

SUBMISSION
TO THE CONSTITUTIONAL CONVENTION
ON “SAME SEX MARRIAGE”
FROM Bishop Christopher Jones on behalf of the Council for
Marriage and the Family of the Irish Catholic Bishops’
Conference

March 13th 2013

Introduction

1. The Council for Marriage and the Family of the Irish Catholic Bishops' Conference (*hereafter* 'the Council') welcomes the opportunity to make a submission to members of the Constitutional Convention on the vital protection afforded to the institution of marriage in *Bunreacht na hÉireann* in advance of the Convention's consideration of this important theme on 13 April 2013.
2. What is presented here is a preliminary submission. Given the fundamental nature of the issues involved and the relatively short time between the public request for submissions and the submission date, the Council would welcome the opportunity to make an oral submission to the Convention in due course.
3. The Council also asks that sufficient time be given for a society-wide discussion of the fundamental importance of the family based on marriage 'as the necessary basis of social order and as indispensable to the welfare of the Nation and the State' (Art. 41.1.2), before any action is taken by the Convention or by Government that would alter the existing Constitutional understanding of marriage and the protection of it. Of all the articles of the Constitution, Article 41.3.1 places one of the most strongly expressed duties on the State to protect the particular values enshrined in the Article and related clauses. It specifically requires the State to guard the institution of marriage with 'special care' and 'protect it against attack'. It is therefore essential that sufficient time is given to evaluate not only the ethical and legal probity of any change to the existing Constitutional definition of marriage but also the potential impact it will have on the relationship between the family and the State, notably in relation to the rights of children.

Marriage is a unique union

4. Marriage is a unique union, a relationship different from all others. In marriage, a woman and man promise love and fidelity to each other, for better, for worse, for richer, for poorer, in sickness and in health as long as they both shall live. They declare that their commitment is stronger than any challenge which may face them in the future. This committed married love provides a stable and nurturing environment for children. It is here that children receive the most important and lasting education of all. They learn how to be a member of a family and of society.

Marriage is not merely a private institution. It is the intimate cradle of life and love where children learn the values and actions that will make them good citizens.

Marriage and the family as 'the necessary basis of the social order' (Art 41.1.2)

5. Article 41.1.2 of *Bunreacht na hÉireann* identifies the family based on marriage as, 'the necessary basis of the social order and is indispensable to the welfare of the Nation and the State'. The changes to marriage and family in recent decades have not alone been profound but rapid to an unprecedented degree. These changes and challenges which face marriage and family life in Ireland at present include the following: Major increase in cohabitation, especially over recent decades; high proportions of lone parents; high incidence of marital and relationship breakdowns, sometimes contributing to child poverty; reduced economic capacity to have the desired number of children; affordable child care; increased need for family care of elderly relatives and those with disabilities. The Church considers that the impact of these changes and challenges should be fully taken into account in evaluating any proposals to change the Constitutional provisions relating to marriage and the family.
6. Specific legal protection for families is provided in our Constitution and in the international instruments Ireland has ratified, e.g. the Universal Declaration of Human Rights, regarded by many as the *Magna Carta* of human rights principles. It affirms the right of all 'to marry and to found a family' and links this explicitly to the family as 'the natural and fundamental group unit of society'. On this basis it affirms that the family based on marriage 'is entitled to protection by society and the State' (Article 16). Article 16 of the Social Charter of Europe (1961), Article 23 of the International Treaty on Civil Rights, Article 10 of the Charter on Economic, Social and Cultural Rights as well as many other national and international instruments similarly recognise and affirm the essential link between marriage, the family and the welfare of the State itself.
7. The significance of this long established and widespread recognition of the link between marriage, family and the welfare of the State is twofold.

8. Firstly, the Constitutional protection of marriage derives from the very nature of marriage itself. Marriage is an institution that flows logically from the complementarity of gender in women and men and the clear and objective purpose of this complementarity in terms of the generation and care of children. Sexual complementarity as women and men, in all its physical, psychological, emotional and spiritual dimensions, has a specific and logical purpose innate in the institution of marriage. It is worth referring here to the Civil Registration Act 2004 Article (2) (2) (e) which states that “there is an impediment to a marriage if both parties are of the same sex.”
9. Secondly, the irrefutable interest of the State in ensuring the good of marriage, and through it the good of the State is such that the question of the definition of marriage cannot be limited to a concern for the rights and freedoms of individuals alone. A key responsibility of the State, through its laws, is to protect the wider good of society, often by limiting the freedom of individuals because a wider good is at stake. In this regard it is worth noting that recent case law has confirmed that there is no legal right to same-sex marriage under the European Convention on Human Rights, and that a State is free to make differing arrangements for marriage and alternative legal provisions for same-sex unions (*Gas & Dubois v. France* 15 March 2012; *Schalk & Kopf v. Austria* 24 June 2010)¹.

