. This Report examined the definition of the family as contained in Article 41 of the Constitution. Article 41 states that the State recognises the family as the natural primary and fundamental unit group of society. The Report stated that Article 41 was greatly influenced by the teaching of the Catholic Church and was drawn up with the family based on marriage, in mind. It explored whether the Constitutional definition of the family embraced all family forms or if there was a need to extend the definition to include the changing family units in Ireland. Numerous organisations submitted written opinions to the Oireachtas Committee, outlining their definition of family rights as contained in the Constitution. Most religious organisations objected to the change in definition on the grounds that God constitutes marriage as being that of a man and a woman and to go against that is going against God's wishes. Organisations such as the Adoption Board called for a broader definition of the family to recognise different family forms outside the institution of marriage. The Adoption Board stated that parenting capacities should not be defined by marital status, as stability, permanency and security are the most important elements in a child's development. The Report concluded that despite the changing pattern of family forms in Ireland, it did not find a consensus that the definition of the family should be extended (Oireachtas Committee, 2006).

Adoption became legal in Ireland in 1952. Despite amendments to the 1952 Adoption Act down through the years, the nature of the adoption system is still based on the

customs and attitudes of the 1950s. At the centre of these attitudes is the '*supremacy of the marriage-based family, the constitutional cornerstone of society*' (Oireachtas Committee, 2006:32). In Ireland, the only circumstance where the law permits the adoption of a child by more than one person is in the case of a married man and woman living together. Single lesbian and gay people can apply to adopt a child, but they cannot apply jointly as a couple (The Adoption Authority of Ireland, 2008).

On the 24th June 2008, the Minister for Justice, Equality and Law Reform, Mr. Dermot Ahern T.D., announced that the government had approved the Heads of a Civil Partnership Bill. The Bill proposes to set up a system for registration of same-sex partnerships and to set out the duties and responsibilities attached to the legal partnership. Under this proposal, same-sex couples will not have the right to be considered for joint adoption and there is no provision for non-biological parents to acquire guardianship (Department of Justice, Equality and Law Reform, 2008).

In November 2008, Cardinal Sean Brady called on those who are committed to the '*probity of the Constitution, to the moral integrity of the Word of God, and, to the precious human value of marriage between a man and a woman as the foundation of society*' to challenge civil partnership when it is made law (Irish Catholic Bishops' Conference, 2008).

Findings and Analysis

GLEN and Iona

The Gay and Lesbian Equality Network (GLEN) is a non-governmental organisation. Its main aim is to achieve full equality and inclusion for lesbian, gay and bisexual (LGB) people in Ireland. One of its objectives is to ensure that relationships between LGB people are seen as no different to relationships between heterosexual people. GLEN focuses on influencing policy and on working in partnership with organisations such as the government, regulatory authorities, trade unions and other social partners in order to achieve change.

The Iona Institute was established in 2007 to promote people's awareness of the importance of marriage and religion in a civil society. It is a pro-marriage and pro-family organisation. It was set up to draw attention to marital breakdown in Ireland and to highlight the importance of the traditional heterosexual family form i.e. mother, father and children. Iona's objective is to persuade legislators and other policy makers to devise policies aimed at strengthening marriage and keeping parents together both for their own sakes, the sakes of their children, and the sake of future generations.

Concepts of Rights and Understanding of Same-Sex Marriage and Parenting

GLEN frames the same-sex marriage debate as a human rights and equality issue and argues that committed same-sex couples are missing out on all the rights and benefits that accompany heterosexual marriage. They are discriminated against because their relationship cannot be legally recognised. Marriage would give same-sex couples equal status and an equal standing in society to heterosexual relationships and family types. GLEN sees the area of same-sex marriage as central to the realisation of equality and believes that the legal acknowledgement of same-sex relationships would be a stabilising influence as it would recognise and formalise the diversity of families that already exist. Marriage would provide protection and rights for lesbian and gay parents and their children and the commitment and stability of marriage forms a solid base for good parenting.

Iona rejects the framing of the issue of same-sex marriage as one of rights, on the grounds that heterosexual and homosexual relationships are not comparable. It believes that same-sex marriage would de-stabilise society as it would undermine the traditional family unit. Iona framed the debate in an essentialist way, arguing that heterosexual marriage is rational and legitimate because it can provide children. Marriage as a social institution was designed to ensure that children are raised by their mothers and fathers. It believes that it would be a completely irrational decision to legalise same-sex marriage, as marriage is intrinsically heterosexual.

GLEN frames the issue of same-sex parenting as an equal rights issue. It acknowledges the diversity of family forms in today's society and believes that it is the quality of the child-parent relationship that is important and not the sexual orientation of the parents. The spokesperson for GLEN said that despite the fact that attitudes have changed in recent years, there still exists an element of prejudice, by a small minority of people, regarding same-sex parenting. Misconceptions regarding gay men still exist and there would be more of an acceptance of lesbian women raising children than gay men. Iona frames the issue of same-sex parenting from an essentialist standpoint i.e. it is 'unnatural' for same-sex couples to be parents. It acknowledges that family forms in Ireland are becoming increasingly diverse, but argues that children do best when raised by their biological married mother and father.

