



# Church of Ireland

Meeting with the All-Party Oireachtas Committee on the  
Constitution on Articles 40.3, 41, 42.1 and 42.5 of the  
Constitution relating to the Family

April 2005

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## **Meeting with All-Party Oireachtas Committee on the Constitution**

### **Articles 40.3, 41, 42.1 and 42.5 relating to The Family**

**Tuesday 26<sup>th</sup> April 2005.**

*(Rt Revd M G StA Jackson, Bishop of Clogher)*

By way of setting the context, we begin with some background information about the Church of Ireland. The Church of Ireland forms a Province of The Anglican Communion. It was dis-established in 1870. It is autonomous. It is also a member of the Anglican Communion along with, for example, the Church of Kenya, the Church of Sri Lanka, the Episcopal Church of the United States of America. Like them and other such Churches it maintains communion with the Church of England. The current difficulties within ECUSA and the Church of Canada which overlap with some of the questions asked by the Committee are not germane to the Church of Ireland and its polity although they are of concern in the Communion of which we are part. The Church of Ireland – in common with other Churches in Ireland – has no ‘special position’ constitutionally in Ireland.

The language of ‘natural law’ is applied in very diverse ways. Strictly speaking the level of agreement about its content extends no further than to the general idea that good is to be done and evil avoided. This means that ‘natural law’ may indeed underwrite morality as such but may not properly be used to underwrite a particular moral code over against another such code as if in competition with it. In some quarters it has through time and application acquired a highly confessional perspective. This is not correctly part of its origins

Legally the Church of Ireland is described in The Preamble and Declaration adopted by The General Convention of 1870 as follows:

*‘The Church of Ireland, deriving its authority from Christ, Who is the Head over all things to the Church, doth declare that a General Synod of the Church of Ireland, consisting of the archbishops and bishops, and of representatives of the clergy and laity, shall have chief legislative power therein, and such administrative power as may be necessary for the Church, and consistent with its episcopal constitution.’*

The doctrine of the Church of Ireland has, by tradition, been expressed in its liturgy and worship. In our current context much of its understanding of marriage will be found in the two forms of The Marriage Service in The Book of Common Prayer and in particular in the Introduction to both of these services. Expressing ‘*the causes for which matrimony was ordained*’ the older form gives three:

*First for the increase of mankind, according to the will of God ...;*

*Secondly for the hallowing of the union betwixt man and woman ...;*

*Thirdly for the mutual society, help, and comfort, that the one ought to have of the other, both in prosperity and adversity.*

The newer form offers a different emphasis simply by virtue of the order in which the purposes of marriage are set out in sequence:

*... that husband and wife may comfort and help one another ...;*

*...that with delight and tenderness they may know one another in love ...;*

*... that they may be blessed in the children they may have ...;*

*...begin a new life together in the community...*

In this way the language of the liturgy gives voice to the teaching and understanding of the church. Within the system of belief which forms the weave of the Church of Ireland, marriage itself expresses to society something of the union between Christ and the church. This is the contribution which those who participate in marriage in this tradition make, along many other people in different circumstances, to the life of the nation.

We are not here with the intention of being prescriptive. In representing the Church of Ireland we do so in a specific way as follows. The submission made in January 2005 was debated and approved by the Standing Committee of the General Synod. Such a body performs within it a wide range of views. The Church of Ireland operates in this regard as a parliamentary democracy with the expressed element of consensus in doing its business. What is communicated today is a continuation of its response.

From the above it will be clear that marriage is seen as an optimal state of two people being together – for a specific purpose both human and theological. However we feel that the confident assertion of the optimum does not preclude our espousing within the Church of Ireland the cause of those for whom the optimum is not a lived reality. Furthermore there are *de facto* families which do not accord with what we might call the procreative nuclear family model, for example: two brothers/two sisters/sister and brother living in the same house. Again, there are domestic situations which perform function as families which do not accord with the liturgical definition of marriage, for example: a man and a woman living together each with children from an earlier relationship and also a child from their relationship with one another. These are real human situations, often full of difficulties for those who are part of them. We feel that we are not precluded from highlighting the situation of family groupings as herein outlined and seeking assurance that in the Constitution their needs and insecurities are addressed. In our opinion this ought to be in such a way that appropriate provision be made for their well-being and pertinent to their circumstances although not necessarily equal to that made for those who are married. Our feeling is that the State ought to make marriage itself a specifically attractive way of life thereby enabling it to make a contribution to the stability and welfare of society in general and to the whole being of society as all participate and engage in it.

The remainder of this presentation relates to our written submission of January 2005.

First, many family law cases express and expose situations of human delicacy and tragedy. We underline the necessity of transparency along with the safeguarding of privacy out of respect for the persons engaged in the legal process. We therefore welcome the Minister for Justice's announcement widening the range of appropriate persons who may attend family law cases. We also urge a speedy implementation of this provision together with a comprehensive system of gathering and publishing statistics to assist policy making and clear debate on sensitive issues. The vast proportion of civil Legal Aid is in family law cases. On the principle of 'justice delayed is justice denied' we urge that sufficient monies be made available regularly for appropriate Legal Aid.

Secondly, the definition of what constitutes a family has changed *de facto*. There is in society a major difference between the family and marriage. Our request of the Committee is that in relation to practicalities for which legal provision can be made: no-one should be disadvantaged by being married. It is in light of such features of Irish society that we encourage the Committee to consider seriously the UN definition of the family in its deliberations.