The Nature and Purpose of Marriage

10. The institution of marriage has intrinsic characteristics which contribute not only to the building up of the union between husband and wife but also to the relationships they have with any children of their marriage and to the society in which they live. In this way marriage is uniquely related to the common good. It does not exist solely for the good of an individual and cannot be adequately understood in terms of the pursuit of individual rights.

¹ <http://www.coe.int/t/dghl/standardsetting/media/Article%208/Gas%20and%20Dubois%20v.France.pdf>; <http://cmiskp.echr.coe.int/tkp197/viewhbk.asp?sessionId=80038299&skin=hudocen&action=html&table=F69A27FD8FB86142BF01C1166DEA398649&key=6527&highlight=>

11. The nature and definition of marriage therefore, derives from the very fact that we exist as human persons as male and female and that this physical, emotional, psychological and spiritual complementarity has a purpose. To suggest that it is irrelevant would be irrational and would deny our very nature as human beings. Our complementarity as male and female is objectively, clearly and logically ordered toward the union of a woman and a man for the specific purpose of love and mutual support.
12. Marriage is not simply a private arrangement. It is also a social institution. No other form of relationship – friendship for example – is given the status of an institution. Marriage as a social institution receives certain recognition, rights, benefits and obligations that are unique to it. It is these that make it an institution.
13. The marriage of a man and a woman receives this status because marriage is uniquely pro-child. Marriage as a social institution has evolved mainly for the benefit of children. This is not the same as saying that marriage exists only for children, or that people marry simply in order to have children. People marry because they love each other. But children are the main reason why marriage receives special support and even though some married couples cannot or will not have children, the vast majority of married couples will have at least one child during their lives together.
14. Many of our natural inclinations can be developed and accomplished through our own efforts: For example, by our individual efforts we can fulfil our inclinations towards preserving our health, satisfying our hunger or discovering the truth. But the inclination, natural desire and capacity towards procreation of children and the creation of a family unit based on the complementarity of a mother and father can only be fulfilled through the union of a woman and man in marriage. Despite the fact that with the advent of new reproductive and other technologies other ways of achieving this fulfilment are available – for example through artificial means of insemination and reproduction – in the end they must all be achieved through male and female genetic parents.
15. The inclination towards co-creation is obviously keenly felt by all human beings, including those with same-sex attraction but couples of the same sex lack the capacity to procreate through their union. Accordingly, attempts to equate same-sex unions with marriage will always ultimately fail because it is objectively impossible

for homosexual couples to achieve the same natural end toward which the sexual complementarity of male and female is ordered. Therefore, were society to treat same-sex relationships and marriage as the same and therefore 'equal' would be to suggest that same-sex unions can be something that they are not.

The argument about equality

16. A key aspect of the argument for Constitutional change to the definition of marriage is made on the grounds of equality. The Catholic Church, respecting the dignity of every human person, is opposed to all forms of unjust discrimination and affirms the importance of treating everyone, whatever their sexual orientation, with equal dignity and respect, in particular, violence, bullying or any other form of maltreatment of someone because of their sexual orientation is to be completely condemned. However, defining the institution of marriage as a voluntary union of one man and one woman does not constitute unjust discrimination since it is simply a consequence of the specific and defining characteristic of the institution of marriage.
17. The principle of equality acknowledges that we must treat similar situations similarly but that we can also treat different situations differently. The institution of marriage between a woman and a man has special standing because it is uniquely beneficial to children.
18. Same sex relationships, which may be an expression of mutual love, do not have the same generative capacity and natural complementarity as that provided by marriage between a woman and man who are the biological parents of their children.
19. The argument for a change to the definition of marriage is sometimes based on the perception that marriage is essentially a matter of love and commitment between two people. The argument goes that this love and commitment can be both shown and experienced by a same-sex couple in the same way as a heterosexual couple and therefore the State should recognise both as constituting marriage. Marriage, however, is about a great deal more than simply love and commitment, whether within a legal framework or without it.

