Can mini-publics make legitimate constitutions?

A public reason study of the Irish Convention on the Constitution
Abstract
This thesis examines the abilities of constitutional mini-publics to make legitimate constitutions. Legitimacy in this thesis is defined as following the ideal of public reason. It is a quantitative study of the third weekend of the Irish Convention on the Constitution (a constitutional mini-public). They deliberated on and recommended amending the Constitution to allow same-sex marriage. Previous research into the legitimacy of constitutional mini-publics has been limited to studying their form, for example, participant selection or decision-making process. This thesis analyses the content of the deliberation. A series of theme analyses were performed to discover the reasons used. The reasons were categorised as public or nonpublic. The Convention on the Constitution justified all their decisions with public reasons. Showing constitutional mini-publics can make legitimate constitutions based on the ideal of public reason under the right circumstances.
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1. Introduction
Since the summer of 2010, an increasing number of states have included average citizens in the constitution-making process. This trend started in Iceland with 1000 randomly selected citizens gathered to deliberate on and establish “the principal viewpoints and points of emphasis of the public concerning the organisation of the country’s government and its constitution” (Landemore 2020a: 159) and by doing so, kickstarting the review and subsequent proposal of a new Icelandic constitution. The new document was then put to a referendum and won by a two-thirds majority. The newly proposed Constitution was put forth to Parliament in 2013 and has yet to be signed. Though the process seems to have failed to replace the existing Icelandic Constitution, it won a large majority referendum. It showed a radical turn in the constitution-writing process and started a new trend in constitution-making in countries such as Estonia, Luxembourg, Romania, and Belgium (Landemore 2020a: 158-160, prologue xv; Suiter & Reuchamps 2016: 1).

The most notable event in this new trend in constitution-making took place during the 2011 Irish election campaign. Many parties had promised political reform which resulted in the institution of the Irish Citizens’ Assembly (Suiter et al 2018: 142). The first assembly, the Convention on the Constitution, was held in 2012-14 and consisted of 66 randomly selected Irish citizens, 29 members of the Oireachtas (the Parliament of the Republic of Ireland), four representatives of parties from Northern Ireland’s Parliament, and a chairperson. The goal of the Convention on the Constitution was to consider possible changes to the Constitution and make recommendations (Citizens Information 2021). The most notable result of the Convention on the Constitution was a referendum in 2015 on same-sex marriage. The referendum ended with 79% in favour of introducing same-sex marriage. A notable difference from the Icelandic referendum is that an Irish constitutional referendum is binding. Should it pass with a simple majority, the president must sign it into law (Suiter et al 2018: 143). The Convention was so successful they decided to do another similar event in 2016. The Irish cases resulted in Constitution changes legalising same-sex marriage and abortion in the historically conservative Ireland, causing some scholars to ask if this marks the death of conservative Ireland (Elkink et al 2018). This thesis will analyse the use of public reason in the Convention on the Constitution.

These are all examples of “mini-publics”, a concept first developed by Robert A. Dahl in “Democracy and its critics”. Dahl did, however, call them “minipopulus” (Harris 2019: 45). Mini-
publics typically consist of between 20 to 1000 people who are generally randomly selected. They then deliberate on one or a handful of topics on the short end for one “deliberation day” on the long end over 12 weekends over six months, as in the second Irish Citizens’ Assembly. The authority and power of mini-publics also range from consultative, as in the examples above, to as in the now famous case of Porto Alegre in Brazil, where mini-publics set part of the city budget in "participatory budgets" (Marquetti 2012: 62-63).

A mini-public generally has five stages. First is the planning and recruitment stage, in which a government committee ensures the process is fair and high-quality. The second stage is the Learning stage, in which the participants learn independently through information packages provided to them. Following the learning stage is the deliberative phase in which impartial facilitators aid the participants (who at this point, usually are divided into smaller groups) deliberate among themselves on the topic at hand. After the deliberation phase comes the decision-making phase, in which a final report, recommendation, or decision is formed. The decision-making is done through further deliberation and then either consensus or a vote. The last stage is the follow-up. The point of this stage is to ensure the impact of the mini-public by, for example, involving public figures and engaging with the media (Escobar & Elstub 2017: 3-4).

These are also examples of what Suiter and Reuchamps named "the constitutional turn for deliberative democracy in Europe” (Suiter & Reuchamps 2016: 1). They observe a trend starting in the 2010s of mini-publics being used for constitutional reform in addition to the earlier mentioned cases in Estonia and Romania (Suiter & Reuchamps 2016: 1). Since Suiter and Reuchamps’ observation, France has also held a mini-public deliberating among other things rewriting their Constitution (Convention Citoyenne pour le Climate 2020).

1.1 Deliberative democracy and public reason
With this new trend in constitution-making, the problem of legitimacy follows. Are constitutional mini-publics capable of making a legitimate constitution? Much debate has been had on the legitimacy of mini-publics as democratic institutions, but less has been said about their use specifically for constitution-making purposes. (Goodin & Dryzek 2006; Lafont 2015; Mansbridge 2020; Chambers; 2020). The research has mostly concluded that mini-publics can be a legitimate way to make political decisions. Those conclusions do not necessarily translate to constitutional
mini-public. The bar for justifying ones decisions are lower when it comes to wether we should spend build a new bike lane or plant more trees in the park than it is when deliberating on constitutional matters and questions of basic justice. Constitutional matters and questions of basic justice must be justified with public reasons will soon be argued using Quong’s arguments for public reason. This thesis will analyse the use of public reason as a measure of legitimacy.

Previous research on the legitimacy of constitutional mini-publics has focused on questions such as their representativeness, the mode of decisions making, and the political uptake of constitutional mini-publics to evaluate their legitimacy. Those are important aspects of the legitimacy of a constitution-making institution, but they miss the evaluation of the content of constitutional mini-publics. Content refers to what is being said in the deliberations and the wording of the decisions they make, which contrasts with the “form” of mini-publics, for example, who gets invited and how decisions are made.

In a 2013 lecture, Jonathan Quong shows why the content of decisions is a central aspect of their legitimacy with an example:

Imagine a supreme court that strikes down as unconstitutional a piece of legislation that has emerged from the government: that legislation defines marriage as an exclusively heterosexual institution. The argument the supreme court makes appeals to that of a prominent moral philosopher who says that monogamous relationships regardless of sexual orientation are the highest form of human flourishing (Quong 2013).

Quong invites us to imagine the liberal response to this supreme court decision. He believes most liberals would be happy with the decision because homosexual couples ought to have the same right to marry as heterosexual couples. He also believes most liberals would feel unease at the supreme court’s reasoning. In this case, the supreme court referred to a very specific and controversial claim about the nature of the good life (Quong 2013). He argues liberalism is not simply another sectarian doctrine with a conception of the good life that it fights for, such as catholicism or utilitarianism. Quong’s vision of liberalism is political liberalism grounded in the idea of people as “free and equal” and “society as a fair system of cooperation”, as Rawls put it (Rawls 1999: prologue xv). He continues by pointing out a central aspect of treating people as free and equal: the collective use of
political power must be reasonably justifiable to everyone who is the subject of that power. Since reasonable people disagree on what makes a good life, our political institutions should only justify the use of political power with public reasons (Quong 2013). Most simply put, public reasons are reasons acceptable to all reasonable citizens (Billingham & Taylor 2020: 671). Notably, this excludes religious reasons and reasons based on philosophical comprehensive doctrines such as utilitarianism.

Quong’s example and the following argument show why the form and output of constitution-making is not enough to legitimise the decisions. The reasoning (content) of the decisions must be public for a decision to be legitimate. It does not follow from the form or output alone that the mini-publics can make legitimate constitutions. We can not know without analysing the reasons used by constitutional mini-publics.

1.2 Research problem, purpose, and question
This thesis’ research problem is how constitutional mini-publics justify their decisions. Are their decisions legitimate from a public reason perspective? Following the ideal of public reason is necessary (as Quong argues) if we want to treat fellow citizens as free and equal—which generally is a value held by deliberative democrats. Public reason is therefore an appropriate ideal for mini-publics as deliberative democrats invented them.

Previous research on the legitimacy of constitutional mini-publics has studied the form of the mini-publics, for example, who is invited to the mini-publics and how the decisions are made. This thesis contributes to the literature by analysing the content of constitutional mini-publics. Content in this context refers to the content of the deliberation, what is being said by the participants.

The purpose of this thesis is to explore the hypothesis underlying the constitutional turn in deliberative democracy: mini-publics can be used to make legitimate constitutions. Legitimacy will be understood as justifying one’s decisions with public reasons. To explore this hypothesis, this thesis will analyse the use of public reason in the deliberation on same-sex marriage in the Irish Convention on the Constitution (2012-14). The research question this thesis will answer is “does the Convention justify its decisions on same-sex marriage with public reasons?” this thesis will also explore the question “can mini-publics make legitimate constitutions?”.
2. Theory
2.1 Deliberative Democracy

Deliberative democracy centers the importance of deliberation in the democratic process. Deliberation can be minimally defined as "mutual communication that involves weighing and reflecting on preferences, values, and interests regarding matters of common concern" (Mansbridge 2015: 27). This definition by Mansbridge (inspired by Dryzek) is purposefully minimal to separate the idea of good/bad deliberation from deliberation as such. Making it possible to talk about bad deliberation without it being a contradiction in terms.

For example, definitions that say mutual respect is intrinsically part of deliberation make deliberation without mutual respect an oxymoron. Same goes for definitions that states deliberation is necessarily non-coercive. Such definitions make it impossible to talk about coercive or non-mutually respectful deliberation (Mansbridge 2015: 29-30). The minimal definition solves this by being neutral towards the quality of the deliberation and is a preferable definition (Bächtiger et al, 2018: 2).

Deliberative democracy can be contrasted with aggregative democracy—likely what most people think of when they hear "democracy"—which revolves around counting votes. Aggregation and deliberation are not opposing visions of democracy but complementary parts of it. The democratic process generally involves the demos deliberating and then aggregating (voting). Deliberative democracy emphasises the deliberative part of the democratic process rather than the aggregative part (Bächtiger et al, 2018: 2). The core of deliberative democracy is one should resolve conflict through deliberation rather than coercion or conflict. Simone Chambers puts it well and succinctly "Talk-centric democratic theory replaces voting-centric democratic theory" (Chambers 2003: 308) to which she adds that deliberative democrats usually see deliberative democracy as an expansion of representative democracy rather than as an alternative to representative democracy (Chambers 2003: 308).

Why would deliberative democracy be better than existing forms of democracy? Many have written on the topic, and Meave Cooke has gathered five common arguments for deliberative democracy. The first argument is that the deliberative process educated the citizens involved. Deliberative democracy, in this view, makes participants not only better citizens but also better individuals (Cooke 2000: 948). Second is that the deliberative process has a community-generating
effect. There are several mechanisms proposed. Among them is that an individual can only understand herself as a community member through public reasoning with others who share values and traditions. Another proposed mechanism is that deliberation makes people ask themselves what might count as a good reason for others involved in the deliberation or affected by the decisions made (Cooke 2000: 949-950). The third argument is that the deliberative process improves the fairness of democratic outcomes. This argument is based on a procedural view of fairness. If the procedure is fair, the outcome is fair. The proponents of this argument claim that a necessary step for a fair democratic decision is that it has been through the deliberative process (Cooke 2000: 950). The fourth argument is that the deliberative process improves the practical rationality of democratic outcomes. While the third argument posits that the deliberative process is necessary for fair democratic decisions and therefore concerned with the process, the point of the fourth argument is that the deliberative process will produce better outcomes by improving the epistemic and rational qualities of the democratic process they will improve the outcomes of that process (Cooke 2000: 952). The fifth argument is that deliberative democracy “elucidates the ideal of democracy most congruent with ‘whom we are’” (Cooke 2000: 954). That is, deliberative democracy best reflects contemporary western conceptions of knowledge, the self, and the good life. The argument is that a deliberative democracy accepts that there are no epistemic standards outside of the cultural and historical context we live in, that deliberative democracy allows citizens to self-govern through deliberation and that everyone's view is deserving of equal respect (Cooke 2000: 954-955).

Once deliberative democrats have argued for deliberative democracy as an ideal of governance. The next question is where it should be pursued. Many deliberative democrats believe the ideals of deliberative democracy should be pursued almost everywhere. The most obvious place the ideals of deliberative democracy should be pursued is in parliament, court, and other formal government institutions. According to Rawls, the US Supreme Court is the ideal form of deliberation with its focus on public reasons. Bächtinger points out the US Supreme Court may be a good example of deliberation but it is not very democratic. There are also sites of deliberation in the public sphere outside of formal government institutions. Among other sites, there are discussions taking place every day in schools, bars, or online (Bächtinger et al 2018: 9-11).
2.2 Mini-public

Another site of deliberation is the mini-public, which is object of this study (Bächtinger et al 2018: 13). The idea of mini-publics comes from Robert Dahl’s discussion of deliberative “minipopulus” in his work ”Democracy and its Critics”. In the book, he imagines a minipopulus as an institution where around one thousand randomly selected citizens with the task to deliberate for an extended time on a specific issue and then announce their conclusions. In his mind, there would exist one minipopulus per major political issue, and it could exist on any level of government. A committee of scholars, specialists, and administrative staff could be in attendance to help the minipopulus along. The result would be a democratic process that once again resembles the world in which democracy, its ideals, and practices first came into existence (Harris 2019: 45).

Mini-publics typically consist of regular citizens (usually without a background in activism or any expertise on the subject at hand) who deliberate on political issues. The deliberation is usually are complex and contentious. Mini-publics vary in shape and size. Depending on the form of the mini-public, it can consist of 15-20 people to thousands of people. For example, citizens’ juries, consensus conferences, deliberative opinion polls and citizens’ assemblies. Random sampling is generally preferred, and depending on size, there may be a need for stratification based on, for example, gender, age, or income. If mini-publics are allowed to self-select, they tend to select older, richer and more well-educated people. There will usually be a facilitator at hand to ensure the deliberation is civil and inclusive. Information or access to experts or advocates will typically be provided, and the participants often produce some form of report or recommendation at the end (Dryzek 2010: 155-156).

A useful distinction when studying mini-publics is between their internal face and their external face. Their internal face refers to the qualities of the deliberation and the effects on the participants and to what degree mini-publics live up to their ideal of being perfect public spheres. Some of the questions in this area have been whether mini-publics lead to group polarisation or if people come together when deliberation, if people change their minds at all in mini-publics, and to what extent members of minority groups and less educated people have the same opportunities to contribute to deliberation as non-minority groups and more educated participants (Smith & Setälä 2018: 305-307).
The internal face refers to what goes on inside the mini-publics. The external face revolves around how mini-publics fit into a larger deliberative and political system. The fundamental question about mini-publics external face is what their role can and should be in the deliberative and/or political system (Smith & Setälä 2018: 307).

Archon Fung asks what form of mini-public should be used in contemporary democracies and to what extent they should be used. He does this by developing a framework for the range of institutional possibilities for public participation. Positioning the Irish Convention within this framework will help relate it to the literature. Fung argues three dimensions constitute the space for any participation mechanism. These dimensions are (1) who participates, (2) how they communicate and make decisions, and (3) the extent of their authority and power. Using these three dimensions, he envisions a "democracy cube" that can be used to analyse how different designs of participatory institutions may affect their output/function. The values he studies are legitimacy, justice, and effective governance (Fung 2006: 66).

The first dimension is participant selection. The presupposition for this dimension is that the reason for expanding citizen participation is existing decision-makers are somehow deemed deficient. The deficiency could be, for example, because of a lack of knowledge, competence, recourses, or the respect necessary to command compliance. The selection of who participates in the mini-publics will play a large part in their ability to remedy these deficits. Factors such as the participants' representativity of the relevant or general public, their degree of knowledge and competence, or their level of accountability will largely determine their ability to remedy the democratic deficits they meant to remedy. This dimension starts on the more inclusive end with the diffuse public sphere and ends on the more exclusive end with expert administration and representatives. Between these two poles, Fung lays out five methods of participant selection. The middle five methods of participant selection all count as mini-publics. The diffuse public sphere, expert administration, and expert representatives are either too inclusive or too exclusive to count as mini-publics. Starting with the most inclusive and moving to the most exclusive the middle five are: open self-selection, open targeted recruiting, random selection, lay stakeholders, and professional stakeholders (Fung 2006: 67-68).

The second dimension is communication and decision. It exists along the axis of least to most intense, where intensity roughly means the required level of investment, knowledge, and
commitment. Fung divides this dimension into six main modes of communication and decision-making. Generally, most people attending participatory events will not put forward their views at all, but participate only as spectators that receive information and observe the deliberation. The six modes of communication and decision-making are (going from least to most intensive): listen as a spectator, express preferences, develop preferences, aggregate and bargain, deliberate and negotiate, and deploy technique and expertise. The first three are modes of communication, and the last three are modes of decision-making (Fung 2006: 68-69).

