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Why Would Gays Want To Marry?

Workers Solidarity Movement

September 2005

The issue of gay marriage has come to the fore again recently with both Canada and Spain approving bills to make it legal. In this interview we talk to Judy Walsh, from the Equality Studies department in UCD about how marriage and partnership rights are currently constructed in Ireland.

WSM: Can you explain how marriage and partnership rights stand at the moment in Ireland?

JW: There is a very clear hierarchy in the Irish legal system. Marriage is the very privileged family form and that is confined to straight people. At the moment it excludes people who have a different gender identity that hasn't been recognised. In terms of what this contract involves, once you sign up for marriage you take on fairly extensive obligations towards your partner but you also have a range of benefits confirmed on you largely around tax, social welfare, employment benefits.

WSM: Do the policies around partnership rights have a negative impact for all relationships outside of marriage or is it just same sex couples?

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JW: Anything outside the marital family unit is treated less favourably; so solo parents, people who are heterosexual but are cohabiting or not and are not married are all treated as lesser forms of family than the marital family, the courts have made that very clear. The constitution prescribes special protection for the married family.

In relation to social welfare last year the government introduced legislation to say that gay or lesbian co-habiting couples are not to be treated as couples for the purpose of social welfare.

In most areas you find that married couples are benefiting and have the most defined set of rights. If you own a property and if you are married your spouse has an automatic share in the property, moreover married couples don't have to pay inheritance tax. If you are not married and you are in the same situation and your partner dies it depends whether you have written a will or not. Your partner is a stranger to the law.

WSM: Are there other ways in which people who can't legally get married lose out?

JW: Sure, children are probably the one most acute in people's actual lives.

In terms of parent child relationships, if you are married both parents are automatically the legal guardians of their children. Where the parents of the kid are not married to each other the mother is automatically given custody and rights over the child.

Married fathers are presumed to be automatically good parents and unmarried fathers are seen as having a lesser status. The real problem here is not discrimination based on gender but on marital status.

WSM: How does this affect same sex couples that have a child?

JW: The biological parent, whether they be a man or woman is the guardian. The partner would fall outside the parental unit.

There is no provision at the moment to have a gay or lesbian partner to be appointed as guardian.

WSM: Do you see these laws changing so that same sex couples will be able to get married?

JW: Marriage is somewhere off in the distant future. The gay and lesbian lobby have various positions, which is not necessarily a bad thing. Many groups that have put in proposals are saying they don't want marriage per se; they just want some form of recognition. For example GLUE who are concerned mostly with people whose partner is outside the EU want some form of recognition; for them it's an urgent issue of being able to be with their partner in the one place.

David Norris drew up a bill to put gay and lesbian relationships on some sort of legal footing with opposite sex non-married couples. This was introduced last year but it has been deferred. The government indicated that it would draw up its own proposals. The issue is gaining some political momentum and I can imagine there will be a larger debate around this fairly soon.

WSM: Do you think that state should be regulating interpersonal relationships?

JW: There needs to be some form of ground rules to protect people from being exploited, from violence and abuse. Traditionally the state has used marriage for the base of many things, basically maintaining inequalities, privatising responsibility and care. Basically the state subsidises marriage, we give it financial benefits, we need to ask why don't we subsidise solo parents. At the moment children are inheriting the poverty of their parents. People talk about meritocracy and I think it's a joke.

WSM: What is your utopian vision of relationship formation and regulation?

JW: Autonomy and equality as the two core values, where every individual would have autonomy and the right to self-determination, to freely choose the type of relationships they

want to form with whom, when etc. Subject to their not being able to exploit or abuse someone else. If each individual had a basic standard of living regardless of gender or martial status, the questions about what happens when you cohabituate or get married become more or less irrelevant.