20. Clearly, there are many forms of relationship which demonstrate love and commitment yet are not treated in the same way as or equal to marriage. An unmarried adult may share a home with an aged parent and care for them; this is a demonstration of love and commitment but is not akin to marriage. Similarly, two siblings may live together, pooling their financial resources and sharing their interests; this too demonstrates love and commitment but is not akin to marriage.
21. Moreover, unmarried couples, single parents and adoptive parents provide loving homes, devoted care and a good upbringing for children, often in difficult circumstances. However, the distinctive legal recognition given to marriage by the State arises primarily because the institution brings unique qualitative benefits for the children of that marriage and to society. A substantial body of research shows that the best outcomes for a child are most likely to be found where a child has two parents, a father and a mother, who are bound to each other in a stable marriage.² This confirms what many of us know instinctively, that stable marriage between biological parents is uniquely beneficial to children and to society. In the words of the organisation in the United States called *Child Trends*;

*Research clearly demonstrates that family structure matters for children, and the family 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 marriage between biological parents.*³

22. A society that believes in giving priority to the welfare of children will seek to protect and actively promote marriage understood in this way as it is in the best interests of children and ultimately of society itself. While it is clearly the case that some individual marriages may be dysfunctional and harmful to children, this is so and will always be the case in any other form of family unit and is not a reason to undermine the traditional institution of marriage itself.
23. Note too that the Church endeavours to be sensitive in its pastoral care to those couples who find it difficult to conceive and who experience difficulties in their marriage relationship.

² See, for example, *Why is the Government anti-Marriage?*, UK Centre for Social Justice, December 2009.

³ Kristin A Moore Ph.D, Susan M Jekielek & Carol Emig, *Marriage from a Child's perspective: How does family structure affect children and what can we do about it?*, Child Trends Research Brief, Washington 2002.

24. The relationship constituted by the institution of marriage is distinct from all other human relationships. Its unique distinguishing characteristics centre on the biological complementarity of male and female and on the possibility of children. As Professor R.P. George of Princeton University has put it:

Marriage is the community formed by a man and woman who publicly consent to share their whole lives, in a type of relationship oriented toward the begetting, nurturing and educating of children together. This openness to procreation, as the community's natural fulfilment, distinguishes this community from other types.⁴

25. This unique aspect of being able to bring human life into the world is necessary for the advancement of society. No society can go forward without new human lives. In fact, every society is built on the family based on marriage between a biological mother and father because it is the source and first context for these new lives. This social and procreative understanding of the institution of marriage as a stable and loving relationship between a woman and a man, open to and ordered towards the generation and nurturing of children, predates all the cultures and societies of today.

26. Recognising the unique nature and role of marriage has never prevented the development of other forms of friendship and interdependence within those cultures and societies and there has never been any suggestion until very recently that they be given the same name or status as 'marriage'. Marriage based on the complementarity of male and female, recognising the irreplaceable role of a mother and father in the nurturing of children has always been recognised as unique and distinct from all other forms of human relationship and as having a vital role as the fundamental unit of society.

⁴ *In Defence of Natural Law*, Oxford, 1999.

Key questions for the Constitutional Convention

27. The burden of establishing that homosexual unions are of the same nature as heterosexual marriage and contribute in an equal way to the common good of society rests with those who wish to alter the definition of marriage in the Constitution.
28. The Catholic Church's position is clear; it does not give recognition to any other partnerships or legal unions as having an ethical or legal equivalence with marriage. The Church opposes therefore a change in the definition of marriage to include same-sex couples or other forms of relationship other than that of the relationship between one woman and one man. We believe that it would be damaging to the common good should civil law render same sex unions equivalent to marriage.
29. It is important to note that in Ireland the Church and State co-operate closely in the solemnisation of marriages and that in excess of 70% of marriages in the Republic of Ireland are celebrated by couples choosing the Christian celebration of marriage with both elements taking place within the same ceremony. Any change to the definition of marriage would create great difficulties and in the light of this if there were two totally different definitions of marriage the Church could no longer carry out the civil element.
30. Marriage as the foundation of the family exists prior to the State and has its own legitimate and established nature and identity. The State therefore exists to serve marriage as the foundation of the family. Indeed, current Constitutional provisions acknowledge that the State has a duty to preserve and promote marriage as an institution that precedes the State.
31. Laws have a normative and pedagogical function. They encourage and teach people to see and understand things in a particular way and help shape the development of public attitudes and morals. Changing the Constitutional definition of marriage to include same-sex unions would, over time, inevitably influence how society as a whole understands marriage. Marriage would be reduced to an arrangement of the sexual relationship of any two people. It would cease to be the institution upon which the family, and therefore society itself is founded.

Conclusion

32. The family is the original cell of social life. It is the natural society in which husband and wife are called to give themselves in love and in the gift of life. Authority, stability, and a life of relationships within the family constitute the foundations for freedom, security, and fraternity within society. The family is the community in which, from childhood, one can learn moral values and make good use of freedom.

33. Marriage is a pre-political and natural institution that arises from our very nature as human beings. It is therefore important that members of the Constitutional Convention approach the question of potential change to the Constitutional understanding of marriage in terms of an assessment of the nature of marriage itself and of its fundamental relationship to society

ENDS.