The last dimension is authority and power, going from least to most authority. This dimension exists of five levels of the extent of authority and power, going from least to most authority these are personal benefits, communicative influence, advice and consult, co-governance, and direct authority. Personal benefits means the participants have no expectation of influencing actual policy or action and simply participate for personal benefits in the shape of, for example, fulfilling a sense of civic obligation. Communicative influence is the power to move with communication. It may take the shape of rhetoric or what Habermas called the "unforced force of the better argument" (Habermas 1998: 306). The other three extents of authority and power are just what they sound like (Fung 2006: 69-70).

2.3 Public reason
Any democracy will be characterised by what Rawls called “the fact of reasonable pluralism” (Rawls 1997: 765) this refers to the fact that in any democratic society where people are free to think for themselves, there will exist a plurality of reasonable irreconcilable paradigm-like views of the world, beliefs about fundamental metaphysics, of what is right and wrong, and good and bad. He called these paradigms comprehensive doctrines. A typical example is religion, but it is not limited to religion. Notably, utilitarianism is a comprehensive doctrine Rawls had a lot to say about. Comprehensive doctrines (religious, philosophical, or any other kind) are generally irreconcilable and unarguable at their core (Rawls 1997: 765-767). If you do not believe in a certain god, an argument based on that god's will is not going to mean much to you. Since an atheist can not be expected to be convinced by religious reasoning or a Christian by Hindu reasoning, we will need some other reasons if we want to resolve differences and conflicts among people of different comprehensive doctrines. Rawls' solution is public reason.
In many cases of disagreement between comprehensive doctrines, the differences do not have to be resolved. You can believe what you believe, I believe what I believe, and we leave each other to do so. As Thomas Jefferson put it “it does me no injury for my neighbour to say there are 20 gods or no god. It neither picks my pocket nor breaks my leg” (Jefferson 1954) but there are situations where it may do you injury. For example, when the result is the coercive use of state power. Rawls argues that we need reasons that one could reasonably provide when fundamental political questions and coercive use of power is at stake. To resolve these otherwise unresolvable conflicts Rawls suggests that “truth” and “right” should take the backseat to the idea of the “politically reasonable addressed to citizens as citizens” (Rawls 1997: 766).

To take the classic example of the use of religion and religious symbology in public spaces or by government officials. Any reasoning around this topic will not be resolved based on the truthfulness of the religious symbology or religion at hand and the reasoning is always going to be public in at least two senses of the word as characterised by Rawls: it is the literal reason of the public, and it is also reasoning around questions of fundamental political justice. Rawls's idea of public reason revolves around a third sense of public reason defined as a reason that is ”being expressed in public reasoning by a family of reasonable conceptions of political justice reasonably thought to satisfy the criterion of reciprocity” (Rawls 1997: 767). This last sense of public reason is an ideal of how public reason in the first two senses ought to be conducted.

The structure of public reason

Public reason as a concept dates back to Hobbes in its broadest form, and it got a new life with Rawls’ writings on public reason. Since Rawls, there have been countless articles and books written on the topic. To analyse the different theories of public reason, Billingham and Taylor have developed a framework consisting of four questions all theories of public reason will have to answer. The four questions are the rationale question, the idealisation question, the formulation question, and the content question. These four questions revolve around what Billingham & Taylor call the Reasonable Acceptability Principle (RAP) which states ”the exercise of political power ought to be acceptable to all reasonable citizens” (Billingham & Taylor 2020: 671). In short, the rationale question asks why one would endorse the principle, the idealisation and formulation
questions ask how the principle is specified, and the content question asks what satisfies the principle (Billingham & Taylor 2020: 671).

Quong answers the rationale question: we should treat everyone as free and equal. The content question is a result of the idealisation and formulation questions as well as the concrete deliberation of members of the public. The idealisation and formulation questions must be further specified.

The idealisation question and formulation question as mentioned decide how any RAP is specified. Every theory of public reason has to specify a group of people political power has to be justified to. Billingham and Taylor call this group the justificatory constituency. This group of people is always to some degree idealised. This raises the question of how they are to be idealised. On one hand, the justificatory constituency can consist of all actual citizens because there would be nothing or close to nothing they all could agree on. On the other hand, if a the idealisation goes too far and the idealised group agree on everything then the RAP would be redundant because there would be no coercive use of power. If everyone agrees, no one is forcing their beliefs on anyone else. Any theory of public reason will have to idealise its justificatory constituency in some way on this spectrum and its answer to the idealisation question will affect how the RAP is specified and what laws and use of power are seen as legitimate (Billingham & Taylor 2020: 673-674).

With the idealisation question answered and a justificatory constituency identified, a public reason theory needs conditions for when the use of political power is justified to the constituency. This is what the formulation question seeks to answer. One dimension to this is the scope of public reason. Some theories of public reason state only constitutional essentials and matters of basic justice fall under the scope of public reason. Other theories have a wider scope and argue all laws and policies fall under the scope of public reason. Another dimension is whether the laws themselves have to be endorsed by the justificatory constituency (for whatever reason each and every constituent decides) or laws have to be justified by a set of reasons endorsed by the entire justificatory constituency (Billingham & Taylor 2020: 674-675).

To summarise, this is how Billingham and Taylor state the four questions that every theory of public reason has to answer:
• Idealization Question: How are the reasonable citizens to whom the view refers idealized? What conditions are used to specify their beliefs, desires, or commitments (Billingham & Taylor 2020: 674)?

• Formulation Question: What conditions need to be satisfied in order for an exercise of political power to be acceptable to all reasonable citizens (Billingham & Taylor 2020: 674)?

• Rationale Question: Why should we endorse this version of the RAP? Why does the legitimacy of laws and policies depend on what this constituency of reasonable citizens would or would not accept (Billingham & Taylor 2020: 675)?

• Content Question: What, if anything, is acceptable to all reasonable citizens? What laws and policies does this view deem to be legitimate (Billingham & Taylor 2020: 675)?
3. Previous research

This thesis is contributing to the literature on deliberative democracy with a focus on constitutional mini-publics. The literature on constitutional mini-publics has two main lines of inquiry. The First is research into the effects of constitutional mini-publics, such as to what degree participants change their opinions. The second is research evaluating constitutional mini-publics. Evaluation at times relies on the effects of constitutional mini-publics but is not limited to studying their effects and also goes beyond a neutral analysis of the effects. This thesis will contribute to the second line of inquiry.

The effects of constitutional mini-publics

One finding in the literature on the effects of constitutional mini-publics is that people change their minds during these deliberative mini-publics. Studies on the Convention of the Constitution in Ireland of 2012-14 and the Irish Citizen’s Assembly of 2016-18 found that participants of the mini-publics changed their views during the mini-publics. The research found that in the Citizens’ Assembly, the participants as a whole moved to a more liberal direction on the topic of abortion, which was the focus of that study. The authors further suggested that the Citizens’ Assembly also influenced the broader public to support more liberal abortion policies (Farell et al 2020; Suiter et al 2014).

Another finding in the literature on the effects of constitutional mini-publics is that they make a difference in the constitution-writing process. A study on the Icelandic constitutional mini-public found that almost 10% of the proposals from the public were accepted into the newly proposed constitution. A number the author called an “extraordinary level of impact” (Hudson 2017: 1). The study also found that the impact was especially high in the area of rights (Hudson 2017). Landemore also found an expansion of the scope of religious rights and provisions in the newly proposed Icelandic Constitution (Landemore 2017;Landemore 2020b).

These findings suggest constitutional mini-publics have some effect on the participants of the mini-public and the process of constitution-making. It should be remembered that since constitutional mini-publics are a relatively new phenomenon, there are only a limited amount of studies available, and the studies have a limited amount of cases to study. The literature suggests constitutional mini-publics have impacts, but the extent of impact is still not certain. Research on
the effects of mini-publics are necessary, but it is not what this thesis is doing. Understanding the effects of constitutional mini-publics is part of understanding their legitimacy and often brings implicit evaluation with it. The evaluation also requires understanding the effects of mini-public.

Evaluation of constitutional mini-publics

The evaluative studies focus on the legitimacy of individual constitutional mini-publics. Some of the studies use a theoretical model of input, throughput, and output legitimacy. It is a useful model, and all the studies discussed will be applied to the model.

Input legitimacy

Input legitimacy has three dimensions. The representation it allows, that is, who is invited. The agenda-setting, as in what question they deliberate on and who decides what the questions are. The last dimension is the level of information the participants of the mini-public have. The level of information refers to the amount of information they obtain during the mini-public (Suiter & Reuchamps 2016: 7).

The research on input legitimacy of constitutional mini-publics has seen mixed results. On the positive end, research has pointed out that in the case of the Irish Convention (2012-14), the citizens had access to information and had time to absorb it (Carolan 2015: 737). There were initially some concerns about including politicians in the Convention. The politicians did, however, make efforts to not take up all of the room, and they regularly encouraged other participants to contribute. In the final survey of the Convention, 75% of the Citizen-participants agreed or strongly agreed that their opinion of elected politicians had improved as a result of the Convention (Suiter et al 2016: 42). Later research also showed that while politicians slightly “over-participated” they did not dominate the discussions and it did not become a problem (Harris et al 2021: 188). The Irish case’s input legitimacy was further deemed high due to its agenda-setting powers, and the same observation was made about a Romanian constitutional mini-public (Suiter et al 2016: 42; Gherghina & Miscoiu 2017: 16-19).

On the other side, a regional constitutional mini-public in British Columbia (Canada) on the regional constitution scored low on input legitimacy due to bad terms of openness of agenda setting. The researchers related this to the mini-public having a close connection to the political system. The
mini-publics recommendations went straight to referendum bypassing the regional parliament. The recommendations going straight to the maxi-public created high output legitimacy, but it necessitated less agenda-setting powers and by that decreasing the input legitimacy (Caluwaerts & Reuchamps 2016: 23-25).

The input legitimacy of the Icelandic constitutional mini-public received critique due to low turnout to the extraordinary election as well as the Supreme Court annulling the Constitutional Assembly (one part of the mini-public) on technical grounds, after which the parliament had to appoint the members of the Constitutional Assembly to a newly created “Constitutional Council” with the same tasks as the Assembly to move the mini-public along (Bergmann 2016: 19-23, 29). One general critique of the input legitimacy of constitutional mini-publics has been that random selection risks excluding minority groups since the odds are against them being selected to participate (Suteu 2015).

Another critique of constitutional mini-publics was about the Irish Convention, in which two of the individuals were married, and another two were next-door neighbours. The married couple had been selected because one spouse suggested to the recruiting agency that their spouse would also be interested. This does jeopardise the claim of representation due to random selection (Carolan 2015: 742). Another critique of the selection process was that due to how they selected participants (by using home addresses), they ended up excluding population groups. Notably, homeless people, members of the traveling community, and new Irish citizens were, as an effect, excluded from the selection (Suiter et al 2016: 36).

**Throughput legitimacy**

Throughput legitimacy focuses on the deliberation itself. Representation is important, but representation alone is of limited use if the representatives are not participating in the deliberation. Participation is a central part of throughput legitimacy. A second dimension of throughput legitimacy is the connection between deliberation and decision. In the case of these mini-publics, the decision is a recommendation. Making the question how the deliberation translates into the recommendation (Suiter & Reuchamps 2016: 8).

One study judged the throughput legitimacy of the Iceland case to be high due to its high level of public participation in the open part of the process and because the Constitutional Council
unilaterally approved the newly drafted constitution (Bergmann 2016: 23-26, 29). The Romanian constitutional mini-public was also judged to have high throughput legitimacy due to the extensive possibility to participate, equal access for all participants to voice their opinions, and a transparent deliberative process (Gherghina & Miscoiu 2017: 16-19).

One common concern about throughput legitimacy is that men will speak more than and speak over women. The Irish Convention used trained facilitators to counteract this, which has worked. An analysis of the Irish Convention by Harris et al. found that men spoke more in the public discussions, but women spoke more in the private roundtable discussions. Leaving improvements to be made but not a clear manly domination as might be expected (Harris et al 2021: 188).

Suiter et al. saw the ability of civil society organisations to present at the mini-public as adding throughput legitimacy by “engaging Irish citizens nationally and internationally ‘outside the room’ (Suiter et al: 50). Others critiqued the lack of transparency or principles when choosing experts and civil society advocates lecturing during the Convention (Carolan 2015: 743). This was somewhat compensated for by live-streaming the Convention (Suiter et al: 36).

**Output legitimacy**

Output legitimacy is mainly about the relation between the mini-public and the maxi-public. The decisions of the mini-public have to be justified to the people who did not take part in the mini-public. This dimension naturally depends largely on the input and throughput dimensions. The decisions and results made in the previous two dimensions will directly impact the political and social uptake of the mini-public (Suiter & Reuchamps 2016: 9).

Suiter et al. judged the Irish Convention to have a high output legitimacy as it resulted in two referendums (same-sex marriage and lowering the minimum age for presidential candidates). The first of them was voted in favour by 62% of the vote, and the second was voted down (Suiter et al 2016: 48). In 2023, we also know that mini-publics went on to become a regular part of the Irish political system with new ones starting as soon as the last is ending, although not all on Constitutional matters anymore. Another output was the international attention it got. The Convention has been suggested as a method for constitutional reform in places such as Catalonia and the UK (Suiter et al 2016: 49).
The output legitimacy of the Icelandic case was first judged to be high due to the proposed Constitution winning in a national referendum with a two-thirds majority. After the win, the output legitimacy sank due to not being ratified. Bergmann blames the lack of output on the mini-public making enemies in parliament and with the (in Iceland powerful) fishing lobby. Even though the Icelandic experiment failed nationally, it did inspire internationally and has been used as a model in, for example, Mexico (Bergmann 2016: 30).

**Conclusion**

Research has shown mixed results in all three dimensions of legitimacy. So far, there are not enough cases to draw hard conclusions about the legitimacy of constitution mini-publics, and one would also expect that the first few cases are going to be learning experiences with improvements made along the way. One aspect of legitimacy that has yet to be discussed is the legitimacy of the content of the deliberation. That is, what is said and concluded by the mini-publics. They are consultative mini-publics, so what they say as consultation is surely central to their legitimacy. This is part of the throughput legitimacy and is a necessary part of it to evaluate. As Quong points out, the reasoning for decisions is a central part of the legitimacy of the decisions. All the research on throughput legitimacy so far focuses on the form of the deliberation. The literature has yet to evaluate the content, which is what this thesis will contribute.
4. Research design and method

4.1 Design

The analysis will consist of three parts. First, a reconstruction of the reasons used by the mini-publics and Oireachtas. Second, an analysis of the reasons and categorisation of them into public and nonpublic reasons. The third part will consist of an analysis of the results.

This thesis is a theory-exploring case study. It explores the hypothesis “average citizens can make legitimate constitutions”. To use the vocabulary of Eckstein, this study is a least likely crucial case study (Eckstein 2011: 27-33). The same-sex marriage deliberation in the Irish Convention is the least likely place for citizens to follow the ideal of public reason because of the nature of the topic. If they do live up to the ideal of public reason, it strengthens the reasons we have to believe the hypothesis by a large extent.

The Irish Convention is the best single test of the hypothesis that average citizens can make legitimate constitutions because it is a contentious issue often tied to religious beliefs. To fully test the hypothesis a larger study would have to be done, but this case works well as a probe. If constitutional mini-publics are going to fail anywhere, it is most likely here. This means that if they can deliberate and constitution-make on same-sex marriage, they are likely capable on any other issue as well. If one wanted to falsify the hypothesis that average citizens can make legitimate constitutions, this case would likely be the best place to look because of the topic they are deliberating on (same-sex marriage). The Convention makes for a good (soft) smoking gun test. This was also one of the first constitutional mini-publics. If we assume that constitutional mini-publics have improved with time and experience, then this mini-public had worse conditions for good constitution-making than the latter. If randomly selected citizens can make legitimate recommendations here, they should be able to do so anywhere. In this context, a smoking gun test means a case that is sufficient but not necessary to for the hypothesis to be (likely) true. (Gerring 2017: 26).

It is a "soft" smoking gun case because the nature of mini-publics is that there are randomly selected citizens that participate, which decreases the inferential role of one case since any other set of citizens could have led to a different outcome. The potential conclusions will also be limited to how average citizens deliberate in the context of the specific design of this mini-public. For
example, trained facilitators helped the deliberation be fair between participants of the mini-public. This is also a study of a single case, which limits the generalisation possibilities.

4.2 Method

Arguments

To determine if a constitutional mini-public used public reasons one must analyse its arguments. An argument consists of two parts, premises and conclusions. The classic example goes as follows:

P1. All men are mortal
P2. Socrates is a man

C. Socrates is mortal

In everyday language, we often refer to premises as arguments, but in formal logic, an arguments is both the premises and the conclusions. In other words, premises are the reasons for the conclusion. To discover the reasons used by the Convention, the premises must be identified. In practice, this is best done by discovering their conclusions and then working backwards, tracking the reasons (premises) provided for the conclusions (Feldman 2014: 143). The provided premises are called explicit premises, but in natural language, we often do not explicitly state all of our premises. If only the explicit premises are stated, we will make an uncharitable and inaccurate reconstruction of the argument. The unspoken premises are called implicit premises. It will be necessary to read and add implicit premises to the argument. There is no formula for how to add implicit premises. Two good rules are to add as few as possible and to follow the principle of charity, meaning the added premises should make the argument as strong as possible (Feldman 2014: 152).

