

The Irish Gay Rights Movement and Political Opportunity Structures

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Abstract:

It is commonly accepted that the more advanced a nation becomes, the more secular it becomes. While this is the case in the Republic of Ireland, the country is unique in its rapid secularization between 1990 to 2015, which allowed for great expansion of LGBT rights in the nation. I seek to explain that the AIDS crisis questioned the legitimacy of existing sodomy laws in Ireland, and therefore the legitimacy of the Irish Government, which limited the extent to which Ireland could enforce its laws banning same-sex intercourse in the 1980s. Compiled with rapid economic advancement due to Ireland's integration into the Eurozone and its deepening into the European market, this created internal opportunity structures that LGBT rights activists took advantage of to advance their movement in Ireland.

Keywords: Gay, Rights, Sexual Identity, Secularization, Religious Identity, Political Mobilization

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Introduction

The Republic of Ireland, referred to as Ireland for the purposes of this paper, emerged from a history of deep religious and political division as recently one of the freest countries in the world. In 2017, the Cato Institute ranked Ireland as the fourth freest country in the world with a Human Freedom Index of 8.48 out of 10 (McGann, 2018). In addition to being one of the freest countries in the world, Ireland also ranked as one of the richest by GDP per capita. In 2017, as determined by the World Bank, the country ranked with a GDP per capita of USD \$75,648 (“GDP per capita, PPP”, 2018).

Ireland achieved this international status due to internal structural reforms, specifically with the Catholic Church, the penal code, and the economy. As a result of these internal reforms, Ireland experienced rapid political change accompanied by economic change and reform, particularly in regard to gay rights. In just over 20 years, Ireland evolved immensely in terms of their stance on homosexuality; in 1993, same-sex intercourse was legalized and in 2015, same-sex marriage was legalized. Both the government and civil society as a whole experienced massive disruption of their long-standing traditions due to movement activists who were able to use the changing political, legal, and social opportunity structures to advance their cause.

The Irish case highlighted the ways in which movement activists can take advantage of internal legal loopholes to advance their cause. In doing so, they disrupted domestic politics by using the internal structural reforms as an opportunity to expand social consciousness and sway public opinion. This case demonstrated how a social movement took advantage specifically of opportunity structures to explain a theory on how all movement activists can advance their cases in democratic countries.

Literature Review

In a very short period of time, Ireland experienced unprecedented rapid economic growth and social change, fundamentally shifting the dynamics of the nation. In 1990 Ireland ranked below 35th place in regard to GDP per capita in spite of Ireland's integration into the European Economic Community (EEC). Ireland's interactions with the EEC, and henceforth the European Union (EU) as of the 1993 Treaty of Maastricht were also subject to intrigue (The Editors of Encyclopaedia Britannica, 2016). In 1973, Ireland joined the EEC after a battle to have its request for entry separated from that of the United Kingdom (UK) (The European Commission, n.d.). Since admission in 1973, Ireland has been an active member of the EEC/EU; for instance, seven Irish representatives have held the title of president of the council of the EU (The European Commission, n.d.). However, all controversies aside, the EU was of massive aid to Ireland, in particular after Ireland's 1999 incorporation into the Euro Zone (The European Commission, n.d.). Furthermore, Ireland's strategic internal tax and economic reforms, such as shifting the Irish economy to an information and communications technology (ICT) and pharmaceuticals-led economy provided the grounds for the Irish economy to expand greatly – a period known as the Celtic Tiger period (“The Atlas of Economic Complexity”, 2015; Falvey, 2011).

Interestingly, Ireland's rapid evolution from a post-colonial nation to an economic powerhouse correlates with social change within the country itself, in particular gay rights. Same-sex intercourse was not legalized until 1993 when an 1861 colonial sodomy statute was repealed by the Oireachtas Éireann, or the Irish Parliament (*Electronic Irish Statute Book*, 1861). The Oireachtas, composed of the lower house of the Dáil Éireann and the upper house of the Seanad Éireann, issued a series of reforms in the early 1990s that liberalized Ireland in ways not experienced since the Irish Revolution (Oireachtas, 2018). Contraception was fully legalized in

1993 (*Electronic Irish Statute Book*, 1993), and divorce in 1995 (*Electronic Irish Statute Book*, 1995). As opposed to other Western nation that experienced massive social and political reforms decades prior, such as France who legalized access to abortion in 1975, these reforms represented a massive cultural shift in Ireland that snowballed and culminated with the legalization of divorce in 1995 (Chan, 2017).

