

Gay civil unions and family policy: what's at stake?

A briefing note

The purpose of family policy: Promoting equality or child welfare?

At the centre of the debate over the family is a key question, the answer to which has deep implications for the attitude of the State towards family policy, namely, is the purpose of family policy the promotion of equality or child welfare?

The equality answer and its implications:

If we say that the main purpose of family policy is the promotion of equality between different family forms then this has certain clear implications. One is that we should recognise same-sex civil unions at the very least, if not same-sex marriage itself. It also means that we would have to consider recognising gay adoption.

However, it could also mean that we should give the benefits of marriage to other family forms as well. In other words, we stop 'discriminating' in favour of the family based on marriage and give the legal and other supports currently associated with marriage to all the diverse forms of family that now exist in Ireland to the fullest extent possible.

The child welfare answer and its implications:

If, on the other hand, the main purpose of family policy is the promotion of child welfare and not equality, then this has far-reaching implications as well.

We are forced, in particular, to consider the effect family structure has on child welfare. That is, does the form or structure of the family in which a child is raised have any effect on its welfare? Does it matter whether a child is raised in a lone-parent family, by their married mother and father, by cohabiting couples, by same-sex couples etc?

Research shows that children tend to fare best, and allowing for exceptions, when raised by their married, biological parents. This being so, there is a compelling reason for the State and for society to continue giving special support to the family based on the marriage between a man and a woman.

Marriage matters:

There are many methodologically sound studies testifying to the benefits of marriage for children. Here is just one quote taken from a report issued by Child Trends, a major, pro-child, non-partisan group in America:

"Research clearly demonstrates that family structure matters for children, and the family structure that helps the most is a family headed by two biological parents in a low-conflict marriage...There is thus value in promoting strong, stable marriages between biological parents."

Child Trends. 'Marriage from a child's perspective: How does family structure affect children, and what can we do about it?' - June 2002.

What recognising gay civil unions does:

If we recognise gay civil unions in a form that too closely resembles marriage it will be a declaration that marriage policy is really about adult equality and not child welfare. This is already argued by gay marriage advocates such as Gail Grossman Freyne writing in The Irish Times of March 18, 2008.

On the other hand some commentators rightly point out that same-sex couples are already raising children and therefore these children should be given the same legal and other protections enjoyed by the children of heterosexual married couples.

However, if for this reason we give same-sex couples most or all of the rights currently enjoyed mainly by married couples, this will have far-reaching implications. For example, it will help pave the way for gay adoption.

But, accepting the right of same-sex couples to have children means denying the right of children, where possible, to be raised by a mother and father from birth. In other words, we must choose between the rights of the adults and the rights of the child.

It's worth pointing out that the UN Convention on the Rights of the Child recognises the right of a child to know and be cared for by his or her parents where possible.

Family policy: a choice between two guiding principles

Guiding principle one: An equality approach to family policy leads to the conclusion that marriage in its present form should not be favoured over other family forms.

Alternative guiding principle: On the other hand, a child-centred approach suggests there are compelling reasons to continue giving special support to marriage in its present form.

Both society and the State need to decide which of these two approaches should be the guiding principle of marriage and family policy.

Is a compromise possible?

A child-centred approach does not rule out taking equality considerations into account. For example, legal rights and protections can be extended to same-sex couples, as well as to anyone involved in a caring, dependent relationship, whether sexual or not. These rights could include, for example, next-of-kin rights, property settlement rights and maintenance rights.

By extending some marriage-like protections and rights to anyone in a caring, dependent relationship we recognise the just demands of these relationships while at the same time maintaining the distinctive nature of marriage. This does not reduce those in non-marital relationships to 'second-class' citizenship as some claim, it simply recognises that different situations should be treated in different ways.

Other considerations

The role of the EU and other international bodies in this debate

International bodies such as the EU and the Council of Europe are pressing for a liberalisation of their member-states laws with respect to gay civil unions, gay adoption etc.

For example, the European Commission has told Germany that it is in breach of an EU equality directive on the grounds that the form of civil unions it has made available to same-sex couples is not exactly equivalent to marriage. Germany could shortly find itself before the European Court of Justice for this reason.

This action by the Commission opens up the distinct possibility that similar action will be taken against Ireland if and when gay civil unions are made available here. In other words we, like Germany, could be instructed to make it equivalent to marriage.

Children raised by same-sex parents: what the studies say

Advocates of gay marriage say studies show that children fare no worse when raised by same-sex parents than they do when raised by a mother and a father.

However, these studies suffer from serious flaws as outlined by Professors Patricia Casey and Linda Waite (of the University of Chicago) in the Zappone and Gilligan case.

These flaws led the judge in this case, Justice Elizabeth Dunne, to declare:

"The phenomenon of parenting by same sex couples is one of relatively recent history. The studies that have taken place are consequently of recent origin. Most of the studies have been cross sectional studies involving small samples and frequently quite young children. I have to say that based on all of the evidence I heard on this topic that I am not convinced that such firm conclusions can be drawn as to the welfare of children at this point in time. It seems to me that further studies will be necessary before a firm conclusion can be reached."

It must also be stated that the burden of proof in this vital debate rests with those who say it doesn't matter whether children are raised by a mother and father, or by some other combination of adults. To state, in effect, that mothers and fathers don't matter is both radical and novel and would require considerable proof before society could accept it. That proof is not yet to hand and until it is, it would be unwise to conduct what would effectively be a social experiment on children.

Religious freedom and gay civil unions

If and when gay civil unions are introduced, in whatever form, this is very likely to have direct implications for the freedom of Churches and other religious organisations to act in accordance with their beliefs.

In Britain it has meant that Catholic adoption agencies must be open to placing children for adoption with same-sex couples.

In addition, a church could be forced to hire out a hall to a same-sex couple who wished to use it to celebrate their union following a registry office ceremony. It could be sued if the religious organisation refused. This has already happened in the United States.

Adult rights or children's needs?

The debate about the family is in danger of placing adult rights – their rights to equality and autonomy – ahead of the needs of children. Sometimes adult rights, adult freedom, can be exercised in ways harmful to the needs and interests of children. Commenting on the debate about the family and the current emphasis on adult rights, Professor Brenda Almond, Vice-President of the Society of Applied Philosophy in Britain, has said: "All that matters is what adults want and what they set out to achieve, and children can be expected to adapt to it, however it works out in practice."

A clear example of placing adult rights ahead of children's needs is to be found in Spain and Canada and should serve as a warning to us. In those countries the names of a child's natural parents no longer appear automatically on a birth cert. One result of this is that two men or two women can be recorded on a birth cert as the parents of the same child even though two men or two women cannot be the biological parents of the same child.

In Spain, following the legislation of gay adoption, the words 'mother' and 'father' could no longer appear on birth certs and were replaced with the words 'Progenitor A' and 'Progenitor B'. The use of these latter terms has since been revoked although it remains the case that two men or two women can appear as the parents of the same child on a birth cert.

The effect of this, of course, is to deny a child his or her right to know the identity of his or her biological father, or biological mother, as the case may be. This is similar to the now condemned practice of closed adoption which deliberately deprived an adopted child of the knowledge of his or her natural parents. The logic inherent in the argument that is driving forward recognition of same-sex civil unions is leading to developments in other countries that we need to be aware of here in Ireland.