Reconstruction

The reconstructive part of the analysis is descriptive. The purpose is to accurately reconstruct the deliberation to allow for a classification of the reasons. Thematic analysis is going to be used to reconstruct the deliberation. Thematic analysis is a suitable method for identifying collective
meanings in a data set and commonalities in how a topic is discussed (C&B 57). Thematic analysis is judged appropriate for the reconstruction.

As described by Clarke and Braun, the thematic analysis process consists of six steps. The first is to familiarise oneself with the data. This was done by listening to the full deliberation and transcribing the relevant sessions. The second step is to generate initial codes. The third step is to search these initial codes for themes. In the fourth step, one reviews the potential themes by going through the data set again with the themes in mind. For a larger data set, one could only do this with part of the data, but the data set analysed in this study was small enough that analysing the whole data set was possible. The fifth step is to define and name the themes. The last step is to produce the report.

Steps two to five were repeated three times to analyse (break down) the complex deliberative material. First, arguments were distinguished from concerns. Arguments in this thesis are defined as above, and concerns are defined as issues or problems raised without a deduction. Four topics were identified, and lines of disagreement were distinguished within each topic.

**Categorisation**

In the categorisation section the reasons will be classified as public or nonpublic. What makes a reason public? Quong answers this question by arguing the content of public reason has two parts. Quong’s conception of the content of public reason is inspired by Rawls. The first part is the principles and values used in reasoning must come from a political conception of justice. The second part relates more to how one reason rather than what one uses to reason. The second part is public reasons must limit themselves to “commonly accepted methods of inquiry and rules of reasoning, as well as the virtues of reasonableness and the duty of civility” (Quong 2011: 41). The second part can usefully be thought of as consisting of two parts. First, using commonly accepted methods of inquiry and rules of reasoning, and second following the virtues of reasonableness and the duty of civility. This makes for three criteria to determine if a reason is a public reason.

The first criterion is that the values and principles should come from a political conception of justice. What makes a conception “political”? Political conception has three core characteristics. The first characteristic is that political conceptions have limited scopes, which are limited to claims about justice, citizenship, state legitimacy, or political obligation. Political conceptions limit
themselves to what people owe each other as fellow Citizens. The second characteristic is political conceptions do not make perfectionist judgements and metaphysical claims. Perfectionist judgements in this context refer to “judgements regarding which virtues, activities, relationships, goals, ideals, attitudes, or values contribute to, or are essential to, a worthwhile, excellent, or otherwise valuable human life” (Quong 2011: 12) or which ones are of no worth or “detract from the value of a human life” (Quong 2011: 12). Perfectionist judgements refers to intrinsic value or lack thereof often argued with reference to human nature. Judgements relying on conceptions of the good or human flourishing are examples of perfectionist judgements (Quong 2011: 12-13). The third characteristic is that political conceptions must be grounded in values that do not contradict any just conception of the good life (Quong 2011: 14). A political conception of justice has all these three characteristics.

The second criterion for public reason is they must use commonly accepted methods of inquiry and rules of reasoning. Quong does not write much about this, but Rawls elaborates on the criterion in “Political Liberalism”. Since constitutional essentials and public politics should be justifiable to all citizens, we may only use “presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial” (Rawls 2005: 224). This, he elaborates, entails that for a reason to be public we can not use elaborate theories that are in dispute (Rawls 2005: 224-225) We may, in summary, only use commonly accepted beliefs and basic reasoning, such as common sense, and generally accepted scientific conclusions and methods. As a result, reasons that use controversial theories or comprehensive reasons may not be considered public reasons.

The third criterion for public reasons is they must rely on the virtues of reasonableness and the duty of civility. The duty of civility is a duty we have to follow the norms of public reason when engaging in politics about fundamental political questions (Quong 2011: 42; Rawls 1997: 768-769). To answer what the virtues of reasonableness are, the concept of a reasonable person must be defined. For a person to be considered reasonable, they must accept two ideas. That political society is “a fair system of social cooperation for mutual benefit between free and equal people” (Quong 2011: 38) and what Rawls calls “the burdens of judgement”.

There are six burdens of judgement, scientific evidence can be complex and conflicting; people can disagree about the relative importance of considerations; all concepts are always going
to be, to one degree or another unclear; our experiences shape our moral and political values; fully rational people will disagree on some normative considerations; social institutions only can incorporate a limited set of values which means some difficult choices are going to have to be made (Quong 2011: 37). What it means for reasons to rely on the virtues of reasonableness is that they accept political society as a fair system of social cooperation for mutual benefit between free and equal people and they accept the burdens of judgement.

To summarise, a reason is public if it follows the these three criteria:

1. Must rely the principles or values provided by a political conception of justice. Defined by:
   - Limited scope to claims about justice, citizenship, state legitimacy, or political obligation.
   - Avoids perfectionist judgments.
   - Grounded in values that do not contradict any conception of the good life.

2. Must rely on "commonly accepted methods of inquiry and rules of reasoning" Defined by:
   - Only use commonly accepted beliefs and basic reasoning.
   - Not using contested scientific theories.

3. Must rely on "the virtues of reasonableness and the duty of civility". Defined by.
   - Following the six burdens of judgment.
     - Scientific evidence can be complex and conflicting.
     - People can disagree about the relative importance of consideration.
     - All concepts are always going to be to one degree or another unclear.
     - Our experiences shape our moral and political values.
     - Fully rational people will disagree on some normative consideration.
     - Social institutions cannot incorporate a limited set of values which means some difficult choices are going to have to be made.
   - Following the duty of civility.
4.3 Material

The primary material used is the videos of the fifth weekend of the Convention, which is the weekend where they deliberated on same-sex marriage. The weekend consisted of three Q&A sessions and two plenary sessions which were all transcribed. They were accessed through the Conventions official website. The website host the videos on Youtube. At the time of the event (2012-14) the video was streamed live on the web for over a total of 100 hours (Arnold 2014: 4).

There were also four presentations by experts that were not transcribed or analysed because the participants of the Convention did not speak during these presentations, and the purpose of this study is to study the reasons used by the participants.

The greetings at the start of every utterance were removed from the transcript as they do not add to the reasoning of the utterance and make the transcript more unwieldy. No more ‘cleaning-up’ of the transcript was done. All spoken words (past their introductions) were transcribed, including hesitations and false starts, to accurately reproduce the deliberation.
5. Analysis
This first section of the analysis reconstructs the third weekend of the Convention. Their task was to deliberate on legalising same-sex marriage and give a recommendation to the Oireachtas. At the end of the weekend, 79 people voted in favour of changing the Constitution to allow for same-sex marriage, 19 voted against it, and one person had no opinion. A similar majority voted for recommending a directive amendment to the Constitution (the State shall enact laws providing for same-sex marriage) over a permissive amendment (the State may enact laws providing for same-sex marriage). A similar majority again voted for recommending that “in the event of changed arrangements in relation to marriage, the State shall enact laws incorporating necessary changed arrangements in regard to the parentage, guardianship and upbringing of children” (Arnold 2013: 6).

The weekend consisted of 65 utterances by the participants. An utterance is defined as when one person starts speaking until they stop speaking and someone else speaks or the session has ended. The utterances were divided into two categories based on their function, arguments and concerns. Some utterances were classified as both arguments and concerns. Arguments are defined as deductions which are defined in section 4.2, and concerns are defined as issues or problems raised without a deduction. Of the 65 utterances, there were 21 concerns and 47 arguments, and three utterances were both concerns and arguments (Appendix A).

The public deliberative sessions of the weekend can be divided into four sessions, the first three taking place on the Saturday and the last on the Sunday followed by a vote. The first session is technically two, and they were Q&A sessions for experts who came in to talk about the pros and cons of legalising same-sex marriage. These are best analysed as a single session since they share the same function and were both relatively short sessions. After the Q&A sessions, there was a private roundtable discussion. The purpose of the second public session was to share the themes from the private roundtable discussions. The third public deliberative session was a Q&A with a panel of experts. The fourth and longest session was the Sunday plenary session in which they were supposed to review the draft ballot. They were only supposed to review the wordings of the ballot they were to vote on. It was only supposed to take 30 minutes, but it veered out to discussions of same-sex marriage and the constitution more broadly and ended up taking a little over 90 minutes instead (Arnold 2013: 9).
To give an overview of the course of the weekend it is helpful to see how the share of concerns to arguments change over the weekend. Unsurprisingly the first Q&A session consisted almost entirely of concerns. Out of the eight utterances, there were seven concerns and one argument. The many concerns are likely due to the nature of the Q&A session and because they were encouraged to ask questions, not make arguments. The second session, in which they shared themes from the private roundtable discussion, consisted of five concerns and nine arguments. The third session was another Q&A, with three concerns and five arguments. The last plenary session consisted of eight concerns and 29 arguments. The weekend started with almost only concerns and ended primarily with arguments. The following section will identify themes in the concerns and arguments and reconstruct the central arguments.

5.1 Reconstruction
5.1.1 Concerns
The most common theme was concern for the children. These came in three kinds. In chronological order, the first was whether different-sex and same-sex parents treat their children differently, as it relates to physical or psychological abuse. The second kind of concern for children was about whether and to what extent discrimination against same-sex couples harms children, either directly due to not being able to marry as they grow older or because of discrimination against their same-sex parents. The third kind of concern for children was whether one could use legislation to protect the children’s rights to know their genetic parents.

An adjacent theme was a concern for parental and grandparental rights focused on concerns around what happens in case of divorce regarding guardianship rights and possible adoption. There was also a concern for the guardianship rights of grandparents in the event of the parents dying.

One theme that also becomes a significant point of argumentation is whether same-sex marriage would infringe on religious rights and freedoms. The concern is either general or when more specific, centred on the rights of parents, families, and religious organizations to teach their view of marriage to their children.

Another theme was concern about whether or not the constitution should be changed was coded into three utterances. These all shared that they recognise current problems in the current order of things and that change is desired to, for example, reduce bullying or deal with issues of
guardianship rights. They are simply asking about the necessity and practicality of solving these problems through constitutional change instead of legislation. This concern later becomes a theme in the argumentation.

The last theme discovered was legal definitions and clarifications. These will not be relevant to evaluating the Convention along the lines of public reason. For transparency, one example of these concerns is the distinction between voting for a permissive or directive recommendation. This refers to whether the amendment they will recommend will read 'the State may enact laws providing for same-sex marriage' (permissive) or 'the State shall enact laws providing for same-sex marriage' (directive) (Arnold 2013: 6). Other examples are how the current interpretation of the constitution (marriage being between a man and a woman) came to be and whether redefining 'marriage' would automatically redefine 'family' in the constitution. These were technical questions that got technical answers from the experts at the Convention.

Two concerns did not fit into any of the categories. First was a concern about whether there would be enough time in one weekend to decide. The second was a question regarding whether "gayness", as the woman calls it, is caused in the womb.

5.1.2 Arguments

To analyse the arguments, first a theme analysis was done to discover the topics of argumentation. After, another theme analysis was done on the topics to discover the lines of disagreement—the axes among which the participants argue. This means that someone arguing that the definition of marriage does allow for same-sex marriage and someone arguing that the definition of marriage does not allow for same-sex marriage both argue along the same line of disagreement.

The arguments were divided into four topics. Two arguments did not fit into any of the topics. The topics will now be listed in order of numbers of utterances per topic, going from most to least. The topic with by far the most utterances was “should same-sex marriage be legal?”. The second most common topic was “protecting religious rights and freedoms”. The third most common was meta-deliberation—deliberation about the deliberation and Convention itself. The fourth topic was “should the constitution be rewritten?” which is related to the first topic but slightly different as the arguments in this topic were not specifically about if same-sex marriage should be legal but about the nature of the constitution.
The four topics could also be seen more generally to be about should the proposed change happen (should same-sex marriage be legalised?), the consequences of that change (protecting religious rights and freedoms), the means to achieve the change (should the constitution be rewritten?), and about the deliberation itself (meta-deliberation).

**Lines of disagreement**

On the topic of legalising same-sex marriage, there were four lines of disagreement. The lines of disagreement were around equality and discrimination, whether same-sex marriage was harmful or helpful for children, the definition of marriage, and whether same-sex marriage devalues different-sex marriage.

Protecting religious rights and freedoms was the second most frequent topic, but it only contained one line of disagreement. The disagreement was on the education of children and whether parents, schools, and religious organisations needed further protection to teach their vision of marriage as between a man and a woman to children if they did change the Constitution. Protecting religious rights and freedoms was classified as a different topic from whether same-sex marriage should be allowed because the arguments were not around whether same-sex marriage was good or bad or the direct consequences to the family, but rather about potential legal consequences for people outside of the same-sex families.

There were only two arguments on whether the Constitution should be rewritten. One argued the Constitution should not be rewritten since it already, in his interpretation, allows for same-sex marriage. The other argument was that the Constitution should be changed since it symbolises who “we” are, and it should be clear and explicit in its acceptance of same-sex marriages.

On the topic of meta-deliberation, there were two lines of disagreement. One was about the problems of framing the debate around words such as “consequences” and “issue” and proposed that the deliberation should be framed through a positive lens instead. The other line of disagreement was around whether they should vote for a permissive or directive at the end of the weekend, or in other words, whether they should vote for “the state may enact laws providing for same-sex marriage” or “the state shall enact laws providing for same-sex marriage”. The second line of disagreement was not strictly about the discussion, it was about the voting at the end, which
was part of the deliberative process of the Convention, and it is classified under the topic of meta-deliberation.

The two arguments that did not fit into the four topics were one man arguing not all Christians are anti-change and some Christians are pro-change, and another person arguing the anti-change people are just ignorant.

The lines of disagreement will now be analysed to discover their reasons for disagreement. First their conclusions will be identified, and then the premises that lead to those conclusions. For the purposes of coherence with the categorisation section the premises will be referred to as “reasons”, because premises are reasons for conclusions.

**Legalising same-sex marriage**

Most reasons on this topic favour same-sex marriage, which is unsurprising considering they later recommended amending the constitution to legalise same-sex marriage. There were four lines of disagreement on this topic, equality/discrimination, protecting the children, the definition of marriage, and same-sex marriage devaluing different-sex marriage. What follows is an overview of the lines of disagreement.

**Equality/Discrimination**

On the line of disagreement about equality and justice, the first argument for legalising same-sex marriage is that everybody has the same civil rights and should be treated equally. The first reason for this was that it is little to ask for in a modern world to have the same equal rights. The second reason was same-sex marriage should be legal because one needs to be proactively anti-discrimination. The first two reasons are similar but from different perspectives. Further reasons for same-sex marriage on equality or anti-discrimination grounds were that a state that discriminates is not one to be proud of. This reason is similar to the first two but has an added nationalist aspect. The following argument was that civil partnership, even with equal rights, is not enough for equality, with the reasons being that same-sex couples and different-sex couples would be treated differently and by definition not be treated equally. This, they argue, would be bad since there should be equality between same-sex and different-sex couples.
On the other side of the line of disagreement, there was only one utterance. It stated civil marriage provides sufficient equal rights for same-sex couples, and legalising religious marriage would force religious institutions to do something they do not want to do. Because religious institutions should not be forced to do things against they will only civil marriage should be legalised.

**Protect the children**

The following line of disagreement was around protecting the children. The most common argument was same-sex marriage is needed to protect children in same-sex families. The reasons used were same-sex families already exist, and denying them marriage does not protect their children but leaves them less secure. Another reason was what matters for children is not the nature of the family but that they are provided with love and security, and same-sex marriage can add that security. The following reason was that if it is true (the person does not grant this but plays along with the case against same-sex marriage for the argument) that children need different-sex parents, then children of same-sex parents are disadvantaged, possibly the most disadvantaged in society, and we need to provide them with the privilege of allowing their parents to marry.

The second most common argument was since many same-sex couples do not have or plan to have children, they should not be used against legalising same-sex marriage. In their view, protecting children and legalising same-sex marriage should be different discussions. The last argument was because there are already laws protecting children, there is no need to be against same-sex marriage on the grounds of children's safety.

**Definition of marriage**

The third line of disagreement was around the definition of marriage. The side against same-sex marriage argued marriage is, by definition, between a man and a woman, which can not be changed. They allowed for civil partnerships with equal rights, provided they were not called marriages. The reasons for same-sex marriage argued marriage is about love, commitment, and partnership. They further argued same-sex couples are capable of love, commitment, and partnership and are therefore capable of marriage.
Devaluing different-sex marriage

The last line of disagreement was on whether same-sex marriage devalues different-sex marriage. The most common argument was same-sex marriage does not devalue different-sex marriage. The first reason against same-sex marriage devaluing different-sex marriage was that marriage had changed a lot in the past without harming the institution of marriage. It can keep changing without devaluing different-sex marriage, and they were only referring to legalising civil marriage, not mandating religious marriage. The reasons against legalising same-sex marriage were that the Constitution says the state must protect marriage as it exists. The state is, as a result, obliged to protect the institution of marriage from expanding into allowing for same-sex marriage. The other side then said the Constitution is gender-neutral regarding marriage, so there is no reason to believe the Constitution privileges different-sex marriage.