Despite the social, political, and economic advances made in the early 1990s, there reforms stalled for a period of time. During the Celtic Tiger period, the Dáil introduced legislation to legalize domestic partnerships in 2005, which failed (Seanad Éireann, 2005). Yet two years after the economic crash of 2008, the Oireachtas passed the same bill in 2010 (Taylor, 2010). Generally, liberalization is expected during times of economic growth as according to Ozsahin, however, 2008 to 2010 represented only the recovery of the Irish economy as opposed to the exponential growth it experienced in the eight years prior (Cüneyt Özşahin, 2013). At this point, Ireland's legislation on gay rights lagged behind multiple European nations, most notably the Netherlands and Spain which had legalized gay marriage as early as 2001 ("Same-sex marriage | Family law | Government.nl", 2016) and 2005 (Renwick, 2005). Hence the first anomaly in Ireland's gay rights movement: how the island liberalized in times of economic hardship, directly contradicting widely accepted theory (Cüneyt Özşahin, 2013).

In 2015, the Oireachtas set the question of gay marriage up to a constitutional vote to create the 34th amendment to the Irish Constitution, with the wording of "Féadfaidh beirt, gan beann ar a ngnéas, conradh pósta a dhéanamh de réir dlí" or in English "Marriage may be contracted in accordance with law by two persons without distinction as to their sex" (Oireachtas, 2015). The amendment was not put up to a parliamentary vote, but rather to a popular vote (Hayes, 2016). In doing so, Ireland became the first country in the world to do so, and to date only one of two, with

Australia becoming the second in 2017 (Berlinger & Westcott, 2014). The vote further passed overwhelmingly in favor of the amendment, with a vote of 62% to 38% (Slattery, 2015). This thus represents the second anomaly in Ireland's expansion of gay rights. Generally, gay rights activists prefer to settle the issue of gay marriage with the courts or with Parliamentary/governmental action, as seen in every country in the world aside from Ireland and Australia (Sciupac, Masci, & Lipka, 2017).

Clearly, exterior factors contributed to the expansion of gay rights in Ireland, but the internal political opportunity structures allowed activists to disrupt and change the legal structure of the country. As a result, the 1980s AIDS crisis created political opportunity structures which allowed activists to put pressure on the Irish government to legalize same-sex intercourse. After this historic legal precedent was set, Ireland's government liberalized rapidly in the 1990s with the legalization of divorce and contraception (Clarity, 1993). These movements changed both the social and legal consciousness around homosexuality and opened the gateways to same-sex partnerships and marriage (Parker, 2017).

My research seeks to establish a connection between research on political and legal opportunity structures in Ireland and their relevance in creating economic and social domestic policies. However, the majority of research on this topic focuses solely on the impact of the Catholic Church on Irish culture and the decline of organized religion in Ireland. In order to fill in the gaps, my research adds domestic factors to the analysis in order to complicate the ways in which movements operate. In addition, analyzing the different legal and political opportunity structures that existed prior to the gay rights movement will allow activists to identify when it is an opportune time to disrupt domestic politics.

AIDS Crisis and Political Opportunity Structures

The AIDS crisis in Ireland, while devastating, was useful in bringing awareness to some of the major issues in the country in regard to healthcare, sexual education, as well as the role of the Catholic Church in politics and government. In particular, the Church's influence on domestic politics was fundamental to the functioning of Irish civil society, but the gay rights movement in Ireland disrupted the religious dominance of the Church. It became the first movement to force the Government to remove elements of Catholic dogma from the lawbooks. As such, the AIDS crisis and support from the general population put pressure on the government to bolster the gay community, most notably from the European Court of Justice case of *Norris v. Ireland*. In doing so, the stronghold that the Catholic Church had on the Republic was impaired. Various sociopolitical theories highlight the impact that a country's legal structures have on societal attitudes; the Irish gay rights movement exemplifies these theories and exposes the relationship between legal change and the social dynamics of a country.

