

THE IONA INSTITUTE

**Submission to the Convention on the
Constitution on
Article 41.3.1: Marriage**

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Introduction

This submission sets out why we believe the constitutional provision on marriage should not be changed.

- We argue that the institution of marriage is mainly child-centred, not adult-centred and that the debate about marriage should centre on the interests of children, not adults.
- We argue that the marriage of a man and a woman is uniquely pro-child and therefore it is not discrimination or a breach of the principle of equality to give it unique treatment.
- We show that demands for same-sex marriage inevitably cause us to lose sight of the ideal of having a loving mother and father and of the importance of the natural ties between parent and child. This would be a very great loss and is the chief harm redefining marriage would cause.
- We show the immense implications of same-sex marriage for freedom of religion, a second harmful effect of the redefinition.
- We argue that the rights of gay people and their children, and that of other families as well, can easily be secured without changing the definition of marriage.
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Who does marriage have special status?

Article 41.3.1 of Bunreacht Na hEireann commits the State to “guard with special care the institution of marriage”. This effectively recognises the special status of marriage.

Why does marriage enjoy this special status, what do we mean by ‘special status’, and what do we mean when we describe marriage as an ‘institution’.

By ‘special status’ we mean that marriage enjoys social approval as well as financial and legal protections that are unique to it. This special status is what makes marriage an institution in a way that say friendship (as important as friendship is) is not.

The key question is whether there is something about marriage that justifies giving it special status. Is there something about marriage that is uniquely beneficial to society and above all to children?

The social sciences confirm what every known society in the world has known instinctively, namely that marriage between a man and a woman is uniquely beneficial to society and to children. This is the case even though some individual marriages may be dysfunctional and harmful to children (as can any other type of family).

One of the most important child research organisations in the United States is Child Trends, which is centrist in its politics and ideological outlook.

It produced a paper in 2002 called 'Marriage from a Child's Perspective: How Does Family Structure Affect Children and What Can We Do About It?'

This summarises what the social sciences have to say about the matter.

The summary is as follows: "*Research clearly demonstrates that family structure matters for children, and the family structure 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.*"

A great deal of additional material is available that attests to this fact.

Note the various elements in the above summary. There are two parents. The parents are the biological parents, that is, the mother and the father. They are married.

The research demonstrates why a truly child-centred society will continue to give marriage between a man and a woman special status and will not see this as unfair and unjustified discrimination.

Those who insist, in the name of 'equality', that marriage between a man and a woman should no longer have special status have to ignore or downplay the importance to a child of having their own loving mother and father married to one another and active and engaged in their lives. In fact, gay marriage advocates do indeed downplay or deny altogether the importance of mothers and fathers.

The institution of marriage is child-centred not adult-centred

The fact that marriage as a social institution is essentially child-centred is also crucial. In many debates about marriage we tend to think of it in adult-centred terms.

But marriage does not have special status because of adults. It has special status because of children. Clearly marriage is also about the love that exists between two people, but love can exist in many relationships and can be sexual or non-sexual in nature.

These do not have special status and show that love alone is not the principle reason why the institution of marriage has special status. Children are the principle reason for that.

Of course, it is rightly pointed out that not all married couples have children. However, this no more takes away from the essence of what the *institution* of marriage is than does the fact that some people marry out of convenience, not love.

In any case, much more important than the fact that some married couples don't have children is that all children have a mother and a father. This is a basic fact of nature even if the father is a sperm donor or the mother an egg donor.

Also, we must distinguish between *individual* marriages and the *institution* of marriage. It is the *institution* that is child-centred. It is the welfare of children that the *institution* has primarily in mind even if every individual marriage does not result in children.

Why the special status of marriage is not discriminatory

Is changing the definition of marriage a matter of equality? The short answer is no.

The principle of equality says that we must treat similar situations similarly but that we can treat different situations differently.

If the marriage of a man and a woman is uniquely pro-child then it is entirely justifiable to treat this form of marriage uniquely.

This does not denigrate families headed by a single mother, a single father, a cohabiting couple or a same-sex couple.

The special status accorded to marriage in no way suggests that those families are in some way less capable of love than the married family. A cohabiting couple can love each other at least as much as a married couple. A same-sex couple can love each other as much as a married couple.

A single mother can love her children every bit as much as a married mother and father.

For these and other reasons, all people in caring, dependent relationships deserve legal protection, including gay couples.

However, to repeat the point made above, the institution of marriage between a man and a woman has special standing because it is uniquely beneficial to children, all other things being equal.

What's the ideal: Loving parents or a loving mother and father?

We have to decide in our own minds whether we think the institution of marriage is mostly child-centred or adult-centred.

Some advocates of same-sex marriage are willing to concede that it is mostly child-centred. But they then say that having a mother and a father isn't as important as having loving parents.

We need to examine the implications of this.

Certainly it is better to have two loving parents of the same-sex (or one loving parent for that matter) than to have an abusive mother and father.

However, the real question is this; it is better to have two loving parents, or your own loving mother and father?

Demands for same-sex marriage often rest on the two-fold claim that it would confer equal status on same-sex couples while doing no harm to the institution of marriage itself, let alone to individual marriages.

Two responses can be given to this line of reasoning. The first, as already mentioned, is that it is not discrimination to give marriage between a man and a woman special status because of the uniquely pro-child characteristics of man/woman marriage.

The second claim, that redefining marriage would do no harm to the institution, is belied by the very nature of the debate itself.

Advocates for same-sex marriage either depict marriage in an adult-centred as distinct from a child-centred way, or else they claim that having loving parents is just the same as having your own loving mother and father.

