

The future of marriage and family law in Ireland

– Notes from address by David Quinn, Director Iona Institute

1. Family life in Ireland today: the facts.

Marriage breakdown in Ireland has increased almost five-fold since 1986.

In 1986, 40,000 people had suffered a broken marriage.

That figure is now 200,000.

One in four children is now being raised in non-marital families, which is approaching British and American levels.

The fastest growing family form in Ireland today is cohabitation. One in six children are born to cohabitees and 121,000 couples are cohabiting.

But how long does the average cohabiting relationship last?

How old are cohabitees normally? How many have children?

How many who have children split up later compared to married couples with children?

What are the divorce rates of couples who cohabited before they married compared with couples who didn't first cohabit?

2. The causes of family breakdown.

Economic pressures.

The crisis of commitment and the overvaluing of personal freedom.

This is driving the delay in getting married, the rise in cohabitation, the delay in having children, the rise in marriage breakdown.

3. The future of family law.

The changes to family life in Ireland, the relative decline of marriage and the increase in alternatives to marriage, are also driving proposals to change family law and the definition of family, and even parenthood itself.

There is a tendency today to see marriage as a primarily private, loving, sexual relationship between two people who need not necessarily be two members of the opposite sex.

But this is not why we support marriage. We support marriage mainly because of the powerful evidence that it is, on average, the most pro-child social institution there is.

As an institution, marriage has a number of elements. One is that it brings together two people. Another is that it brings together two people of the opposite sex. Another is that the relationship is sexual and exclusive to that couple. A further one is that it is reproductive in nature, and finally and most importantly, that it is aimed at ensuring, insofar as this is possible, that the children of the marriage will be raised by their own biological parents.

Every element of marriage as a social institution, and I stress the word social, is therefore, aimed at children. There are two people because it takes two people to conceive a child. The two people are of the opposite sex because it takes two people of the opposite sex to produce a child. The relationship is sexual because even in an age of IVF, this is how the overwhelming number of children are still conceived. It publicly commits both biological parents to their children to raise and nurture and protect them as well as they can.

If you break out of marriage any one of these elements you weaken it as a pro-child institution. If you say, for example, that it need not involve two people of the opposite sex, then you are saying that marriage is really about giving public recognition to the love two people have for one another.

But if you say this, then why give the benefits of marriage to two people simply because their relationship is sexual in nature? What is so special about sex that it warrants the benefits of marriage? This is why the elderly Burden sisters in Britain are currently challenging that country's civil partnerships law before the European courts. Why, they wonder, should cohabiting couples of whatever sexual persuasion be granted marriage-like rights, including exemptions from inheritance tax, and they, who have lived for decades in the same house in a loving, but non-sexual relationships, should not. It's a good question, and hard to answer once you effectively state that children are not the central reason why we give public support to marriage.

Indeed, why restrict marriage to two people at all? And if we go even further, and this argument is already being made, we could say that the State should not privilege marriage above other relationships in any way, shape or form.

This school of thought demands a justification for denying the financial, legal and other benefits of marriage to any kind of caring, dependent relationship involving no matter how many or how few people, and whether sexual or not. It says the State has no right to discriminate against any kind of freely chosen relationship.

Logically, the only way to resist these demands is to continue to see marriage we have always seen it, at least until very recent times, that is, as an institution with children front and centre.

It should be said here that this is not an all or nothing situation. It is not as though we must give all the financial, legal and social support we can to marriage, and nothing at all to other family forms. It is very much the opinion of The Iona Institute that all families in need of help, should receive help.

In order to justify giving most or all of the benefits of marriage to other kinds of families it must first be demonstrated that those other forms of families are as beneficial, on average, for children as marriage is. To do this it would have to be shown that they do as good a job of committing, through time, the two biological parents of a child to his or her welfare.

In this debate, the burden of proof rests not with those who defend marriage as currently defined, but with those who would change the definition, possibly radically.

Dan Cere, a Canadian philosopher, highlights the view of the family that is taking shape among family lawyers and others. This view is taking shape in Ireland as well.

As he sees it, this view, the family diversity view, argues for creating an equivalence between cohabitation and marriage. It wants to define marriage as a couple-centred bond which is gender-neutral. It wants to separate marriage and the State, which is to say, it wants the State to no longer favour marriage. Finally, some of the more radical proponents of the new view wonder why marriage is restricted to just two people.

As Cere says, and I have tried to argue above, what is missing from this new view of marriage and family are children, and how children benefit from having a socially supported form of relationship that publicly commits both of the biological parents of a child to his or her welfare.

He argues that society must now choose between this child-centred view of marriage and the newer close relationship model.

Increasingly Ireland is being confronted with this choice. It seems that we are drifting towards the close relationship model of marriage without hearing the child-centred model properly argued for.