As previously mentioned, contraception was illegal in Ireland at the time of the AIDS crisis. Until 1973, both the importation and sale of contraceptives was illegal; this made access to condoms and birth control nearly impossible. However, the *McGee vs. the Attorney General* case was one of the first times that the Irish Constitution was used against the Irish state. This case stated that the right to privacy in marriage blocked the Irish government from controlling the methods used for contraception in a marriage ("Ireland allows sale of contraceptives", 2009). In another case the Irish Oireachtas passed a bill limiting the use of contraception to "bona fide family planning purposes". Thus, effectively limiting the access to contraception exclusively to married heterosexual couples whose doctors had determined it was legally acceptable for said purposes ("Ireland allows sale of contraceptives," 2009).

The limited access to contraception was one factor that changed Ireland's views on gay rights, but the social dynamic of the country created a social opportunity structure that pushed gay people, mainly men, out of the closet. A 1985 editorial illustrated public opinion on AIDS by claiming that homosexuality was the killer disease, not AIDS (Kerrigan, 2017).

A 1985 editorial illustrated public opinion on AIDS by claiming that homosexuality was the killer disease, not AIDS (Kerrigan, 2017). The lack of response by the government, limited access to contraception, and social stigma pushed the gay community to create their first full response to the AIDS crisis. A group of activists released pamphlets detailing "safe-sex" practices despite a law that prohibited same-sex intercourse (Kerrigan, 2017). In other words, these activists broke the law and risked jail time in order to save their community. This put even more pressure on the government to recognize the severity of the AIDS crisis, as well as to acknowledge the plight of the gay community in Ireland. The Irish government could have arrested these activists and protestors, but this would have led to international rebuke. However, by refusing to arrest those disseminating the pamphlets, the government simultaneously gave legitimacy to the Irish gay community and acknowledged that the current laws were unjust. In this first way, the HIV/AIDS crisis helped Irish gay rights by legitimizing the community and also implicitly acknowledging that the country's laws that were meant to protect the morals of the Catholic Church were disproportionately and unfairly impacting the Irish gay community.

Furthermore, the pamphlets informed those engaging in same-sex intercourse of safe-sex practices and inadvertently raised the issue of the Catholic Church's control over the state, particularly in regard to hospitals. The Catholic Church is the largest provider of non-state health services in the world, and Ireland is no exception. Due to the Catholic Church's intense influence over Irish culture the Catholic hospitals did not allow these pamphlets to be distributed and insisted

that heterosexual marriage was the only true way to prevent AIDS (Hogan, 2016). Since the Irish government was not enforcing its own laws, religious institutions were left to decide whether to distribute these pamphlets or not. By allowing the Catholic Church to act in this way, the Irish government was subtly limiting the amount of disruption that the gay rights movement caused to social structures and Irish culture as a whole.

In ceding the power of discretion to the cultural institutions of the island, the government shifted legal structures in support of gay people, but at the same time, it reinforced the beliefs of the Church's followers. The Catholic Church's influence on politics and society put the Irish government in a particularly precarious situation both domestically and internationally. On one hand, Ireland risked alienating a majority of their population who were anti-gay; However, given the concern of the international community and the severity of the global AIDS crisis, they could not jeopardize their reputation internationally, but more specifically, their status within the European community.

This dance between international and domestic politics created the legal climate under which activists began organizing themselves; these activists wanted to disrupt the existing legal and social structures in order to change the societal attitudes toward the gay community. In the case of *Norris v. Ireland*, David Norris, an Oireachtas senator and openly gay man, took the Irish government to the European Court of Human Rights; Norris argued that the Irish law which made same-sex intercourse illegal was in violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Court of Human Rights, 1993). However, this case was passed to the European Court of Human Rights before the AIDS crisis fully erupted, but a ruling was made in 1988 at the height of the gay rights movement (European Court of Human Rights, 1993). There were cases similar to *Norris v. Ireland* in the United Kingdom and Northern Ireland

decades earlier, but the Irish case came at a time when Europe was gathering strength and preparing for deepened integration (Carter, 2018).