Protecting religious rights and freedoms

The next topic was protecting religious rights and freedoms. The line of disagreement on the topic of religious rights and freedoms was if further protection was needed for religious rights and freedoms, primarily concerning education. One side argued the Constitution must be explicit in protecting the freedom of religious organisations, schools, and parents to teach children that marriage is between a man and a woman. In total, four reasons were given. In order of occurrence, the first reason was “equality works both ways”, and an inclusive society must protect religious rights. The second reason was since the Constitution already protects the parents’ rights as primary educators, it should not be a problem to add further clarification that it is the case. The third reason was because we do not know how judges will interpret the Constitution, we need to be explicit in protecting religious rights. The last reason was everyone should be allowed to live and breathe their culture, and this should include religious people whose culture is that marriage is between a man and a woman and people should be able to express their values in full without having “to feel like second-class citizens”.

The other side argued religion does not need further protection. There were three reasons for this spread across five utterances. Chronologically the first reason was the Constitution had been changed before relating to marriage when they, in 1995, voted for introducing divorce. When this change happened, it had no impact on religious education. Given the previous lack of impact, we do
not need to worry that this proposed change (same-sex marriage) will threaten religious education; thus, religion does not need further protection. The next reason was the Constitution already states that the parent is the child’s primary educator, which safeguards education. Making it unnecessary to further protect religious education. The last reason was faith-based education should be protected, but the Constitution should not reflect a specific ethos. The proposed protections for religious education are a Trojan horse which tries to sneak in a Catholic ethos in the Constitution and should be rejected.

Rewriting the constitution

On the topic of rewriting the constitution there were only two arguments. The first argument was the constitution should not be changed to allow for same-sex marriage. The reason was the constitution is gender neutral and same-sex marriage could be legalised without changing the constitution. The second reason was the constitution should be changed, and the reasons were the constitution symbolises who we (presumably the Irish public) are and what we value. Since we should value equality the constitution should be changed to reflect that.

Meta-deliberation

There were two lines of disagreement on this topic. First on the shape of the ballot at the end of the deliberation and how one should vote on it, and second on the merits of the “unintended consequences” argument. On the first line of disagreement, the more common argument was not needing the permissive option on the ballot (that is, the State may enact laws providing for same-sex marriage). There were two reasons for this. First, voting for permissive is essentially voting for nothing, as the government may decide not to legalise same-sex marriage. The second reason was the Constitution is already permissive, and the vote for a permissive amendment is redundant and should not be on the ballot. Next, there was an argument for the need to vote directive (that is, the State shall enact laws providing for same-sex marriage) because, similarly to the first reason of the first argument, voting for permissive left the decision to the whim of the government of the day. The two arguments are different, though, as they have different conclusions, one wanting to remove the permissive wording from the ballot and the second just encouraging people to vote directive.
The second line of disagreement was, as mentioned, around the merits of the “unintended consequences argument”. On the side of the unintended consequences argument was the reason that they have not had enough time to consider all the consequences, which should be reflected in the final ballot. Four reasons argued the unintended consequences argument is bad. First was there could also be good unintended consequences. Second was unintended consequences should not be worried about because questions such as adoption, assisted reproduction, and surrogacy that people worry about will undoubtedly be dealt with in time. The next reason was the unintended consequences argument is bad because it obfuscates the intended consequences. The last reason was the unintended consequences argument is bad because there are no unintended consequences, only intended consequences of same-sex marriage.

The rest
The remaining two arguments that did not fit into the four topics were that not all Christians are anti-change. The reasons were the person making the argument is Christian and not anti-change, demonstrating that not all Christians are anti-change. The second argument was individuals who oppose change are ignorant. The reasons were that the person making the argument used to be anti-change. He was anti-change because he was ignorant due to a gay person that personally abused him. After he was educated he changed his position. The man concludes that all anti-change people are ignorant.

Arguments

<table>
<thead>
<tr>
<th>Topic</th>
<th>Utterances</th>
<th>Line of disagreement</th>
<th>Utterances</th>
</tr>
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<tbody>
<tr>
<td>Legalising same-sex marriage</td>
<td>8, 13, 14, 18, 19, 20, 21, 25, 26, 28, 29, 37, 38, 41, 42, 43, 44, 45, 46, 47, 48, 54, 55, 57, 58, 60, 61, 62</td>
<td>Equality/Discrimination</td>
<td>8, 14, 21, 37, 54, 57, 58, 62</td>
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<tr>
<td>Protecting the children</td>
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<td>Protecting the children</td>
<td>13, 26, 28, 29, 38, 41, 43</td>
</tr>
<tr>
<td>Definition of marriage</td>
<td>19, 25, 42, 44, 45, 46, 47, 48, 54, 55, 57, 58, 60</td>
<td>Definition of marriage</td>
<td>19, 25, 42, 44, 45, 46, 47, 48, 60</td>
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<tr>
<td>Devaluing different-sex marriage</td>
<td>18, 20, 55, 61</td>
<td>Devaluing different-sex marriage</td>
<td>18, 20, 55, 61</td>
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<td>Topic</td>
<td>Utterances</td>
<td>Line of disagreement</td>
<td>Utterances</td>
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<td>--------------------------------------------</td>
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<td>--------------------------------------------------------------------------</td>
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<tr>
<td>Protecting religious rights and freedoms</td>
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<td>Are further protections for religious rights and freedoms needed?</td>
<td>33, 35, 36, 39, 41, 49, 50, 53, 54, 56, 63, 65</td>
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<td>Should the constitution be rewritten?</td>
<td>12, 22</td>
<td>Should the constitution be rewritten?</td>
<td>12, 22</td>
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<td>Meta-deliberation</td>
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<td>The ballot and voting</td>
<td>32, 61</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The merits of ”unintended consequences” arguments</td>
<td>23, 52, 59, 63, 64</td>
</tr>
</tbody>
</table>

Source: Appendix A. Utterances 17 and 27 did not fit into any topic were excluded from this table in order to make it easier to read.

### Concerns

<table>
<thead>
<tr>
<th>Theme</th>
<th>Utterances</th>
<th>Sub-theme</th>
<th>Utterances</th>
</tr>
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<tr>
<td>Concerns for the children</td>
<td>6, 7, 9, 25, 30</td>
<td>Do the parents treat children differently?</td>
<td>6, 30</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Does discrimination harm children?</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rights to know their genetic parents</td>
<td></td>
</tr>
<tr>
<td>Parental &amp; grandparental rights</td>
<td>2, 4</td>
<td>Parental &amp; grandparental rights</td>
<td>2, 4</td>
</tr>
<tr>
<td>Religious rights and freedoms</td>
<td>3, 16, 50</td>
<td>Religious rights and freedoms</td>
<td>3, 16, 50</td>
</tr>
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</table>
5.2 Categorisation

In this section, the reasons used by the Convention will be categorised as public or nonpublic. Since the research question of this thesis is “Does the Convention justify its decisions on same-sex marriage with public reasons?” only the reasons that justify decisions will be categorised. That means the reasons for and against the recommendations the Convention makes and the reasons for and against proposed recommendations that were not made since not making a recommendation also is a decision.

5.2.1 Concerns

Concerns are not reasons, but they can still be public or nonpublic, for example, a concern about what God would think about an action or the utilitarian calculus of an action. Concerns being nonpublic is not a problem for the legitimacy of the constitution-making process since they are not what justifies the constitution: what justifies the constitution is the arguments for the proposed amendment.

It is useful to distinguish the idea of public reason, as described in section “2.3 Public reason”, from the ideal of public reason. The ideal of public reason is realised when people making political decisions act according to the idea of public reason by explaining their decisions using public reasons (Rawls 2005: 444-445). As Rawls describes it, the idea of public reason is only a duty (what he calls “the duty of civility”) when justifying political decisions. Concerns are not justifications for decisions and are as a result not bound by the duty of civility. Because of this, the

<table>
<thead>
<tr>
<th>Theme</th>
<th>Utterances</th>
<th>Sub-theme</th>
<th>Utterances</th>
</tr>
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<td>Constitutional change</td>
<td>1, 4, 10, 16</td>
<td>Constitutional change</td>
<td>1, 4, 10, 16</td>
</tr>
<tr>
<td>Legal definitions and</td>
<td>11, 15, 24, 31, 34, 40, 51, 52</td>
<td>Legal definitions and clarifications</td>
<td>11, 15, 24, 31, 34, 40, 51, 52</td>
</tr>
<tr>
<td>clarifications</td>
<td></td>
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</tbody>
</table>

Source: Appendix A. Utterances 5 and 16 did not fit into any topic were excluded from this table in order to make it easier to read.
concerns will not be categorised since the purpose of this thesis is to evaluate the legitimacy of the 
deliberative content of the Convention and the concerns do not add or detract from the legitimacy.

5.2.2 Arguments
Legalising same-sex marriage

Because the Convention recommended changing the Constitution to provide for same-sex marriage, 
the reasons for change will be analysed first. There were three reasons for the change. These were 
(1) equal rights/anti-discrimination, (2) pride in the nation, and (3) to protect the children of same-
sex parents. There were two reasons against change. These were (1) we should not force religious 
institutions to marry same-sex couples and (2) marriage is by definition between a man and a 
woman.

The equal rights and anti-discrimination arguments were made in utterances 8, 14, and 62 
(Appendix A). Discrimination is the opposite of equal rights, anti-discrimination must be a different 
side of the same coin. Because of this, the equal rights and anti-discrimination arguments will be 
analysed together. The three utterances argue that same-sex marriage should be legal because 
people in same-sex partnerships should have the same rights as everybody else.

This reason for same-sex marriage relates to values provided by a political conception of 
justice since the reason is equality for all. They also do not break against the second or third 
criterion of public reason, that is, using commonly accepted methods of inquiry and rules of 
reasoning and relying on the virtues of reasonableness and the duty of civility. This is a public 
reason for recommending legalising same-sex marriage.

The next reason came from utterance 21 (Appendix A). The man making the utterance 
argues “to treat me differently because of who I sleep with at the end of the day or who I choose to 
say who I love is a form of discrimination and a state that allows that to happen is not a state that I 
think I would like to bring people into or be proud of” (Appendix A: utterance 21). The reason is 
related to the first reason because it argues that refusing to allow same-sex marriage is 
discrimination. The reason differs from the first reason because it argues discrimination is bad 
because a state that allows discrimination is not one to be proud of. The ultimate reason for 
legalising same-sex marriage in this argument is national pride.
To answer if this reason is public, the first question to answer is whether national pride is a principle provided by a political conception of justice. This argument fails to be public by not living up to the criterion of “not making perfectionist judgements” required of a political conception. The argument relies on the intrinsic value of national pride and can not be expected to be shared with fellow citizens of less nationalist tendencies or anti-nationalist/internationalist views.

The third reason was same-sex marriage should be legal to protect the children of same-sex marriage (Appendix A: utterance 28). This utterance argues even if one—for the sake of the argument—believes that different-sex parents are ideal for the child then same-sex marriage should still be legalised. Suppose children of same-sex couples are disadvantaged, and marriage is a privilege with advantages. In that case, we must provide the privilege and advantage marriage would bring to the children of same-sex couples.

This reason is a public reason because it follows Rawls’ difference principle, which is part of a political conception of justice. The reason also avoids contested scientific beliefs by accepting the opposing sides’ empirical claims about same-sex marriage.

Now, to the reasons against legalising same-sex marriage (Appendix A: utterance 37). The reason is not strictly against same-sex marriage but against legalising religious marriage and potentially forcing religious institutions to marry same-sex couples. Since it is an argument against same-sex religious marriage, it has been classified as an anti-same-sex marriage argument. The reasoning goes as follows: civil marriage provides the same civil rights, and giving same-sex couples the right to religious marriage risks forcing religious institutions to marry same-sex couples against their religious beliefs. Mandating religious same-sex marriage would as a result infringe on religious freedoms. Because of this, they should make it clear that the recommendation only recommends civil marriage and not religious marriage.

This reason is classified as a public reason because, to start with, it relies on principles provided by political conceptions of justice. The reason was to protect citizens’ religious freedoms by not forcing them to marry same-sex couples if their religious beliefs do not allow for it. This argument is properly political because it limits its claims to justice, citizenship, and political obligation, avoids perfectionist judgements, and is not grounded in any values that contradict any conception of the good life.
The second reason against legalising same-sex marriage was marriage by definition is between a man and a woman, making it is impossible to have same-sex marriages (Appendix A: utterances 19, 42, 45, 46, 47, 48). This reason is often repeated but comes down to the same point each time: marriage is, by definition, between a man and a woman, and it is impossible to have same-sex marriages. They also add that it would be possible with civil partnerships for same-sex couples.

This reason does not come down to a principle or a value. The reason circumvents the first criteria for public reasons, to rely on principles provided by political conceptions of justice. The reason fails to meet the second criterion by not only using commonly accepted beliefs and basic reasoning. The definition of marriage as being between a man and a woman must be considered in contention and not a commonly accepted belief, especially considering that a large majority of this Convention recommended legalising same-sex marriage. This reason can not be considered a public reason.

Further protecting religious rights and freedoms

On the topic of protecting religious rights and freedoms, what was argued about in relation to the recommendation was if the recommendation should include protections of religious rights and freedoms. Such protections were ultimately not included in the recommendation. The first argument for including such protections was that equality works both ways and that the Constitution needs to protect not only same-sex couples’ rights and freedoms but also religious people and institutions. (Appendix A: utterance 33, 36). This reason is public because it relies on equality, which, as argued earlier, can be derived from a political conception of justice, avoids perfectionist judgements, and is grounded in values that do not contradict any conception of the good life. The reason also relies on commonly accepted methods of inquiry and rules of reasoning and does not go against the virtues of reasonableness and the duty of civility.

The second reason for including protections of religious rights and freedoms was everybody should be able to live and breathe their culture, including religious people and further protections are needed to ensure religious people can live and breathe their culture without feeling like second-class citizens (Appendix A: utterance 35, 49, 65). This reason was also classified as a public reason. Being allowed to live one’s own culture can be derived from political conceptions of justice, such as
Rawls’s original position conception. It does not go against commonly accepted methods of inquiry and rules of reasoning, and it does not go against the virtues of reasonableness and the duty of civility.

There were three reasons against adding further protections of religious rights and freedoms to the recommendation. The first reason was since changes in marriage in the past had no effects on marriage, there was no need for protections this time (Appendix A: utterance 39, 41, 54). This reason is nonpublic based on it not relying on commonly accepted beliefs. As seen in the deliberation, a not insignificant part of the public thinks religious rights and freedoms need further protection if same-sex marriage is legalised. The argument is trying to predict what will happen in the future (will religious rights be infringed or not), and the claim is nothing will happen to the rights of religious people. This may or may not be true, but it does not appear to be a publicly and commonly accepted belief, making the reason not a public reason.

The second reason against adding further protections for religious rights and freedoms to the recommendation was that the Constitution already states the parent is the child’s primary education, and this safeguards religious education, making further protections unnecessary (Appendix A: utterance 51, 62). This reason was classified as nonpublic for the same reasons as the last reason was classified as not public. It is trying to predict what will happen if same-sex marriage is legalised and argues that religious people will not have any rights infringed on. This is a prediction that is contested by the people arguing for further protections and seems to represent the view of a section of the maxi-public.

The third reason against adding further protections for religious rights and freedoms to the recommendation was faith-based education should not be protected because that would mean making the Constitution reflect a specific ethos. It would be a way to sneak a Catholic ethos into the Constitution (Appendix A: utterance 63). It seems possible to imagine a way to further protect religious rights and freedoms, but following the principle of charity, this reason will be read as if it is correct in its initial premise. Adding protections for religious rights and freedoms in this context could mean making the Constitution reflect a specific religious ethos. This reason is public because it can be understood as relying on a political conception of justice in so far as it wants the Constitution not to privilege any specific comprehensive doctrine. This could be deduced from an original position conception of justice.
Rewriting the constitution

There was one reason for recommending that the Constitution should change and one argument not to recommend changing the Constitution. The reason was the Constitution symbolises who the people of Ireland are and what they value. Since they should value equality, the Constitution should reflect this (Appendix A: utterance 22). This reason relies on the value of equality which a political conception of justice can provide, on commonly accepted methods of inquiry and rules of reasoning, and it does not go against the virtues of reasonableness and the duty of civility. The reason is a public reason.

The reason against recommending that the Constitution be changed was the Constitution already supports same-sex marriage, and changing it is unnecessary to legalise same-sex marriage (Appendix A: utterance 12). This reason is not public because it does not rely on commonly accepted beliefs. It was clear in the deliberation that many thought the Constitution had to be changed to allow for same-sex marriage. That is what most of the deliberation was about. It was not commonly accepted that the Constitution already supports same-sex marriage. The person also did not explain or add anything to the claim that the Constitution already supports same-sex marriage. This is certainly a contested understanding of the law, and is not a public reason.