It is important that we understand just how radical this second claim in particular is.

If we say that having loving parents is just the same as having your own loving mother and father then we are saying two things.

The first is that the natural ties between parents and their own biological children are of no real consequence.

This is a remarkable assertion. We know that many adopted children seek out their natural parents in later life.

We also know that many children who are conceived through egg or sperm donation, or both, also seek out their natural parents in later life.

Finally, and referring back to the research quoted by Child Trends, it is the family consisting of two married, *biological* parents, that generally provides the best outcomes for children.

The second claim is that the sex of the parents is of no importance. This, of course, is a denial of sexual complementarity, a denial that there are any real differences between mothers and fathers and that there is any value from a child's point of view in being raised by a loving mother and father, let alone their own.

Thus, acceptance of same-sex marriage logically forces us to accept a radically different view of parenthood and the family.

We are forced to deny the importance of the natural ties and the special value of motherhood and fatherhood.

Furthermore, the claim is made that those who believe in the importance of these things are guilty of 'homophobia'.

Thus we arrive at a point where believing in the value of the natural ties and in the special value of having a loving mother and father is denounced as 'bigotry'.

Is this right? While it is right and proper for society to give gay people legal protection and recognition must this come at the price of redefining marriage and in so doing denying that having a loving mother and father is the ideal for a child?

The consequences for freedom of religion

Apart from radically changing our understanding of the institution of marriage, same-sex marriage will have very far-reaching consequences for religious freedom. Some of these consequences have already unfolded in other countries even before the introduction of same-sex marriage.

For example, in Britain Catholic adoption agencies have been forced to close because they do not believe in adoption by same-sex couples.

In the US, churches have been successfully sued because they would not rent their halls to same-sex couples wishing to hold their civil union receptions (as distinct from the ceremony itself) in those halls.

Here in Ireland, a civil registrar can go to prison for up to six months if they have a conscientious objection to civil partnerships, or in the future, to same-sex marriage. It might be objected that they have to do their job. However, in countries such as the UK, the worst they can face is the sack. So our law is particularly draconian.

In Denmark, the Lutheran Church (a State Church) is now obliged to permit same-sex marriage ceremonies in Churches.

The head of Britain's biggest gay rights organisation, Stonewall, has said that in years to come, all Churches should be forced to do the same.

Fears have been expressed that in the future denominational schools could be forced to teach the new view of marriage irrespective of their beliefs.

Of course, some people will insist that this should happen in the name of 'non-discrimination'. However, this only illustrates how threatening moves to permit same-sex marriage are to freedom of religion.

Essentially, open belief in the traditional definition of marriage will become ever more circumscribed by law. In other words, legalising same-sex marriage does not affect only same-sex couples but will attack the freedom of those with contrary beliefs.

The principle of 'equality' logically means marriage should not have special status at all

This has already been alluded to above. But if we are motivated to redefine marriage purely by a certain concept of equality, then the special status of marriage in any form (including same-sex marriage) makes no sense.

The reason for this is that the special status of marriage itself can be seen to be anti-equality. Therefore the Convention, if it accepts the 'equality' argument without qualification, should recommend deleting the provision on marriage entirely because it commits the State to guarding

marriage with “special care” and does not commit the State to giving the same protection to other forms of family, including single-parent families.

This logic can only be resisted if we believe there is something unique about the relationship between a man and a woman and also if we believe in the special value of motherhood and fatherhood.

Research on children raised by same-sex couples

Some research seems to indicate that children do just as well when raised by a loving same-sex couple as they do when raised by a loving mother and father.

Some of this research is attested to by the American Psychological Association.

However, this research is invariably flawed in some way. For example, the samples relied on are small, and they are usually non-random.

These flaws led Justice Elizabeth Dunne to say in 2006 in the Zappone/Gilligan case in the High Court (which was an attempt to have a same-sex marriage entered into in Canada recognised in Ireland):

“The phenomenon of parenting by same-sex couples is one of relatively recent history. The studies that have taken place are consequently of recent origin. Most of the studies have been cross sectional studies involving small samples and frequently quite young children. I have to say based on all the evidence I have heard on this topic that I am not convinced such firm conclusions [that children fare just as well in gay and lesbian-headed households] can be drawn at this point in time”.

Rights of children raised by same-sex couples

Obviously every child raised by a same-sex couple must have a biological mother and father or it would not exist. Children raised by same-sex couples are normally raised by lesbian couples and frequently that child has come from a previous heterosexual relationship.

In most of the remaining cases the child has resulted from a sperm donation.

Whether sperm and egg donation should be permitted at all is a question for another day, but the rights of children raised by same-sex couples can be secured by changing our guardianship laws. A change to the definition of marriage is not required.

Conclusion

There will be a strong temptation to recommend changing the definition of marriage because it will be seen as the ‘progressive’ and ‘tolerant’ thing to do. It will be seen as a victory for equality.

This submission has argued that the relationship between a man and a woman has unique characteristics that deserve unique treatment in a special social institution.

It should be self-evident that a couple comprised of man and a woman is different from a couple comprised of a man and a man or a woman and a woman.

The most important difference is that only men and women can have children together and offer a child a mother and a father.

Marriage in its present form acknowledges the importance of these differences. If we make marriage gender-neutral we will no longer acknowledge by way of a special social institution that these differences are important to children or to society.

Curiously, the gay-marriage movement, which tells us to 'celebrate difference' will not acknowledge the important differences between men and women and mothers and fathers.

Marriage in its present form does that and it is why we should not redefine it.

ENDS