Moreover, the *Norris v. Ireland* case is notable for the way in which the citizens used one part of the Irish legal system and leveraged it against another. While activists on the ground were knowingly defying Irish law in an attempt to tarnish the government's reputation the *Norris* case took full advantage of the European Community and its laws. Andersen states that in order to take advantage of legal opportunity structures, activists must "articulate their claims so that they fall within the categories previously established by an amalgam of constitutional, statutory, administrative, common, and case law" (Andersen, 2006, 12). As a result, when defending individuals such as *Norris*, lawyers must find weak spots in the law as to contend that their client's case falls within the pre-existing law. However, they must also argue that these laws should be clarified as opposed to creating new laws.

In the case, the Republic of Ireland had to argue that the law itself was legal; this gave further legitimacy to the gay rights movement by showing the contradicting positions of the Irish government abroad and domestically. While they did not enforce the law in the 1980s Ireland presented their case to the European Court of Human Rights, where they contended that the law was legitimate and in accordance with European conventions. In combination with the court's decision to overturn the Irish sodomy law, these contradictory positions gave further legitimacy to the Irish gay community that had been legally neglected by the government for decades. This created a legal opportunity structure that activists could take advantage of in order to disrupt Irish politics; they did so by forcing the Irish government to repeal the law prohibiting same-sex intercourse, but also to bring to light the pitfalls of the deep influence the Catholic Church held over the public in all aspects of life. As a result, the cultural relationship with the Church and the

legal relationship with the European community created quite the predicament for the Irish government. The gay rights movement questioned and criticized the legal relationship between the Catholic Church and the Irish government which disrupted both Irish politics and society. This paper asserts that due to these disruptions, deeply held Catholic beliefs and traditions began to decline in Ireland.

Subsequently, the gay community was able to secure funds from the government to create and distribute pamphlets detailing safe-sex practices. The government could not openly endorse this due to the existing laws. This paper also asserts that representatives feared losing the votes of their constituents as the “gay issue” was fundamentally a political issue. This further allowed Ireland to temporarily play both sides of the same card by funding gay groups under the table while publicly defending its laws and “sovereignty” (Dáil Éireann, 1993). Notably the National Gay Federation, which later became Gay Health Action (GHA), received funding in 1985 from the government for its work in educating the gay community in safe-sex practices (Nolan, 2018). However, this funding did not come from the Department of Health because the Irish government did not want to publicly recognize the AIDS crisis as a health crisis or a crisis that disproportionately impacted a marginalized group (Kerrigan, 2017).

Therefore, the AIDS crisis disrupted internal politics by forcing the Irish government to both defend its laws on an international stage while also ignoring the law at home; this contradiction created doubt amongst civil society in regard to the legitimacy of the laws banning same-sex intercourse. Civil society began to question what should be considered “moral” and “amoral” due to the government’s continued funding of these activist groups while allowing the Church to refuse treatment to gay individuals. The synergetic effects between these aspects of the gay rights movement fundamentally disrupted the deeply held religious beliefs and political

institutions in the country; this allowed movement activists to avail of these opening social and political opportunity structures to advance their cause.

Economics

It cannot be stressed enough how economic opportunities can create opportunities within the political structure of a nation. Stating arguments on certain controversial issues in terms of economic potential can easily persuade governments to increase revenue influxes to the country. In regard to the gay rights movement, this has been especially advantageous. Following the massive gay rights movement in the 80s and early 90s, Ireland's weakened anti-gay stance allowed for the creation of an openly gay community in the country (Walsh, 2015). The disruption of political dogma on the topic of same-sex intercourse led the Irish government to consider the economic implications of openness towards minority groups. Thus, creating a spillover effect from positive political disruption to economic disruption. The essential "legalization" of same-sex intercourse proved to be beneficial, as theory suggests, to the economy of Ireland and created the political opportunity to advocate for more rights and equality in the country (Hicklin, 2012).