Meta-deliberation

There were two arguments relating to the recommendation on the meta-deliberation topic. The first was that the Convention should vote for a directive amendment recommendation since a permissive amendment recommendation would leave it to the whim of the government of the day to decide if they were to go through with the changes. In order to “cherish all the children of the nation equally” they had to vote directive (Appendix A: utterance 32). Protecting all children equally is a principle that can be derived from a political conception of justice (for example by using the original position thought experiment). The reason also relies on commonly accepted methods of inquiry, rules of reasoning, and the virtues of reasonableness and the duty of civility. Because of this the reason is classified as a public reason.

The second argument was similar to the first. It argues marriage should be available to all citizens because of equality. It further argues that permissive wording in the recommendation risks being ineffective. The key difference is what it argues for, removing the permissive wording from
the ballot (Appendix A: utterance 61). This reason is nonpublic because it does not live up to the virtues of reasonableness. One of the virtues of reasonableness is to see political society as “a fair system of social cooperation for mutual benefit between free and equal people” this reason does not live up to this by not treating people who are for a permissive wording as free and equal by wanting to remove their preferred option from the ballot. Surely being free and equal ensures we all have our preferred options on the ballot, at the very least.

<table>
<thead>
<tr>
<th>Reason</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legalising same-sex marriage</td>
<td>Legalisation was recommended</td>
</tr>
<tr>
<td>Reasons for recommending same-sex marriage be legalised</td>
<td></td>
</tr>
<tr>
<td>Equal rights/anti-discrimination</td>
<td>Public</td>
</tr>
<tr>
<td>Pride in the nation</td>
<td>Nonpublic</td>
</tr>
<tr>
<td>Protect the children of same-sex parents</td>
<td>Public</td>
</tr>
<tr>
<td>Reasons against recommending same-sex marriage be legalised</td>
<td></td>
</tr>
<tr>
<td>Not force religious institutions</td>
<td>Public</td>
</tr>
<tr>
<td>Marriage definition</td>
<td>Nonpublic</td>
</tr>
<tr>
<td>Further protections of religious rights and freedoms</td>
<td>Further protections were not recommended</td>
</tr>
<tr>
<td>Reasons for recommending further protections of religious rights and freedoms</td>
<td></td>
</tr>
<tr>
<td>Equality works both ways</td>
<td>Public</td>
</tr>
<tr>
<td>Everybody should be able to live and breathe their culture</td>
<td>Public</td>
</tr>
<tr>
<td>Reasons against recommending further protections of religious rights and freedoms</td>
<td></td>
</tr>
<tr>
<td>Changes in marriage had no effects in the past</td>
<td>Nonpublic</td>
</tr>
<tr>
<td>Parents are the primary educator</td>
<td>Nonpublic</td>
</tr>
<tr>
<td>Sneaking in Catholicism into the Constitution</td>
<td>Public</td>
</tr>
<tr>
<td>Changing the Constitution</td>
<td>Changes to the Constitution were recommended</td>
</tr>
<tr>
<td>Reasons for changing the constitution</td>
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</tbody>
</table>
5.3 Results
For the decisions to be legitimate, they must be justified by public reasons. Starting with the first topic, the decision was to recommend legalising same-sex marriage. The Convention justified this with two public reasons: the equal rights/anti-discrimination argument and the protect the children argument. On the topic of further protection of religious rights and freedoms, they decided not to recommend further protections. This was justified with the public reason of further protections resulting in sneaking comprehensive reasons into the Constitution. On the topic of changing the Constitution, they decided to recommend that the Constitution should be amended. This was justified with the public reason of the Constitution symbolising who they are as a public. On the topic of Meta-deliberation, they decided against removing the permissive choice on the ballot. This was not justified at all, but the reasons for removing the permissive choice were not justified by public reasons either.

In summary, all decisions made were justified by public reasons. They were showing that average citizens who deliberate on issues can justify their decisions on constitutional matters and questions of basic justice with public reasons, which shows that they have the ability to make legitimate constitutions.

<table>
<thead>
<tr>
<th>Reason</th>
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</tr>
</thead>
<tbody>
<tr>
<td>The Constitution symbolises who we are</td>
<td>Public</td>
</tr>
<tr>
<td>Reasons against changing the constitution</td>
<td></td>
</tr>
<tr>
<td>Same-sex marriage is already allowed</td>
<td>Nonpublic</td>
</tr>
<tr>
<td>Meta-deliberation</td>
<td></td>
</tr>
<tr>
<td>They should vote directive</td>
<td>Public</td>
</tr>
<tr>
<td>There should be no permissive choice on the ballot</td>
<td>Nonpublic/they did not remove the permissive choice</td>
</tr>
</tbody>
</table>
6. Conclusion
The answer to the research question “does the Convention justify its decisions on same-sex marriage with public reasons?” is that the Convention did justify its decision on same-sex marriage with public reasons. This suggests that mini-publics at least under certain circumstances can make legitimate constitutions as understood through public reason theory. Since this case was a least likely crucial case and a soft smoking gun test, we can conclude that we have good reasons to believe that these results would hold in other constitutional mini-publics as well. Future research is however needed to ensure that constitutional mini-publics reliably justify their decisions with public reasons since this was still a single case study. The main takeaway from this study is we have stronger reasons to believe mini-publics can make legitimate constitutions than before this study was conducted.

The results of this study should be put in the context of deliberative democratic theory, which is best done by using Archon’s democracy cube. The three dimensions are, as mentioned in the theory section, (1) who participates, (2) how they communicate and make decisions, and (3) the extent of their authority and power. In this case, there were 66 randomly selected citizens, 33 politicians, one chairperson, and a set of facilitators (one per table). On the first dimension, the most relevant aspect is the 33 politicians. Even though, as mentioned earlier, they did not dominate the discussion, they may have influenced the deliberation in the direction of public reason. This could be because of their experience as politicians, where you must regularly reach out to people outside of your comprehensive doctrine. The facilitators may also have increased the ability of the citizens to use public reasons. The facilitators are not a problem for drawing conclusions from this case because any constitutional mini-public is likely to have facilitators. They are in that sense not a variable that is likely to stay the same in any constitutional mini-public, having politicians present has to my knowledge never happened in another constitutional mini-public.

On the second dimension, they communicated and made decisions through deliberation and a vote at the end. The results may have been different if the mode of communication and decision were less intense. For example, by only aggregating their existing preferences without the deliberative stage, their reasons may have been less public due to not directly trying to justify them to people right next to them with different beliefs and worldviews.
On the third dimension, their power was to advise/consult. It is not clear how more power would have affected the results. On the one hand, the extra power may have caused the participants who used nonpublic reasons to fight harder for their comprehensive doctrines. It could also have given the participants an added sense of responsibility to their fellow citizens and caused them to use more public reasons. On the other end of power, if they were given less power and authority by, for example, only using the mini-publics as a communicative endeavour where they get to reach out to the public but not recommend amendments to the Oireachtas they may have used less public reasons due to them having less of a responsibility to their fellow citizens. Different designs of the mini-public could have changed the results of the study, but we can still conclude that the results of this study are that we have better reasons to believe average citizens can make legitimate constitutions than we did before.

In this case, the participants justified their decision with public reasons, and their recommended amendment of the Constitution is legitimate as understood by public reason. With everything mentioned in mind, this gives us reason to believe using constitutional mini-publics is a viable option to make legitimate Constitutions. The topic of deliberation (same-sex marriage) makes this a case where one would expect nonpublic reasons. Since the participants managed to justify their decisions with public reasons in this case, we can assume they likely would do so in a less contentious case as well. The thesis did, however, only study one case, which limits the ability to draw conclusions not only to other existing cases but also to future constitutional mini-publics. This thesis shows that mini-publics are capable of making legitimate constitutions.

**Future research**

The first suggestion for future research is studying a constitutional mini-public that did not have politicians present to see if it makes a significant difference. To systematically further study the internal face of deliberative mini-publics, one could use the democracy cube and go dimension by dimension—for example, study how citizens deliberate on constitution-making under different circumstances. Changing the size of the constitutional mini-public studied or the method of making decisions would improve our knowledge of average citizens’ ability to make constitutions.

Another area of future research is what to make of the results that average citizens can make legitimate constitutions under the right circumstances. What does that mean for the democratic
system? Even if we accept that average citizens reliably can make legitimate constitutions, is this something that should be put into regular use? Maybe even be mandated in the Constitution? One could argue that the drawbacks of having regular constitutional changes are, on some level, supposed to be reliable and relatively non-changing, providing stability for the state. On the other hand, regular constitutional mini-publics allow the Constitution to be a living document and keep the Constitution from becoming out of date and unfit for the society of the day. It is a question of what the Constitution and our relation to it ought to be. Future research could ask how constitutional mini-publics ought to fit into that relation.
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Quong, Jonathan. (2013). *Liberalism Without Perfection*, [online video], Youtube, 29 May 2013, available 2023-02-23 at [https://www.youtube.com/watch?v=PAVau7jP0mg&list=PLU2NcGAdp0283GjiBZIolbiwGiCXJntkyx&index=2&t=277s](https://www.youtube.com/watch?v=PAVau7jP0mg&list=PLU2NcGAdp0283GjiBZIolbiwGiCXJntkyx&index=2&t=277s).


## Appendix A

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### Utterance

#### Session 1

**Part 1**

<table>
<thead>
<tr>
<th>Q&amp;A with Gerard Duncan and…</th>
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<tbody>
<tr>
<td>1 I’m not sure if it’s appropriate to ask the question, but I’ll try anyway. As I understand it, the Constitution does not prohibit, doesn’t define marriage or family. It doesn’t prohibit same-sex unions. To amend the Constitution should it not be dealt with in the legislative process solely. As I understand the process from this Convention, assuming the Convention recommends same-sex union and assuming the Government accepts that recommendation, there will then have to be legislation to allow a referendum if passed will then require legislation. Have we too many steps that are not needed? Also is it appropriate to have the issues in the Constitution? If we look at article 31 3 1 the state pledges to protect marriage and the following sub-article the state following sub-article, the state or the constitution permits divorce, they would seem to me to be in conflict and are we possibly building up problems in our constitution and making our constitution too unwieldy? Should we just be dealing with higher level things in the constitution and letting the legislature do its work?</td>
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<tr>
<td>2 Just two brief questions. The first is for Dr. Penner. Under the Guardianship of Infants Act 1964, the provision for the testamentary guardianship being passed on, the issue of the rights of grandparents, where does the superiority lay in those circumstances? The second question is, Dr. Eimear Brown, in a same-sex marriage situation where there is a subsequent divorce, what are the implications for adoption and guardianship in those circumstances?</td>
</tr>
<tr>
<td>3 Just a quick question to Eimear if I can. In any of the research that was carried out in countries where same-sex marriage does exist, is there any evidence to support the claims that this has led to a coercion of any of the religious organizations or orders, or in any way can act as a violation of the freedom of religion? So is there any evidence to support that claim, which is often made by opponents of marriage equality in any of the research that was carried out?</td>
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Can I just ask you very briefly, thank you very much for all your presentations. In relation to the issue of guardianship in particular, in the current situation, assuming there is no change, is there scope within the law in Ireland comparing, for example, a child that has been brought up in a situation of a second marriage to allow guardianship, for example, to the stepfather or stepmother in that situation, either with the consent of or without the consent of the biological parent, not in the relationship? And how would that compare with the situation of civil partnership? What I'm trying to get at, is there a situation where without a constitutional amendment, the court or the law could be changed, for example, to allow the court some discretion around guardianship rights and responsibilities in the case of same-sex partnerships or indeed in the case of opposite-sex couples in the case of second unions and so on?

<table>
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<tr>
<th>Session 1 Part 2</th>
<th>Q&amp;A with Jim Sheehan</th>
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<tbody>
<tr>
<td><strong>5</strong></td>
<td>I'd just like to make a point that gay and lesbian people arrive from heterosexual parents. There was something I saw a number of years ago but I couldn’t follow it up for this. It’s when the child is in the womb with the mother, it’s something in her genetics that causes gayness. Homosexually. Maybe Professor Sheen can help me?</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td>[First part inaudible] There is a lot of problems with children and with parents from heterosexual marriages, but so far we’ve never heard of any of gays mistreating their children. Maybe they do, I don’t know but we’ve never heard of it.</td>
</tr>
<tr>
<td><strong>7</strong></td>
<td>My question is effectively to Professor Sheehan. Does the available evidence effectively suggest that really the only negative impact on children of same-sex parents is the discrimination that they suffer on the basis of parental sexual orientation?</td>
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<tr>
<td><strong>8</strong></td>
<td>The speaker before last said children come from heterosexual couples but the fact is that most gay people are married and have children or traditionally that would be the case that a lot of gay people would have been married and have children. Having children is not, there’s no complete correlation between being gay or lesbian and not having children. The second thing I’d say is at this early stage I would like to say that my default position would be that I think it’s very little to ask by anybody to have the same civil rights as anyone else in a modern society. So I would like to just say those comments.</td>
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</table>
Thank you, Professor Sheehan, for your presentation. I know I certainly found it very interesting that you said that despite the fact that obviously there isn’t that much research yet, it is moving in the one direction, and I thought that was the part that stuck with me, certainly, from your presentation. I suppose just to ask you a question in your professional capacity, one of the things that I think is most frightening in Irish society today is the level of suicide amongst young people and mental health problems amongst young people. And I know that amongst gay teenagers the rate of suicide is four times that of their peers. I just wanted to ask if you think that one of the reasons why gay teens find it so hard to come to terms with their sexuality is because they worry that they won’t be able to grow up, fall in love and marry the same way as their friends and they see that there are certain emotional opportunities in life that are closed off to them. If you think that that’s part of the picture as to why we have such a bad problem in this country with suicide amongst gay teens. Thank you.

Session 2 Saturday Plenary Session

Chairman, just a point on the heading, points in favor of reform. I think the vast majority if not everybody would be in favor of reform, but the issue is are we in favor of constitutional change Thank you.

It’s a question more than a point. If we redefine marriage, does the definition of family, does the definition of marriage mean that we have to have a family? I mean, if we define marriage as a family, does that mean that we have to have a family? If we redefine marriage, does the definition of family automatically change in the Constitution or is that something that would need to be done separately?

I believe that the rights have to be afforded to every child equally, but whether it requires constitutional change and whether the legislators and their program of government should be the ones to do it, I don’t know. But I would throw and warn that caution, extreme caution, needs to be taken. And this is a matter, obviously, then for the entire population of Ireland to debate at length, carefully, that we undermine or we may undermine one of the main fundamental blocks of this state, of family, and of natural procreation. I believe the rights do need to be afforded, but whether it needs to come from changing the fundamental plan, the constitution of this country or should it be done carefully through legislation under the programme of government, I'm not sure if the constitution needs to change at all. I actually looked at it and I thought to myself there’s nothing wrong with the constitution. The constitution is gender neutral. It happens to be that the high courts have taken a particular view on it. Legislation has followed suit. Perhaps that suit perhaps is with legislation that’s wrong. Thank you.
There was a reasonably strong feeling I think it would be fair to say at our table that there were perhaps two elements to this question. One was the right of a gay couple to marry and the other were the follow-on consequences in relation to children. And in a sense there was almost two issues. And it really pointed out to us that one of the things that perhaps is necessary is to revisit as a matter of perhaps urgency the definition of family in our constitution and that it wasn’t just an issue in relation to gay couples but an issue for couples who are not in a married relationship full stop. So we felt that a lot of the debate that arose on the pro and anti side of the issue very much focused on the issue of gay couples as parents or in a relationship where children were involved, when in actual fact, many gay couples are not involved in situations where children are involved at all, and simply want a right to be a married couple. So to some extent, maybe there is a case there for decoupling the two issues, addressing the rights of all parents in relation to children, and fundamentally, the rights of children themselves. And that if the issue of what a family is and if the issue of the rights of children, and in particular, that the interest of the child should be the primary interest and fundamental to any decision that’s made in relation to the child, whether it’s relating to a biological parent, a biological mother, a biological father. And we were very conscious of some of the emerging issues, particularly around assisted human reproduction that are coming down the track. And that fundamentally, the only way to deal with that is to deal with the fundamental rights of the child to be put first. And again, we were very persuaded by the human rights issues in relation to the right to marry.
I’m trying to reflect the views of the whole table as well. We had a very strong consensus I think in favour and again we saw it as a two-part issue. First of all, it’s an equality issue for people in same-sex partnerships. They should have the same rights as everybody else. Again, the idea that anti-discrimination needs proactivity, it needs to be said in the Constitution because the case law seems to have interpreted it elsewhere, but it’s a fundamental equality that it’s not trying to take something away from opposite sex marriages, it’s just trying to give the same rights. The second part of it then is the follow on where it seems to at present we seem to disadvantage children of same sex partnerships and they don’t have the legal protection and then as people age, then same-sex parents possibly aren’t able to be looked after by their children if it’s not the biological parent. And one other thing we felt was that the presentations of the people in favour we thought were very persuasive, were very well made, well argued. We thought they were fair because they’re saying we don’t want to take away, we respect the rights for religious freedom, that if religious institutions don’t want to participate, then yes, they have the right not to participate. But when it came to the arguments from the other side, a lot of the terminology they used is almost the terminology that they should be using to argue for. They were talking about mutual respect and compassion and dignity and these are surely words that should be used for accepting people and accepting everybody’s rights and not to discriminate against them.

