

High Ambitions: Benchmarking Ourselves Against the Best

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Acknowledgements

I would like to start by thanking Minister Mc Dowell for his opening address and the commitment he has brought to putting the issue of legal recognition of same sex couples on the political agenda.

The establishment of the Working Group on Domestic Partnership provides an important mechanism for examining the issues, but equally important is the commitment to speedy delivery of solutions. The issues we are discussing are not abstract; they are urgent and immediate to many thousands of people.

I want to begin by discussing the background to the progress that has been made in Ireland. I then want to discuss some of the barriers to legislating for legal recognition and then some of the practical difficulties that arise in going for options that are not based on equality.

Progress

These are indeed exciting and hopeful times in Ireland.

I remember when I trained as an economist in the 1980s. The country was always a depressingly good case study on all the concepts and indicators that go with economic failure: stagflation, long-term unemployment, deficits and decline.

These times were additionally bad for lesbian and gay people: consensual sex between men was criminalised; there was no legal protection against discrimination; the crisis of HIV/AIDS had arrived; and a lot of lesbian and gay people kept their heads down, not least because of the risk of losing already scarce employment. Many more emigrated to where they could live more secure and open lives.

That past truly is a different country. Now of course the challenge for economists has been to explain our success or explain why so many failed to predict it.

Change for lesbian and gay people has been equally rapid. By 1993, the Government had repealed the laws which criminalised sex between men, and did so on the basis of equality. This was followed by equality legislation, outlawing sexual orientation discrimination first in employment and then in the provision of goods and services.

All of this economic and social progress has hugely increased confidence and raised the expectations of Irish people. When the economy started to take off in the 1990s, there seemed a reluctance to believe it among some commentators and a deep conviction that it was not real or could not be sustained. It was often difficult to know whether this was genuine economic analysis or if it was the psychological overhang of failure in the past; the sense that we were incapable or undeserving of success. Now we talk of ambition and getting to the next level rather than reverting to past decline.

The same can be said of the progress for lesbian and gay people. There were those who said that we were simply complying with an agenda from Europe and that Irish people would be resistant to equality. In fact, much of the impetus for change has come from within Ireland itself. The Equality legislation put us to the forefront internationally in legal protections against sexual orientation discrimination. Ireland ensured that sexual orientation was included in Article 13, the antidiscrimination clause of the Treaty of Amsterdam.

This progress has hugely raised the expectations of gay people for their lives. There is a whole new generation of lesbian, gay and bisexual people who expect to be able to live and work in Ireland, where being gay is no barrier to advancement. They expect to be able to meet others, to have fun, to fall in love and, if they choose, to settle down and get married to the person they love and establish a family. Indeed many lesbians and gay men already take on the duties of care to partners and children, despite the lack of legal protection or recognition.

Marriage and Legal Recognition.

We are today looking at issues arising for same sex couples and cohabitants more generally. But I want to focus on the particular inequality between same sex and opposite sex couples and families, which is exclusion from civil marriage.

Different issues, or possible barriers, have been raised in extending civil marriage to include same sex couples and families. I want to focus on three of these key issues in particular: the principle of equality; the wish for pragmatism; and the issue of whether lesbian and gay people want marriage or not.

1. With regard to principle, there is little disagreement that equality for same sex couples and their families means access to the rights and obligations of marriage. The right to marriage is well established in international law, in the UN Declaration of Human Rights and in the European Convention on Human Rights. Lesbian and gay men are either equal, with an equal right to marriage, or we are not equal.

The same issue of principle arose when the Government set about repealing the law in 1993 which criminalised sex between gay men. We now know that one of the options before the then Government, was to go for an unequal age of consent to mark a difference, namely that consensual sex between adult men was less acceptable. The Government rejected this option and went for equality and was pleased to have done so. It was a success that we all shared, something to be proud of. No political party has argued for inequality in principle, ever since.

As the Taoiseach has stated recently: "Sexual orientation cannot, and must not, be the basis of a second class citizenship. Our laws have changed, and will continue to change, to reflect this principle".

2. If it's not about principle, then the issue seems to be one of pragmatism.

There is of course nothing wrong with this and we very much accept the Government's good faith in wishing to deliver quickly on what it sees as feasible options. GLEN too is interested in quick progress to address the pressing and immediate needs of lesbian and gay couples and families. GLEN has never been interested in moral victories that translate into little or no progress for people on the ground.

But it is important to analyse and discuss why civil marriage is not a feasible option.

One argument is that it will be judged unconstitutional. But I have to say that lesbian and gay people are far less pessimistic about our Constitution and our Supreme Court than some. The case being taken by Katherine Zappone and Ann Louise Gilligan certainly reflects the confidence that many lesbian and gay people feel about their status as equal citizens under the Constitution. This society, and the position of lesbian and gay people within it, has been radically transformed since the last time that that sexual orientation was before the Supreme Court with the Norris judgement in 1983.

Perhaps the fear really is of wider opposition. There are of course groups and organisations that have a default position of opposing any progress for lesbian and gay people. Such opposition has not diverted successive Governments from legislating for equality however, and few, even among the opponents, now seek to unravel the gains. I have not for example, come across anyone campaigning to re-criminalise sex between gay men.

3. The third point concerns the argument that lesbian and gay people do not want civil marriage.

It seems reasonable to suppose that there are some lesbian and gay people who may not want to marry, just as there are some heterosexual people who may not want to marry. But there are many lesbian and gay people who do wish to take on the rights and obligations of marriage and who want the option to do so.

These issues have also been present in other countries. Experience from these countries (of which you will hear more today), does show some of the difficulties that arise, when the equality option is not followed. In particular:

- One of the most difficult issues in not going for marriage and enacting some sort of alternative in response is that we are all put in the invidious position of having to debate and argue about the precise rights and obligations to which lesbian and gay families are *not* entitled.

In the UK, legislators were faced with this task and in the end found little case for the exclusion of any rights and obligations when creating the new institution of civil partnership. Civil partnership is therefore almost entirely analogous to marriage except for the name. However this was a torturous process to go through: for example, legislators had to wade through nine acts and 70 sets of regulations of social security legislation alone, to take account of civil partnership.

- The UK experience also shows the difficulties that arise when exclusion of same sex couples from marriage is addressed together with all relationships of domestic dependency, without being clear about the difference.

This can lead to legal frameworks that please or suit no one. For example, in the reading of the Civil Partnership Bill in the House of Lords, a number of conservative peers tabled an amendment, essentially a wrecking amendment, that would have extended civil partnership to two close relatives living in a situation of domestic dependence such as a mother and her daughter.

This was rejected - it being pointed out that this would have meant that the daughter, assuming she was heterosexual and met a man she wished to marry, would essentially have had to divorce her mother to do so. Such is the confusion when you seek equivalent frameworks for very different types of relationships.

Our experience in Ireland is that when issues are addressed on the basis of equality, it means that the issues are resolved and are not left to fester in the body politic. Politicians and the public alike are now proud of the political leadership that was shown with de-criminalisation in 1993, an equality solution that moved the issue from the political agenda and which few would now seek to alter.

Change does bring challenges: - no one wishes however, to pressure people into change for its own sake, to advance abstract ideas just for the sake of it or to merely score political points. People may be surprised by same sex marriage, it may be unfamiliar to them, but lack of familiarity should not be immediately construed as hostility.

Ireland has demonstrated the great value of ambition in economic and social policy. We have been ambitious before and we can be ambitious again.

Thank you.

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