A 1998 BBC article more highlighted the economic prowess of the gay community in Europe due to their "pink pound" ("The Pink Pound," 1998). The "pink pound" refers to the money spent by the gay community ("The Pink Pound," 1998). This opened up a market that gave the gay community both economic and political influence in Ireland. The article states that "Because of family circumstances (or more precisely lack thereof) the gay community tends to have much more disposable income to spend." ("The Pink Pound," 1998). This statement may be controversial, but it clearly articulates the ways in which the struggle for gay rights quickly became a race for capitalist venues.

Moreover, the article contended that gays acted "similar to an immigrant market they stick together to support each other and vote for each other." ("The Pink Pound," 1998). In other words, as early as 1998 many European countries noticed the economic potential that the gay community had and could thus be exploited. In 2011, Cregan articulated how capitalism and Irish identity intersect: "'Irish identity is being refashioned to accommodate a market economy...in favor of a cosmopolitan liberalism not built on moral acceptance of queers but rather on their economic power and potential'" (Fawley & Cregan, 2011). Irish identity as historically constructed is intrinsically linked to the Catholic Church. Nonetheless, with the popular vote to decriminalize same-sex intercourse, the people forced the government to distance itself from Catholic values. However, most importantly, this gave Ireland the freedom to reconfigure what it means to be Irish in the 21st century.

Furthermore, the "An Tíogar Ceilteach", or the "Celtic Tiger" period refers to the rapid period of economic growth in the early 2000s (Herrman, 2008). This growth was prompted by a number of factors including deepened involvement by Europe to aid Ireland in the adoption of the Euro as their official currency (The European Commission, n.d.). However, this paper asserts that the adoption to the Euro in conjunction with the transition of the Irish economy from low to high income created the political opportunity for gay activists to lobby for more legal protections and rights. The first effort to pass a domestic partnership bill in Ireland was in the early to mid-2000s but was postponed and then prohibited from being entered the debate (Clarke, 2008). Western countries such as Spain, the Netherlands, France, and Canada tend to liberalize socially and politically during a time of rapid economic growth (Ferguson, 2016). However, during Ireland's period of economic growth, there were multiple attempts to pass a domestic partnership bill, but to no avail (Clarke, 2008).

While economic profitability and European integration helped provide the political opportunity structures for activists, it was lobbying and other forms of non-violent protest that allowed Ireland to legalize same-sex domestic partnerships. However, as the Irish government insisted on a referendum as opposed to legalizing same-sex marriage via the courts or the Oireachtas, gay rights activists turned to other methods such as lobbying for their rights (“Govt will ‘actively support’ same-sex marriage referendum in 2015”, 2013). Additionally, the Irish gay rights movement ceded some of this power to the Oireachtas, but namely the Seanad where they had an ally in out gay senator David Norris (Houses of the Oireachtas, 2019).

Furthermore, the Irish state worked against the gay rights movement in trying to minimize the extent of political disruption by deploying its resources to cases that challenged the Irish constitution. For instance, in 2006, a lesbian couple attempting to file taxes together as a married couple took their case to court (Carolan, 2006). The judge ruled against the couple citing that “The legal basis for doing so has not been identified save to say that the Constitution is a living document that is not stuck in the permafrost of 1937 but there is no jurisprudential basis put forward which would enable the court to radically alter the concept of marriages provided in the Constitution save that it has been submitted on behalf of the plaintiffs that the consensus of what marriage means is changing” (Mullins, 2013). The case was appealed to the Supreme Court and eventually used in the 2015 campaign for the gay marriage referendum (Mullaly, 2017).

The debates and early votes on the domestic partnership referendum were further stalled by the 2008 financial crisis. Ireland was hit especially hard by this crisis since Ireland’s economy had been growing exponentially and was significantly setback by the economic fall (Bielenberg, 2018). Ireland’s financial struggles are illustrated in the graph below with data taken from the World Bank (“GDP Per Capita, PPP”, n.d.).