GLEN frames the issue of adoption as an adult right which is currently provided to heterosexual couples and not to same-sex couples. The 'right' that it refers to is that all people who wish to adopt, should have the right to be considered as potential adoptive parents. Where same-sex couples have children from earlier heterosexual relationships or through other assisted means, only the biological parent has rights to the child. Iona frames the issue of adoption as a right of the child and not as a right of an adult. Nobody has a right to adopt a child, but the child has a right to be adopted. Same-sex adoption is an argument for adult autonomy and is a conscious denial of basic children's rights, i.e. the right to a mother and a father.

Changes to Irish Policy and Legislation Proposed by the Key Actors

GLEN's proposal to the government is for the opening up of marriage to same-sex couples. Anything less would undermine the right to full participation in society. GLEN bases its argument on the fact that same-sex couples with children already exist and that the family based on marriage is the best possible option. Iona suggests that the government has a duty to protect and promote heterosexual marriage and proposed that it rejects same-sex marriage and civil partnership. Its proposal would be for the introduction of 'Domestic Partnership', which would cater for and offer

protection to anybody in a caring dependent relationship e.g. siblings caring for one another.

Conclusions and Recommendations

The recognition of same-sex couples is universally well established and some form of registered partnership or civil union is now in place in a range of countries, with civil marriage rights in place in eight jurisdictions. Research indicated that where these rights were introduced, they were on the basis of constitutional rights, equality rights or the right to freedom from discrimination. Those who opposed the introduction of rights for same-sex couples argued religious beliefs, threats to the traditional family structure and threats to traditionally held morals. Research found that the same values are attached to the debate in Ireland. GLEN frames the same-sex marriage debate as an equality issue and argues that the introduction of civil marriage would have a stabilising influence in society. Marriage requires both parties to act with responsibility and commitment which creates the conditions for good parenting. Iona rejects the issue of same-sex marriage as one of rights on the grounds that heterosexual and homosexual relationships are not comparable as marriage is intrinsically heterosexual. It believes that same-sex marriage would de-stabilise society as it would undermine the family unit.

The Irish constitution defines marriage as a fundamental institution of our society; however, it does not define marriage as being between a man and a woman. Therefore, it has failed to identify any constitutionally adequate reason for denying civil marriage to same-sex couples. Without the need for a referendum on the issue, the interpretation of the term 'marriage' could include same-sex couples and the term 'family' could be broadened to include the diversity of family forms currently existing in Ireland. We could follow the lead of Spain where they changed just one line of the Constitution so that the interpretation of marriage included same-sex couples.

Religious organisations throughout the world have vigorously opposed initiatives to legalise same-sex unions. However, those who campaign for the right to marry are

seeking the government's recognition of their relationship and not a marriage based on religious traditions. Civil marriage would be separate to religious marriage ceremonies. The successful Spanish civil marriage legislation confirms that a predominantly Catholic country can adapt to change. Canada and South Africa are examples of countries which specified in their Civil Marriage Acts, that they respect the decisions of individuals or religious groups to refuse to perform marriages that are not in accordance with their religious beliefs.

The argument against same-sex parenting centres on the presumed adverse effect it has on children. Much of the debate focuses on the need for children to be raised with a mother and a father. The heteronormative view that heterosexual parenting is the only form of 'natural' parenting, values adult-child biological bonds over other family forms and ignores the value of foster and adoptive care for children. The literature reviewed suggests that gender role identity and sexual orientation among children raised by same-sex parents did not vary significantly from the experiences of children of heterosexual parents. Furthermore, there was no evidence to suggest that children were stigmatised by their parent's sexual orientation. The findings would indicate that many of the commonly stated objections are not founded in fact and are not justifiable grounds for the exclusion of gay and lesbian people from fostering and adoption. Stereotyping people on the basis of their sexuality fosters misconceptions regarding their ability to parent.

Many same-sex couples in Ireland are already living as a family unit and raising children and so the issue of adoption centres on the need to ensure that children have a legal claim on both their carers. The right to marry is as much about legal and financial protection as it is about equality. The proposed Civil Partnership Bill will provide for a new legal relationship for same-sex couples but, it will not recognise the relationship as a family unit. Because same-sex couples will be denied the right to be considered for joint adoption, it discriminates against the children in the relationships as they are not afforded the same protection from the state as children from heterosexual marriages. The United Kingdom is an example of a country where civil



partnership is a very close analogy to marriage in the various rights and obligations, including adoption rights, but it stopped short of the title 'marriage'.

The proposed civil partnership scheme would go a long way towards social inclusion for same-sex couples in Ireland. However, denying them the right to marry only serves to further highlight the difference between their relationship and heterosexual relationships. As the argument for same-sex marriage centres on equal rights and the right to freedom from discrimination, it is reasonable to assume that the campaign will not stop here and the government will find that it will be returning to the issue again in the future. If we are to learn any lesson from the countries where civil marriage has been introduced, it is that the issue of equality for all in society took precedence over religious beliefs and traditionally held morals.

Marriage throughout the world is an important socially accepted relationship and granting same-sex couples the right to marry would have a positive effect on how we view lesbians and gay men in our society.

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