Thirdly, when it comes to the question of rights, our conviction is that the balancing of rights is essential in the working definition of a mature democracy. The spirit of altruism and the generosity of engagement is to be found in the balancing. The feeling of the Church of Ireland is that the balancing of the rights of the unit and the rights of the individual needs to be kept under review. Over-emphasis on either will provide an imbalance. Furthermore, where there are no explicit rights, there can be no balancing and therefore the mutuality of rights cannot come into play. For example, the whole legislative side of Child Protection needs to be kept under review as further examples of good practice and bad practice come to light. In our opinion the assumptions within the State's overlapping of the institution of marriage with the unit of the family need to be examined in light of the fact that the existing definition does not work for an increasing number of people. To highlight the rights of the most vulnerable members of the family unit, that is children, we recommend the express guarantee in the Constitution of the rights of the child.

Fourthly, the outline of the understanding of marriage within the Church of Ireland given above as expressed in the two Marriage Services means that the concept of so called 'gay marriage' is not one which is part of current definitions. At the same time we have pointed out in the submission that Constitutional protection would be given to a same-sex couple were the broad definition of the family favoured above to be used. However, for the Church of Ireland this would not be a marriage. We maintain that in any distinctive civil ceremony for which legal provision is made the language of marriage be avoided.

Fifthly, our suggestions relating to the rights of a natural father are consistent with the thinking outlined above. Rights are a question of balancing. Gratuitous inequality between mother and father should be avoided. In the specific case of rights of a natural father, these need to be established specifically on the basis of his demonstrating that he has endeavoured to establish and maintain a proper and loving relationship with his child(ren). Much is already secured in this area. This is welcomed as it introduces the concept of parenting over against the automatic assumption that motherhood is a form of parenting superior to fatherhood. In all of this the best interests of the child must be paramount. Hence our drawing attention, as examples, to the inappropriateness of automatic rights for the natural father in a case of rape or incest.

Sixthly, as we have recommended that the Committee look seriously at the expression of the UN definition of the family, we also suggest a serious look at the UN convention on the rights of the child.

In all of this we seek to set out the position of the Church of Ireland; to suggest that there are areas of *de facto* family life and domestic arrangements which fall outside the assumptions of marriage-cum-family and that these areas are entitled to appropriate legal protection; to

articulate our concern that the civil society of which members of the Church of Ireland are part deal fairly in its legal provision with those whose domesticities fall without as well as within our understanding of the family. Society is broader than our definitions and provisions for our members but we feel that the inclusive spirit of the Church of Ireland can and does contribute to the good of our society. Our submission is made in that vein.

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(Mr S Harper)

- Firstly, we are aware of how many family law cases often express and expose situations of human delicacy and tragedy. We emphasize the need for transparency along with the safeguarding of privacy out of respect for the persons engaged in the legal process. We therefore welcome the Minister for Justice's announcement widening the range of appropriate persons who may attend family law cases and urge a speedy implementation of this provision. We also call for a comprehensive system of gathering and publishing statistics to assist policy making and clear debate on sensitive issues.
- The definition of what constitutes a family has changed. There is in society today a major difference between the family and marriage. We therefore encourage the Committee to consider seriously the UN definition of the family in its deliberations. We believe that this definition of the Family as "*Any combination of two or more persons who are bound together by ties of mutual consent, birth and / or adoption or placement and who, together, assume responsibility for, inter alia, the care and maintenance of group members, the addition of new members through procreation or adoption, the socialisation of children and the social control of member*", accurately encapsulates most family situations. We feel strongly about the need for the State to protect all of those in mutually caring relationships; e.g. siblings living together, long-term carers and others who have found themselves disadvantaged *vis a viz* others, particularly on the death of one of the parties.
- We believe that the balancing of the rights of the unit and the rights of the individual needs to be kept under review. We want to see the natural mother continue to have Constitutional protection, albeit under Article 40.3 rather than Article 41 as at present. To highlight the rights of the most vulnerable members of the family unit, that is children, we recommend the express guarantee in the Constitution of the rights of the child to ensure that that in all actions concerning children, paramount consideration will be given to the best interests of the child. We endorse the U.N. Convention on the Rights of the Child, and strongly urge the Committee to look seriously at the recommendations contained therein.
- Our request of the Committee is that in relation to practicalities for which legal provision can be made: no-one should be disadvantaged by being married. The outline of the understanding of marriage within the Church of Ireland as expressed in the two Marriage Services means that the concept of so called 'gay marriage' is not one which is part of current definitions. At the same time we have pointed out in the submission that Constitutional protection would be given to a same-sex couple were the broad definition of the family favoured above to be used. However, for the Church of Ireland this would not be a marriage. We maintain that in any distinctive civil ceremony for which legal provision is made the language of marriage be avoided.

- We have proposed change in Article 41.2.1. and 41.2.2. in order to ensure that *any* family member caring for others within the home may enjoy the support of the state.
- Too much inequality between mother and father should be avoided. In the specific case of rights of a natural father, these need to be established specifically on the basis of his demonstrating that he has endeavoured to establish and maintain a proper and loving relationship with his child(ren). In all of this the best interests of the child must be paramount. Hence our drawing attention, as examples, to the inappropriateness of automatic rights for the natural father in a case of rape or incest.

Society is broader than our definitions and provisions for our members but we feel that the inclusive spirit of the Church of Ireland can and does contribute to the good of our society. We thank you again for allowing us this opportunity to address your committee. Individual members of our group will now be glad to respond to any questions you may have.