sorry Chair, just to interrupt before we move on to the next slide. I’d just like to address a claim or I suppose a concern that’s being raised by a number individuals as well as some of the advocacy groups against the proposed change. I’d like to ask the panel if there’s any actual legal basis to their concerns. Would expanding the institution of marriage to include same-sex couples legally undermine the existing institution and if so how? Thank you.
Can I first of all say that unlike my colleague Aideen’s table I think I can report that we had a delightful diversity of views at this table. I think we’re enjoying each other as well. It strikes me at this stage and just having heard what Deirdre said, I think we should also I think pay tribute to all the experts but also the guest speakers I think on both sides did manage to convey their deep respect for this process and their careful consideration of the issues and I think all were sincere in their understanding of what a respectful culture will mean. I think that point should be made. In response to that, it strikes me that there are three questions, Chairman, that this may be a reasonable approach to help guide our thinking. Others may disagree. I think the first question is, there are so many complex issues here that our first question should be, have we enough in one weekend? Should we be looking at making a recommendation? I certainly know that at this table, we only scratch the surface of various issues like assisted human reproduction, inter-country adoption, et cetera. So I think that’s the first question, logically. Should we be moving towards a recommendation or is it our sense that we really need more time on something as big as this? Second question is, if we do think then that we can safely move towards some kind of recommendation or recommendations. Should we be looking at changing the constitution? Are a number of the issues that have been raised in relation to creating a culture of respect, anti-bullying, or the whole issue of guardianship rights, some of these issues can be treated with by way of legislation. So a question will be, I think, or ought to be, and I think we’ve had a mirror of this in previous gatherings, could we achieve by legislation some of the things that we might wish to achieve, or does it require a constitutional change? I think the third issue might be then that if we do decide to change the Constitution, in addition to or without legislation as well on other issues, if we do decide to change the Constitution, do we do so in a way that allows clauses to give, for example, respect to parents, families, organisations who might want to teach or espouse their view of marriage, be it same-sex marriage or marriage as it currently is defined? In other words, do we act to protect that freedom for people so as to prevent unintended consequences? Or another issue, do we change the Constitution in a way that allows legislators the freedom to deal with issues like assisted human reproduction, adoption, where they might want to nuance issues and provisions without attracting the censure, let’s say, of the European Court of Human Rights. So in other words, do we go at changing the Constitution but do so with clauses attached to protect certain outcomes that may not be considered desirable by some. I hope that is in some way helpful and if it is not, thank you for letting me get it off my chest.
Mr Chairman, just make one small point really, the impression might be that those who were for the status quo were representing the churches per se, all of them had church connections. And to say that there is a wider Christian perspective on this that wasn't really represented today, by choice perhaps, but just to say that there is a wider one than the one expressed today. And that while some of us who profess to be Christians find it difficult to, well, to value scripture as well as a human rights issue, that we're grappling with that and that there are many Christian members of the different churches who have come to the point of view that we can no longer stay with the status quo and that there's a human rights issue here and that a conscience issue and that there's a body of Christians out there in favor of same-sex marriage.

I was really interested in the point my colleague makes behind me and not surprised that he didn't get the type of answer he expected and if I could perhaps provoke discussion on the same issue in another way. I'm struck since early morning about people speaking of the concept of traditional marriage and an attack or a fundamental change on tradition. I think it was put on your previous slide that tradition should perhaps be outweighed by equality. I'm not sure the extent that we should be hamstrung by what we describe as tradition because tradition implies no change and yet over the years there has been huge change, much of a fundamental nature. If we look at the domination since the foundation of our state, the domination of marriage through the prism of the Catholic ethos and for the previous hundred years before independence we had a similar type of influence of a huge nature on marriage through the Anglican Church. And then over the last 40 years, we had reforming pieces of legislation in our jurisdiction that did change fundamentally the concept of tradition. I'm thinking briefly of the Married Women Property Act, the Family Home Protection Act, property act, the family home protection act, the fact that we abolished such things as breach of promise to marry, we abolished the concept of conjugal rights, we introduced the criminal sanction for marital rape and we did put marriage on a completely different footing without having a massive debate on changing of tradition. We changed our nullity laws, we changed our Constitution to allow for divorce, having previously introduced the concept of judicial separation heretofore unknown, but yet changing marriage as we knew it. And I merely make the point to reinforce the evolution of marriage in line with the answer that the European Court gave to Eimear in the context of her questions or comments. So my point really is that perhaps we shouldn't be hamstrung by what we describe as tradition, tradition implying no change when in effect we've had huge change and that we should look more towards fairness and justice and equality rather than introducing a barrier of tradition which I believe we can logically and compassionately dismantle in a way that doesn't damage society.
It appears to me as if there's an oxymoron I'm not aware of the fact that you can have same-sex marriage. Marriage, by definition, in any book that I've ever looked up on, was a union between a male and a female. And I don't think you can. I think it’s an oxymoron. You can't have same-sex marriage. You can call it anything else you like, but you can't call it same-sex marriage because you're saying same-sex man-woman marriage or so our words that I think we're dealing with an oxymoron here and I think that we're confusing family with marriage and I think that the last speaker today made a very good case in terms of treating the two things separately, given every benefit one could to people who wanted to share, in by law, giving everything except the word marriage. And I would agree with that.
I suppose I was struck today by all the presentations I thought were very good and respectful and informative. But I think one of the things is that there's a crossover between civil and religious nearly in this and that's why I think that the, because a lot of people would, when they see marriage or they use the phrase marriage, they automatically think of a religious ceremony most people do and that's one of the things I think in the context of the debate we should be looking at the debate is the same-sex civil marriage because we are talking about a civil ceremony in that sense and I do I was struck by some of the remarks with regard to unintended consequences like this is a massive issue as to what other areas such as adoption and that that need to flow out from this should a referendum be passed. So there is a lot in us and I think maybe a day and a half, more time I believe is needed to flesh out the other issues, not the issue itself. I think there's a broad agreement of fairness and equality that we should look towards same-sex civil marriage. But I was struck by one thing when we discussed education and education in our schools. One of the best comments I heard earlier on today was from Sean Mullen where he said we should be looking towards neither Nietzsche nor Newman. And in the context of this debate we've got to actually look at what is fair to everyone, to respect people who don't agree for religious reasons, then they have well-held beliefs. And yet society moves on, and we have to recognize equality and fairness. And I believe that people should be treated equally and should have access to civil marriage should they wish to do so. But on the education side of things, and we did discuss this, and I don't know how maybe the panel of experts here, that should this be passed into law and you have religious faith-based schools who don't believe that, you know, that they believe that marriage is between a man and a woman, well, what effect does that have further on down the line with regard to, you know, teaching in those schools? People who decide to send their kids to be at Church of Ireland, Catholic, Jewish, Islamic faith schools. So there are other things that flow out of this and it's not as simple as, well I don't think anyone believed that it was simple and it certainly isn't because I thought of things today that I haven't thought about you know before as to what can flow out of it but you know I was struck by some of the examples about what's happened in the UK too. I think some of them were unintended consequences such as the closure of adoption agencies and that type of thing. So I think we've got to tread carefully, but I would stress that we should be talking about this in the context of same-sex civil marriage in relation to even the ballast and that, because we've got to be clear. A lot of people will argue from the religious perspective that say, well, I don't want you infringing on my religious beliefs, but we're not talking about religious ceremonies here. I think we should be clearer about that.
I suppose just very, very briefly what I really want to say, I suppose get something off my chest a bit like what Ronan said as well. Number one, I just want to say first of all I feel exceptionally privileged to be here today. It’s one of the reasons why I asked to be a member of the Constitutional Convention because this is possibly the most important issue that I will ever deal with in my political career I think and it’s something that is personalised to me too as somebody who is gay and I suppose what I really want to say at the end of the day is that Dara alluded to it that this is a civil issue this is an issue about asking the state to treat same-sex couples in the same way it treats opposite-sex couples when it comes to marriage. That’s what we’re asked today. It’s around that particular issue. I mean I think there should be respect for what you know some of the religious organizations here said today and I’m glad that Tom that you did mention that and Richard mentioned as well. There are other groups within you know religious communities who are totally in favor of marrying gay and lesbian couples. I just couldn’t get it out. Anyway, but can I just finish up on this really as such. You know, we can call it what we want, and this is my own personal view, we can call it what we want, but refusing to allow same-sex couples to marry through the eyes of the state is discrimination. The blood that flows through my veins is the same as the blood that flows through anybody else’s veins. And to treat me differently because of who I sleep with at the end of the day or who I choose to say who I love is a form of discrimination. And a state that allows that to happen is not a state that I think I would like to bring people into or be proud of. And we here today, and I have to say it, and I will really finish up this time here, I was sitting here thinking, you know, I’m going to put some of the memories of the experiences I had here today into somewhere up here and remember them because they were really fantastic. They were life-changing experiences. Hearing Connor and Paula talking there, I mean, some of us here were literally, you know, holding the tears in, you know, with the moving things that they said. And I just really think, you know, remember the experience you have today and it’s something that we’re not going to have all the times in our lives. It’s a very special and privileged moment that we all have here to be discussing an issue that can really progress our society, I believe, to a society that we can be proud of and treats everybody equally. And this is one of the remaining institutions within our society that allows blatant discrimination to happen to people based on who they sleep with. I’ll finish on that.
22 I suppose I just wanted to add Gerard to maybe what you said about the Constitution being a set of rules in the bigger picture. I suppose for me the Constitution is really a sort of statement of who we are as a society and what we value. And for me I would want to be living in a country where the Constitution was a statement of value of everybody equally. And that in that case for me the only place for this to be altered is in the Constitution and that any other form of alteration of the rules or regulations in law to allow perhaps for some equality just falls short. I think we, I described it here at this table as a form of subtle discrimination, that if you say well civil partnership is enough, for me it’s not, it has to be in the constitution because the constitution is ultimately who we are and what we value as a people.

23 I just wanted to say that during the day during the discussions a lot of words like issues and concerns and consequences got thrown around and it kind of got me a bit upset because it's not only an opportunity to discuss about what could go wrong, but it's absolutely an opportunity to talk about what will go right. Because when I feel the lack of rights in my own life, there's only opportunities for things to get better. And there's only opportunities for people in this room to make a decision, to put something in our constitution to protect young people who are gay and who are lesbians, to expand their rights set, to say to the international community, Ireland values the fact that there's a diversity of family life, there's a diversity of sexual life and that Ireland values and respects that. It's going to say so much that people, young people are leaving the country in droves and I mean I don't want to have to be another young gay person who has to leave to have a marriage recognized in a country that isn't mine. As a young patriot I don't want it for Ireland but equally I don't want it for you guys either to sit here and talk about worries and fears for like for religious groups and for social groups. It's not something that has to be a negative. It can absolutely be something that's positive. It's positive in my own life, and I think that it will be a positive for the diversification of people in Ireland. And I think that maybe as you think about it over the evening, if you could think of it in a positive light instead of going, oh no, what will happen if, and what will happen to the children, and what will happen, God forbid that a gay couple will want to look after a child that doesn't have a home. That's a good thing. It doesn't have to be that they'll be lost and lonely and won't have a mother. It could be, well, they'll have a family that they wouldn't have had otherwise. So I just want you to maybe reframe the way you're thinking. It doesn't have to be a negative, and it will absolutely be a positive, to my mind anyway, at least.

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my question is towards Connor. I was very interested in the submission that the group made from UCC and you’re making the point that in both the preamble to the Constitution and our Constitution it’s based on equality and the freedom and dignity of each individual. And I think you made the point that Articles 41 and 42 could be applied to same-sex couples. So in the submission you were going through the way in which it has been interpreted in the court as meaning opposite-sex couples and I’m just wondering, have you any insight or anything further you’d like to add on that as to why that has happened and you make the point in the submission as well that it’s a political matter rather than a legal matter so I’d be interested in your opinion on that. Thank you.

Could I ask both Connor and Carol, in the context of safeguarding children’s rights, in the context of the genetic identity, could the rights of a child to know its genetic parents and to contact them, can that be preserved or put into legislation? And if so, has it been done in any other jurisdiction? And secondly, could I ask the panel, and in particular David, Secondly, could I ask the panel, and in particular David, and I want to thank David for his support of the decriminalization of homosexual acts. As a gay man, I welcome your movement towards me in that regard. And not that way, no. It is very important, David, that I, as a gay person, David, that I, as a gay person, born, given the gift by the God that I pray to, the God that I believe to, the God that I worship, and in my life, my religion and my faith is very important. Today, and this issue, is distinct from that. And the God that I worship and believe and pray to is the God that Bishop Riley this morning quoted, where he said, to love another person is to see the face of God, because is the God that Bishop Riley this morning quoted, where he said, to love another person is to see the face of God. Because in my partner, I see the love, the commitment, and the union of two people, which to me is at the heart of marriage. My mom and dad, for 40-odd years before my mom died, it was a union of love, of commitment. And they taught me values that I haven’t seen repeated. Sorry, that I see repeated every day by gay people and by straight people of love, commitment, fidelity. And my question to you is, surely the love and commitment that I have as a gay man to my partner can be replicated in marriage, which is about a commitment and partnership. Thank you.
26 Thanks very much for all the presentations. I really enjoyed today. I’m beginning to think before I got married I should have become a constitutional lawyer first because I didn’t realize what I was getting myself in for. Just on the point that Cara made there very briefly, about the key determinant about the happiness of children and security of children in any family being poverty. And I want to agree with that. I just want to ask the panel, particularly in relation to the UCD study from the School of Applied Social Sciences that said, in terms of family relations and family well-being, that the key determinants in relation to children and their well-being and their advancement in society is actually the education of the parents and nothing to do with the family and their well-being and their advancement in society is actually the education of the parents and nothing to do with the family structure, be it lone parent, be it gay parentage, be it married parentage or whatever. And I think the scaremongering in relation to how happy children might be in any sort of relationship, I think needs to be put to bed because I think the key to terms is love and it’s family security and not the nature of that family. Thank you.

27 Thanks. I’m going to go off. but often now I think the biggest problem with people is ignorance. You know, they don't know enough. Because it’s a thing that happened to me personally years ago, I was abused and automatically from there on, any gay person I came across was, I categorized them as the same as the abuser. Which meant that I didn't have enough knowledge, I didn't know, and I think there's an awful lot more people in the country that are on the same boat as I that are on the same board as I was. And I kept that up until I got help and I got educated. And then I found out that the gay people, whether they're men or women or whatever, they're perfect people. There's nothing at all wrong with them. Just the attitude that I took because I didn't know any different. And I know I’m not asking a question. I'm just putting my own view out and what I think of the lesbians or the gay people. my own view of what I think of the lesbians or the gay people, there’s nothing wrong with them and they can provide a home as good as any, man and woman together.
It comes back to the point that Michael Dwyer made and indeed I think was made by the Bishop earlier. If we accept that the paradigm is the mother, the father and the child, and the child in father and the child, and the child in this system of family is privileged beyond all other children. I speak as somebody who had the disadvantage of growing up with a mother and a stepfather and is a father of two children whose parents aren’t married, who don’t receive this paradigm and this privilege. But if it is the case, and I don’t accept this, but if it is the case the research shows this, and I’ve yet to be pointed to this research. Should we not then afford these children who are otherwise disadvantaged, why would we seek to privilege the already advantaged with extra protections of the state, extra privilege? Surely the people we should be most concerned about are the most vulnerable children in our society, and giving them the maximum protection of the state and the maximum support from the state, the state rather than to seek to privilege the already privileged if you in effect accept that that is the case that they are.
I’ll be really brief I just wanted to make a point because I don’t think it had to be made and certainly I think marriage is about an awful lot more than children I think sometimes when we focus on some of the comments earlier on focus on marriage as procreation and things like that which are a little bit offensive earlier on focus on marriages, procreation and things like that, which are a little bit offensive to those of us who are married and don’t have children and people who can’t indeed. But a lot of the debate has been about children. I think there’s just one point that I wanted to make because it’s been great the diversity of groups that we’ve had here today, but there have been voices that couldn’t be facilitated because of time. And I just wanted to make the point that having read ahead of this, and I read all the submissions that came in and the views of different groups, it struck me that all of the big children’s rights organisations feel passionately that every child should be treated equally. Groups like the Children’s Rights Alliance, the Children’s Ombudsman, Barnardo’s are all campaigning for marriage equality because they believe that it’s right for children. And I just think when we hear all these various arguments that are put out or biases against families that imply that those children aren’t happy, that imply that those children aren’t happy. To me the embodiment of that today and the most powerful presentations for me today was listening to Clare and Connor who stood up and spoke on such a personal level and they were so articulate and they were such happy young people and to me all of this debate comes down to why on earth would we discriminate against good and happy families. I think we should treat everybody the same. I think it’s very, very simple. There’s been a load of other issues thrown in over the course of the day about things like assisted human reproduction, all kinds of other issues which are equally affecting opposite sex couples. I think we shouldn’t be distracted by that because that’s completely separate to the issue that we’re looking at. We’ve been asked one question, are we in favour of marriage or not? Do we believe that all of our citizens should be equal before the Lord. Do we believe that Conor and Clare deserve the same respect for their family as everybody else.