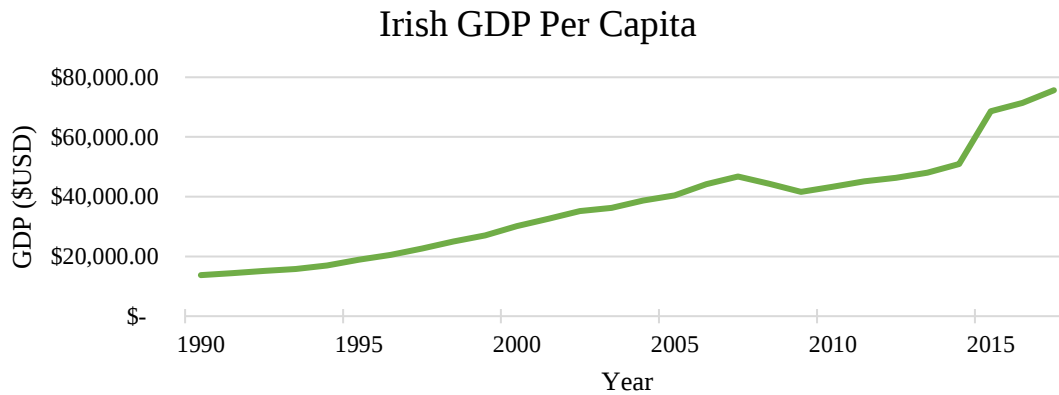


Figure 1: Irish GDP Per Capita. Adapted from World Bank Data. Retrieved April 3, 2019, from https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD?end=2017&name_desc=false&start=2017.

The economic crisis shifted the priorities of the government from expanding the rights of the Irish gay community to focusing on economic recovery. As such, movement activists were not able to make the same amount of gains as they did in the early 90s because the government was not able to allocate the same amount of energy or resources. The movement gained momentum again in 2011 by taking advantage of an improving job market and economy; this created the legal opportunity structure that activists took advantage of in 2015 with the gay marriage referendum (Parker, 2017).

With respect to the referendum, it was not the choice of movement activists to have gay marriage introduced to the state via popular vote. However, in 2013, a minister claimed that if the Oireachtas legalized same-sex marriage, then they would be violating the Constitution. The decision was put to a popular vote as to avoid a constitutional crisis as per the Constitutional Convention (Parker, 2017). This was a risky decision since the fate of the gay rights movement would be decided by Irish society instead of the Irish government. However, under Irish law, all constitutional amendments have to be passed via referendum with a simple majority of over 50% of the vote (Citizens Information Ireland, n.d.). The Irish MPs who were pushing for a referendum

were aware of these factors, but this paper contends that they hoped that pushing the vote to referendum would stifle the gay rights movement in Ireland, as no other country in the world had legalized same-sex marriage before via referendum. With no legal remedy to escape the referendum, activists took to the streets and the media to try and win the favor of the Irish people (Parker, 2017). In doing so, they left a lasting impact on the Irish social consciousness which fundamentally disrupted the existing legal structures of the country.

Conclusion

The Irish gay rights movement disrupted and all aspects of Ireland's social and political world. Once described as an "Irish problem requiring an Irish solution", the gay rights movement sprung from the illegality of same-sex intercourse on the island and gained traction due to the AIDS. Ireland's shifting social consciousness in regard to the gay community were used to help movement activists lobby for change in the legal sphere. These elements were amplified by the case of *Norris v. Ireland* which forced the disruption of the Irish penal code and created the legal opportunity to expand gay rights in the country.

On the other hand, domestic partnerships and gay marriage had to exploit different elements of Irish society to achieve their goals. Firstly, gay rights activists brought awareness to the impact of the "pink pound" which took advantage of Ireland's booming market economy and disrupted Irish economic policy. These economic factors disrupted Irish civil society by evolving Irish identity into one that is fundamentally capitalist. While the 2008 recession slowed the gay rights movement, the economy recovered and gave the movement the momentum that it needed to legalize domestic partnerships and then gay marriage in 2015. It is important to note that many conservative MPs attempted to slow down the progress made by activists by using the law in their

favor and forcing a referendum. However, movement activists focused on transforming the social consciousness which was achieved by challenging and reconceptualizing Irish culture and identity.

This research does not acknowledge all aspects of the Irish gay rights movement, but it does take into account the impact of the AIDS crisis and economic factors. These notable components of the movement disrupted politics, society, the economy, and the religious identity of Ireland. Disruptions in these areas led to the opening of political, legal, and economic opportunity structures which movement activists took advantage of to advance gay rights in Ireland.

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