Just in relation I think it’s really important point that Mr. Dwyer’s raised we asked Professor Sheehan this morning at our table in relation to evidence in relation to abuse of children in same sex relationships or in heterosexual relationships and he suggested if I’m clear in my memory that there wasn’t any evidence to suggest that there was any difference in the level of abuse, either sexual or physical, and...
Thank you very much and thanks for that very clear explanation to Gerry. I think the draft we have now is much better in terms of capturing the elements of the discussion yesterday. I suppose I just wanted to clarify a little more on the second question and the difference between the permissive and the directive question that we're suggesting. A directive question that we're suggesting. And I think, Gerry, as you've said, legally, the permissive, making the amendment permissive, just saying the state may enact laws providing for same-sex marriage, doesn't pose any enforceable obligation immediately on the state. And I just think we need to be clear about that. Because yesterday, we heard such passionately persuasive arguments in favor of the right to marriage equality, particularly from two wonderful young people, Connor and Claire. And it certainly seemed to me that if we wish to vote, if those of us who wish to vote in favor of civil marriage for same-sex couples are voting yes to question one, then we should be voting yes to the directive element of the amendment in question two. And I suppose that's more of a political point. It's not something, Gerry, that you may wish to offer a view on. But I think, just to be clear, that it's only the directive amendment saying the state shall enact laws providing for same-sex marriage that would provide an enforceable legal right to same-sex marriage for the couples and the individuals and the people we heard from yesterday. And I suppose I was struck by something Chris said yesterday about the need to be positive and to be celebratory about this. But again, the directive question saying the state shall provide for laws is a much more positive one. And I suppose the final point is just to say again that this is one provision rather to the debate we had on the last session on the last weekend on the place of women in the home, where this change would have a very practical and immediate impact potentially on large numbers of people in Ireland and a very positive impact potentially. So just again to say the legal effect would be it is an enforceable right to same-sex marriage if the amendment is directive in nature but it's not if it's permissive. In other words, the state simply may enact laws but doesn't have to. not if it's permissive.
I’m sorry I didn't make it to the end of the day. I was in the middle of a meeting but I thought it was a wonderful time and it’s a shame I didn’t make it myself. Sinn Féin on. Sinn Féin is proud of the fact that we led in the Assembly along with Stephen Agnew who is here today in terms of marriage equality. And the reason we did that was because we believe in equality for everyone and Ivana made a very important point about children. I think it is important, essential, that we actually fulfil what was written in the proclamation, which is to cherish all the children of the nation equally. And we don’t have a great track record in doing that. We just have to look at, and I don’t even like using the term legitimate or illegitimate children. What we need to do is ensure we have a chance now to do something really different, and really the correct thing to do, and to protect the rights of children. And that’s why I think the final point there, in the event of changed arrangements in relation to marriage, the state shall enact laws incorporating necessary changed arrangements. I think that wording could be slightly strengthened in relation to equality and constitutional protections of children. But I think this is the right thing to have that extra piece in there about the children and protection of children. And I do think we need to be directive, because otherwise you just leave it to the whim of a government of the day.
I have to say at this point we had excellent presentations yesterday but I really must flag serious concerns about this ballot paper I'm sorry to say. I think it doesn't reflect the diversity of views in that those who have concerns it seems to me would only be able to vote no to this. And I think that there are such a range of different views that we ought to have wider options. The third question really does no more than make it a requirement what the state would have to do as a matter of practicality anyway, which would be to bring in laws. I think the first thing is that many of the concerns we all share around the need to promote an inclusive culture, to attack bullying, to make changes promote an inclusive culture, to attack bullying, to make changes in the area of guardianship, there is the option of doing a lot of that by legislation. And I think that should be there as an alternative in the first instance. But even more seriously, tolerance has to be a two-way street. And we heard a very clear request yesterday from good people, sincere people, people who support civil partnership, for example, people who support civil partnership, for example, but who wanted to make sure that in any constitutional change there would be a clause that acknowledges the rights of individuals, families and organisations to espouse and to publicly espouse their vision of what marriage is, whether that should include same-sex marriage or whether it should be marriage between a man and a woman. So it seems to me that that freedom of conscience clause is vital, if only to make sure that such a referendum would pass of conscience clause is vital, if only to make sure that such a referendum would pass, but quite frankly, to be a properly inclusive society. We can’t go from being intolerant in one direction to becoming completely intolerant in the other direction. So that freedom of conscience issue is critical, and it has to be stitched into the Constitution, it seems to me. The second concern has to do with unintended consequences. Despite the great efforts of our experts, there are many issues that we have not had a chance to think through fully. We've not, for example, heard from adoption experts. Some people in the area of adoption, particularly in the area of intra-country adoption, would take a strong view that heterosexual parenting is more desirable in that instance than same-sex parenting. We should at least leave the state free to legislate for those kind of distinctions. This leaves the state free to legislate for those kind of distinctions. Or perhaps in the area of assisted human reproduction when we eventually legislate for it. Some people might take the view that if you’re bringing children into the world, it should always be on the basis of heterosexual parenting. Whatever about other situations where gay parents will be parenting because of the natural events of life or the various events of life. The point is, and we have our legal experts here, but it is a fact that for example, with the European Court of Human Rights, that whereas they leave member states free to, let’s say, decide whether they will have same-sex marriage or not, once we do, if we make a blunt statement of equality, we might very well find that our hands are tied. I don’t say that that’s definite, but I certainly say that
I suppose it is a question of religious freedom as Katrina said the Green Party and her party put this motion forward in the Assembly and unfortunately we are the only two parties who supported it fully. But one thing that has been important in the Assembly discussion as well as the UK wide discussion was ensuring there is religious freedom and in that sense whilst we are here religious freedom and in that sense whilst we are here proposing to legislate for civil marriage I was just interested, not being as familiar with Irish law, would there be anything that prevented a church which wanted to, solemnising a same sex marriage if they so desired and references made yesterday to Change in Attitudes Ireland who are trying are trying to change the Church of Ireland position on same-sex marriage. So I’m just wondering if by allowing for civil marriage, would there be anything else in Irish law which would stop churches which sue desired from providing services for same-sex couples?

I think it's important to be clear that we're not, well it's not how we, I don’t know who we is, the people I’ve been talking to have concerns, it’s not just a matter of solemnising marriages, I don’t think there’s actually a lot of fears that churches are going to be required to solemnise marriages in violation of their own principles. That might be some person's fear. I think it goes broader than that. It has to do with education, it has to do with what vision of marriage is taught in schools, it has to do with the current protections of education in our constitution and the ethos of schools. And we already know that these are fraught issues in our society. We've had at least two debates in the Shannon on the question of section 37 and the rights of schools to make decisions in order to protect their ethos, even though there have been no court controversies. So let's not pretend that there isn't activism around these issues. There is. And I’m saying is if we want to be a tolerant society, we need to put certain issues beyond doubt, which is that if for example parents want their children to receive only an education that promotes a vision of marriage that is between men and women, or indeed parents want a more aversion or an education that refers to same sex marriage, the point is that there is a danger of unforeseen consequences if we change our constitution in this way, that it will colour the way the courts will interpret the current freedoms that people have. And it isn’t a question of whether you agree with those concerns that some people would have. It's a question of whether you believe that those people should be allowed to breathe and have their values in the society that you also want to live in. I just want to say that. But certainly not just about a solemnization of marriages.
Firstly, I think the changes you’ve made so far when we discussed this yesterday in relation to inserting civil marriage, I’m broadly happy with the ballot paper. To follow on from a couple of points, and I mentioned it yesterday, discussed this with Gerard, is in relation to the area of education, ethos, religious freedoms and beliefs, regardless of what religion that is, or those of no faith indeed, that I think on the last question that we should be looking in, and I put this question directly to Gerard yesterday, he said this morning it’s possible to do, just so it’s clear, is that after upbringing of children that we should insert something like, and to protect the independence of religious institutions, beliefs and teachings. Because there will be consequences whereby that even with divestment from schools, moving towards Educate Together schools, which is correct and allowing people choice, is that equality works both ways, and respect and an inclusive society works across the board. So for those who want to teach, who want to bring their kids up in faith schools, that would there be an impact on the change in the Constitution, should that occur, in relation to how their teaching in relation to marriage and religious beliefs would be. So I think to make it clear from the convention that the convention here respects all people in this country and certainly wants to bring about equality, which I do, and I would like to see same-sex civil marriages. That’s what I want to see. But what I also want to see is to make sure that people’s religious beliefs and teachings are actually respected also. That is covered. There is constitutional protection in the Constitution for religious beliefs. I think that this needs to be in your final question here, simply adding on at the end of it, and I would suggest to Cahirle that it’s something along either to protect or respect the independence of religious institutions, beliefs and teachings. And that’s what I would be proposing. I think we’ve discussed the issues over the last two days. People are very clear about where we’re at. I just think it might be helpful to have that absolute clarification tied in there. So I’ll leave it at that, Chairman.
Thank you Chairman. I agree with the points that have been made about the importance of freedom of religion but I think the constitution as far as I'm concerned already provides sufficient as far as I'm concerned, already provides sufficient protection there. Article 44.1 says that the state shall respect and honour religion. Article 44.2 guarantees freedom of choice and the free profession and practice of religion to every citizen. I think those provisions are already there. I think this is very, we're now moving from one provision of the constitution to two. I think there are complicated issues here. There are issues around things like, well, of course, there has to be freedom of religion. I think it's very important that we put in question on civil marriage. I think that is absolutely crucial because to my view no religious congregation should be forced to marry a couple if they're not happy with doing that. We have to respect their choice not to do that. So we've already made sure that this is about civil rights. But there are a lot of complicated issues when you get into public services, and whether as a state we're happy to have services that are paid for by the public discriminate against people on the basis of their gender, their race, their sexual orientation. Very, very complicated issues. And there's already a lot of case law on Article 44 that achieves that balance. And I just worry that we haven't had that debate here, and that suddenly this extra issue in terms of an extra constitutional amendment has been thrown on the table at the end. And I just worry that we haven't had a chance to think it through properly. I think the constitution already protects religion in very, very robust terms. And I think we should leave it to the Oireachtas to ensure that there's a proper balance here. I absolutely have this sentiment, and I think that's been clear from everybody that has spoken over the last two days, that we want to make sure that there's equal protection for both rights. But that's already there and I think it would be wrong if we put in two contradictory statements or tried to mess with another clause that we haven't looked at and that we haven't looked at the case law on and that we haven't actually thought through properly.
I suppose I want to echo what I was going to say, what Arvel just said. So I feel as one of the 66 random members of the citizen that we should not also, we should take everyone's view into, I know some of the political people are a lot better at speaking than myself and maybe the other citizens, although we would agree. This is, we don't want to go over this legislation and framework there around, particularly in the area of child protection, which I would have an expertise around, and that is going through Minister Fitzgerald and those of us that work in child protection would know this very well. So in the third area, I think that is very well catered for and currently is being worked on around child protection and around issues and particularly since the children's referendum. I do think and I suppose I wanted to say and I've been listening all day yesterday with great interest and would be in favour of equality and a yes vote on this, but we don't want to make it too complicated. We don't want to be bamboozled by people putting their views forward from their political organisations. I think we need to be very, very neutral and very, very fair on this. And I wanted to say that as just a member of the 66. I do agree with this and I think it's a very good framework, but we don't need to be bamboozled. And there are areas, particularly the Constitution, as Arvel said, and the areas of child protection that do already protect and legislate for the other areas that people have concerns about. Thank you
Just a number of things in relation to the ballot paper. If you say yes, and then, you know, when you go into the next section and you’re talking about whether it should be permissive or directive, if it’s going to be permissive, I just wonder what’s the point in putting in something, rather than directive, because it’s more or less saying, yes, I’m in favour of it, but I’m going to leave it to somebody else then to decide whether they should or shouldn’t. I would have thought that you can have equality but not now is essentially or necessarily now, is the upshot of the first, if it was the first one that was selected, for example. And I just wondered why we would include it in that way, because people can equally put on the ballot paper no. So look, that’s just my thought on that particular one. But in relation to the Constitution, I’ve raised the matter on a number of occasions in the Dáil when we’ve been debating different referendums. And the answer continuously comes back that the Constitution has to be read in harmony. So if we start putting in sections or repeating sections that are already in the Constitution, does that not cause problems later on in terms of potential challenges because they’re in a particular section and maybe you might address that particular aspect or am I making myself clear about that? Because it’s not about compartmentalizing it or my understanding of it is not about compartmentalizing it but that there is, that it has to be read in harmony. And the unintended consequences. I’ve heard all this unintended consequences in relation to divorce referendums. It was going to change marriage as we knew it, but in actual fact it did what was sought. It provided a way of people addressing broken relationships and all of the rest of it. And it wasn’t about the whole of society breaking up and you know that was the fear that was put in about all of the unintended consequences at that time. I think this is about very simple things and let me put it on I mean I’m a very traditional person I’ve married I’m married in the 1970s I’m still married to the same person I got out and I campaigned for I got out and I campaigned for divorce because I saw people around me that required a solution to a very obvious problem that they have. I’m in favour of providing the maximum legal protection for people and that includes children. I think that people if they have children, if at all possible, they should have a legal relationship and I don’t see why that wouldn’t extend to every type of family form. I think that’s very tolerant. I’m really concerned about this last provision that’s been talked about because I think there are serious unintended consequences, consequences about the, if we put it in as a question, and I’ll finish on this, if we put it in as a question, are we going to be talking about having about, you know, 25 different types of schools? Are we going to have, you know, are we going to have unintended consequences, in relation to other public services? So I think there are possible downsides to including something that is already included in the constitution.
40 Good morning Chairperson, Chairman and Convention. To be honest
the section that I wanted to comment on was the third one and it says
in the event of changed arrangements in relation to marriage in the
state shall enact laws incorporating necessary changed arrangements
in the regard of the parent's guidance and upbringing of children and
it's yes, no or maybe. To be honest I think that if we actually are
updating the constitution irrespective of whether people think that the
state should do it, it would be to my mind that I would be able to go to
court with the reviewed constitution in hand and say, that law is
unconstitutional and I can have it effected. So I was wondering, are we
saying that upon the amendment of the Constitution to allow civil
marriage, are we also saying that it would be on the state to
immediately enact legislation which would deal with those areas? Or
would it be up to a minority group to say that something is
unconstitutional if we’re not included? It reads as a statement and less
of a question to my mind.

41 I won’t repeat what other people have said, I just want to say I agree
with Catherine Murphy on the issue of permissive versus directive. Just
purely on the issue of unintended consequences that have been raised
and should be included in the draft paper, we are not dealing with the
situation therefore of the current family units that are unprotected
under the Constitution. That’s the reality. It’s not about unintended
consequences this will lead to, it’s the fact that we have these families
currently in our country unprotected by the Constitution. Lastly on
education, this is a complete red herring in my view. The last time we
had a constitutional change in the marriage situation in Ireland was in
terms of divorce. That had absolutely no impact on the religious
instruction of children in Irish primary and secondary schools. So I
think that’s clouding the issue, I think we need to keep it much simpler.

42 I just have a concern about the way the question one is framed. You’re
basically asking people to say yes or no to same-sex marriage, but
there are people who believe that marriage is between a man and a
woman and that that should be left as it is with a provision in the
Constitution to allow for same-sex couples to have the rights of
married couples. But the way it's framed at the moment is that if you
vote no, you're effectively saying that these people have no rights at
all. You're not allowing for people who want to keep marriage as it
stands as well as allowing for civil partnerships with the same rights.
And you're effectively making people vote no to something that they
don't necessarily agree with. You're not allowing an option to expand
on what’s there while protecting the rights of people who, for however
many years have worked in the definition of marriage being between a
man and a woman.
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<td>43</td>
<td>In the third part of the paper I’d like added please the word inheritance. I think that was reflected in many of the conversations at the tables yesterday. I think it has a huge implications for same-sex couples who have children because it also has tax implications through the revenue. And I'd also like us to think about citizenship because there is difficulty and it is going through the High Court at the moment about an issue around a passport for a child that has been brought into the country under surrogacy. So citizenship I’d like added and inheritance. Thank you.</td>
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<td>A provision can be made in the Constitution. It's not necessarily just legislative. You can still allow in the Constitution a subclause for civil partnerships who have the same rights who have the same rights as marriage while protecting the rights of... The definition of marriage doesn’t need to be changed to facilitate same-sex couples having the same rights. But by definition, marriage is between a man and a woman and that should be protected as much as the rights of same-sex couples in a civil partnership with the same rights. An addition can be added to the Constitution. It doesn't need to be just through legislation.</td>
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<td>No what I'm saying is the definition of marriage shouldn’t be changed to accommodate the rights of civil partnerships.</td>
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<td>Can you not add that in as a clause because by voting no you're voting no to something no, you're voting no to something that you're not actually voting no to because you’re...</td>
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<td>No, what I'm saying is you cannot change the definition of a word to include a group of people.</td>
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<td>48</td>
<td>I'm going to repeat some of the comments from around the room and I'm going to reflect on the diversity within the room and across our table here, with great diversity on our table, as there will be across this great state on this matter. I have a problem with the paper as well, as it does not allow for greater diversity. I'm rehashing well as it does not allow for greater diversity. I'm rehashing something from yesterday which I said there’s nothing wrong with the wording in article 41.3 wherein it protects for marriage for all sexes. The current issues that arise that we’re debating at the moment arise out of the courts interpretation of the I would ask that the paper provides for an option or an addition to be put into the constitution to allow for the rights, the same rights be given to civil partnerships. Thank you.</td>
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I have the same concerns as Ronan. And we were in a roundtable discussion last night in another room and it was the issue that came up and it was a substantial minority that were quite anxious to give equal treatment but not to use the word marriage and possibly if I could suggest a wording for an additional question, should the constitution be changed to allow to allow for civil union with rights and obligations equal to those of heterosexual couples. If that were to be included as an option, we’re still giving the vote on the question that the Oireachtas asked, but we’re also giving a wider view of the Convention.

Just in response, and I suppose as a question to Gerry, but in response to Ronan, which was kind of my launch pad, really. He mentioned under the third question as upbringing of children, and we talked about this issue of educating and religious education. But surely Article 42, in which the state acknowledges that the primary educator is the parent, surely that safeguards education along with the points Avril made about religion and the safeguards for religion and religious education. So in that case, and I’m looking for a bit of clarification from Gerry and Sarah perhaps, if we introduce this amendment, surely education and religious education would be protected by the clauses already in there when read in the light of the new clause as well.

Can I just agree wholeheartedly with the points well made by Avril in relation to the task at hand? I don’t think we should overly complicate it. It’s complex enough in areas and we shouldn’t bite off more than we can chew and stray into other areas. Now my experience as a legislator, we did this during my term as a senator, when we dealt with legislation and look at the main, the shall, and the implications and the strength associated with the directive implication. Now I want to ask Gerry this, in his experience, and perhaps the Civil Partnership Act might be a case in point, did he see the difference that instructing a directive as opposed to instructing a directive as opposed to a permissive has made in terms of placing the requirement on government, whoever they are, to do something because I think the permissive is just a bit watery and a bit weak and it would just lead us down a road of where you could have can kicking by whatever administration. Thank you.
Thank you very much. I feel that the ballot paper reflects the discussion that we had yesterday, and I think it's important to go back to what we're being asked to do. We're being asked to go back to principles, and the principle about equality, which we had a lot of discussion about yesterday in relation to same-sex couples. And just two points I wanted to make. We're talking about unintended consequences, and I think that can often be used to kind of scare people. And the point I want to make in relation to some of the issues we discussed, and I have a question about the valid paper as well, is that issues around, for example, adoption, assisted reproduction, surrogacy, they all have to be dealt with, undoubtedly, in this state. They're all on the agenda, whether or not we take a decision in relation to this issue here today or not. Obviously, there's another dimension, if for example, there was a yes vote to the proposition today. So that's one point. The second point I want to make is that in relation to the Constitution and issues around religious freedom and education, I would like Gerry to comment again on that issue of balancing, if a new provision is put in, according to the principle we're looking at here today, how that particular principle applies and will impact on the rest of the Constitution? It might seem an obvious answer in some way that they're all taken in harmony and worked out but, you know, why would you need, Gerry, to particularly address the issues in relation to, say, religious freedom or the other points that have been made in relation to the principle we're taking here today? or would it not just mean that a court would look at the different constitutional principles and balance them as they do at present anyway.

Just to say I'm not happy with the ballot paper. I think a new question has to be asked expressly to include a strong protection for freedom of conscience, freedom of religion and expression and to protect faith-based schools, the ethos and the teachings of the various faith-based schools. I don't think members should have an issue with that, particularly if points are only being reinforced that are already included in the Constitution. I think it is very important, Chairman, that the diversity of opinion is included in the ballot paper.
I think I have the unique distinction of being the only married lesbian in the House of the Oireachtas when I speak from that perspective. I want to affirm the amendments of the draft ballot from yesterday to today, particularly in relation to the way the language has moved from same-sex marriage to marriage for same-sex couples. I am a married woman. I got married. I don't have a same-sex marriage. I'm a married woman in a marriage. Secondly, I think what's emerging in light of our discussion this morning are two substantive issues. The first one has to do with whether or not there should be an additional piece to the ballot paper that offers the option for people to choose civil partnership with full rights and entitlements as married people have and to place that within our constitution. And so that marriage and the institution of marriage, the socially highly valued institution of marriage is still only allowed for heterosexual people. So I think that's what's being placed as one of the substantive issues. What I would like to say to that is that whereas I do appreciate, that is coming in light of the diversity of views, and I do appreciate that many of you may feel and believe that that allows you to make statements, a belief of a fully respecting of a person of my sexual identity. However, my own view and the reason that myself and my partner, Ann Louise Gilligan, ten years, initiated a series of legal battles in this case in order to have our Canadian marriage recognized here is that civil partnership would provide a lesser form of acknowledgement of who we are as a loving couple in terms of our lifelong partnership. Civil partnership does not emerge principle of equality. Civil partnership is a separate institution. Furthermore, the Civil Partnership Act currently, if one does happen to go outside the states to marry as a same-sex couple and come back into the state, the civil partnership effectively downgrades our relationship to civil partnership. I am married, I'm a married woman, but in the state of Ireland, the law says that I am a civil partner. And that is what, that’s the reality of what that separate and distinctive institution is doing. And so the, I suppose, finally I say it is not out of the principle of equality. The legal battle that myself and my partner have been undertaking for the past 10 years, out of which there has been countless public debates, television, radio, analyses, our court, our judgment of our court case has been, is being taught up and down the country in all law schools. So we’ve had 10 years of analysis and debate. So I don’t think this process is too slow. I think we’re ready to make a decision. And I’m presuming that the extraordinary citizens here have been listening to that debate for the past 10 years. And so in that case, that case, what we have simply been arguing for, and I think what’s being placed before is that every human person has the right to marry the person they choose to love. Every human person has the right to marry the person they choose to love. So I think that, so just to say, first of all, that particular proposal possibly to add to the ballot is rooted in a principle of a lack of equality in my view. And I would say, I think in light of what the chair has already said about the houses of the Oireachtas have asked us to actually rule on marriage for same sex
Continually throughout this weekend, it appears as if the people in favour of a status quo are supposed to be on the back foot. In terms of political correctness, we have to be very, very careful with all our wordings. Political correctness often is used against anyone who is protecting or trying to protect the status quo. But if I might just quote you what the constitution of the moment, and it will answer the last speaker’s statement, the state is obliged to do what it has been doing in defense of marriage. The state pledges itself to guard with special care the institution of marriage on which the family is founded and to protect it against attack. Now, just because the state has been protecting itself against the attack that it has been under, it is only having regard to our own constitution, the constitution under which we live and have worked. Now, the state has to show that it still upholds that act. And until it is changed in any referendum or in any other way, it is obliged to protect and it pledges itself to protect. Thank you.
Just firstly, just to say, I really welcome all the debates that have been had yesterday and today. And I think it really bodes well for us as a nation because it should always be about drawing circles of inclusiveness, whether it's our constitution or our laws, and never excluding people because of personal choices that they make in their lives. And that's the way we're advancing. The one issue I'd like to speak to, which is the freedom of expression in relation to religion and that, and I think a lot of people have stood up and they've cited pieces of legislation and they've read from the constitution. We have heard from a jury up here and basically what he has told us, yeah, it goes back to the courts. So we have people here purporting to interpret things which even jury can't tell us because he would bow in deference to what a judge would say and judges differ, etc. And we know in the Constitution through case law that there are at times rights that are assured to people which are competing. And then it's up to a judge to say which of the competing rights take precedent or in a certain case and it is nuanced. But I think all it points to is that a concern has been expressed by one of our members here, Ronan, about a possibility and an assurance can't be given and nobody can give it, nobody reading anything from this constitution here can give that to him. And Gerry has given a vehicle and a means explaining how a constitution is drafted, which we can explicitly rather than implicitly assume that a judge would allow things, we can explicitly say that. And I don't think that's an unreasonable proposition because we're not in a position, no matter how forcefully or if even 95% of people stood up here reading from it, doesn't make it so it happens in the courts. It's a legitimate proposition that Ronan has made, particularly in light of, we heard people from the church who were invited here, they weren't invited here by accident, they were invited here for a reason yesterday, to give the full compliment of the debate. Traditionally, we have been a very religious country and our national identity has been tied up with that. So it's not that religion has been something forced on people of this country. We have moved on or evolved or whatever the word is as a society, where we can accept differences and that's a good thing and we respect people and that's first and foremost it. But at the end of the day some of the teachings that come out may, if you talk about in the educational context and you get down to the nuts and bolts, they may actually say well no that's not the way to go in terms of same-sex marriage. Now is that offensive? Does that break some law? We can't answer that right now. He's just looking for an assurance. I don't know what the big deal is considering, you know, as I say, the generosity of all the discussion here that I have heard. Thank you.
Thank you, Chair. I suppose just to say, and Chair, you said it yourself and a number of people have said it too, that we can’t keep adding to the ballot paper at this stage. And a reminder that the Oireachtas have asked us to deal with the issue of civil marriage for same-sex couples. And that is the main issue. I don’t think that we live in a state whereby that anything, or any unintended consequence, as the phrase that’s being used here today, is going to make people’s lives worse after this. I can just remind people, and I’m just gonna finish in this, can I remind people of what they heard yesterday? The amount of people I spoke to yesterday after yesterday’s day, the passion, the emotion in the room yesterday, it was absolutely unbelievable. I spoke to people at various tables here, and people felt enthused, they felt moved, people cried and so on yesterday because what were we talking about yesterday? The humanity of this situation is you have a choice here today to change the way Irish society is and to change it for the better and to leave it as it is or to bring it closely to being different is serving some people differently than others and that is not acceptable in a Republic and I must say, can I just finish this Tom, it was only yesterday that I really understood when I heard so many other people say it as well what a Republic means. We use the word so many times but yesterday the penny dropped for me as a 35 year old. A republic where everybody is treated the same with the best possible rights. And that’s what we live in. But we’re falling short of being a real republic. And I mean that in the best, most passionate sense. And remember that today. Anything less than full civil marriage for every single individual, regardless of their sexuality, is a discrimination. And call it anything else, but it’s a discrimination. And if you are happy to discriminate
Religion needs to be taken out of the equation completely. We are talking about civil marriage. I had a civil marriage, and I believe it was a lot more fulfilling than any religious ceremony could be. People have been talking a lot about the freedom of religious beliefs, but there also has to be freedom for people who don't have religious beliefs. I understand people's concern about the change from the current interpretation of marriage. We should not be afraid to make that change. Society is changing and it's great that it does. And I agree with the last speaker and Catherine in saying that civil partnership and marriage, they're different names and they don't give equal status by having the different names.
I think you know obviously yesterday and today we have had a very passionate debate about this issue and the thought struck me yesterday evening given the seriousness of the subject we're discussing is the time allowed for within the Constitutional Convention is it adequate and I suppose that's I'm not making I suppose that's not making a call or a judgment on it. I'm sure it's something that you as chairman of the convention will be considering. Of any of the range of subjects that has been put before us to be considered, it is one of the more serious ones. And any possible constitutional change that will flow from the deliberations here, and it does obviously beg the question as well, the status of reports coming from the convention, going to the government, to the theatre, to the Minister for Justice, or whoever it might be, are the government obliged to accept the recommendation, the specific recommendation of the convention here, or can they modify, can they change it, or what is the obligation position in relation to it? Now, the realities are that any constitutional change, there is the inevitable pendulum effect with that change. And we are taking the assurance of our legal advisors here that constitutional change, that other provisions in the Constitution, if there are aspects of unintended consequences, that other provisions in the Constitution will cater for those. I'm not so sure about that. so sure about that. And there has been, I suppose, the evolution of a grey area in relation to it. We have a very fine expert panel who have advices in different aspects. Similarly, down the floor we have had a number of lawyers, for instance, Roland Mullin is a ballister, Michelle Madair is a solicitor, and they are two who have voiced particular opinions in in relation to the possible unintended consequences of change in this area. And, you know, it begs the question, do we need a period of reflection in relation to it? You know, at the end of the day, if the Constitutional Convention comes down and makes a decision on a specific recommendation, a combination of recommendations to the government, and then find in a fortnight's time, really that's an aspect of it that we should have given more thought to. With the specific recommendation that a constitutional change be advanced by way of referendum, it is going to have consequences in other particular areas. I don't think that it was intended that the Convention's role was to glide over in a simple way any possible unintended consequences of changes that it might recommend. And I think that we perhaps maybe should reflect that in the questions that would be put in the redrafting of the questions to the convention here today.
The question that we're being asked today, Chairman, in the context of the permissive, I'm not convinced, Jerry, that we of the permissive as opposed to directive. But I'm not a lawyer, I'm not a legal expert, but could I just appeal to the members of the Convention? We've had a very positive engagement, and to the gentleman on table 7, I hope you have never felt that we who are in favour of the proposition disrespected your viewpoint. I'm not attacking the marriage that you propose to have, it's because of the value, the cherishing of it, what I saw and what I see every day of my life is why I want to be married with my partner, because of what you have, to enhance, to enrich my life and the life of people around me who are gay as well. And I would love you to come to my marriage whenever it happens if we vote today here because I respect your position and I will never attack the institution of marriage because marriage is about the commitment and love of two people, be they heterosexual or be they gay. And no matter where we are in the world, the love that is within the institution of marriage should never be in any way undermined and this debate today here and yesterday to me as a gay person enhances marriage because it's about the values that you and I both share. Could I just make the comment, Ciarán, on this regarding the unintended and unforeseen circumstances. It's a red herring. I teach religion in school before I became a member of Dáil Éireann. I could have been dismissed from my job for being a gay man. I could have been dismissed from my job for being a gay man. Is that right? I would think many of us here would say it's not. The articles in the Constitution as a lay person preserve and protect religious freedom and religious opinion. And we should never lose sight of that. We can quote scripture, we can quote the Bible, we can quote the Constitution, or we can quote the law to interpret whatever way we want. But our Constitution is quite clear on that. to interpret whatever way we want, but our constitution is quite clear on that. And could I just thank all the delegates and the members of the convention for your genuineness in this debate. This has enhanced the Irish Republic that we're all proud of and hopefully someday we'll have a united Ireland and we'll be all equal. But to me, Cahirach, this debate today is about me and you as citizens being equal and not being divided. And thank you for your and not being divided and thank you for your generosity of spirit and thank you for your patience. This is one of the most important things we'll ever do. It’s about us as a society and as citizen individuals, not about faith, not about religion, not about... it's about us as people, humanity. You should be very proud of yourselves this weekend because we've done a great service for people who put us here. who put us here. Don't mind us.
I’d just like to echo Gerry’s comments there, and particularly direct my response towards John at table 7. As Gerry said, what we’re proposing here is by no means an attack on marriage. What we are proposing is to open up the institution of marriage so that it can be shared equally among all of the citizens. Personally I find it very hurtful when people express the view that maybe my decision in the future to profess publicly my love for a partner would in any way undermine or devalue existing marriages. Why, and I welcome comment and response on this from anyone, but why would opening up such a fantastic institution to everyone devalue existing marriages? It just makes absolutely no sense to me. And you quote Article 41.3 where the state pledges to guard with special care the institution of marriage and protect it against attack. And what I’m saying here is we are not attacking marriage. Marriage is not defined in the Constitution as being between one man and one woman. It is not defined like that. It’s the court’s interpretation of the Constitution that defines that. And again, relating to the second question on the ballot paper, I’d like to reiterate the point that was made by a number of members here today, that I don’t believe we should really need to include the option for the permissive wording. The Constitution as it stands is already permissive. There is nothing in the Constitution that can be held as an impediment to civil marriage for same-sex couples. So I think this option on the ballot paper is entirely redundant. Thank you.
Thank you Chairman. I'd just like to say I just thought this whole weekend it was a privilege to be here and a privilege to work with everybody. And I'd just like to say thank you. But the reason that we are here today has been mooted around the tables is that we are here for equality. And that's the key thing that we need to remember, that this is about equality and it's about marriage equality. It's about equality for everybody, whether they be Catholic, Protestant, black, white, creed or religion, that we are here to give. And I just can't emphasize just enough how important I think it is that we do recognize it, that we do move on. Some of the suggestions have been that we delay, that we look at other things. that we do move on. I think that's kicking the can down the road. We are ready, more than ready, to make the decision now. And this decision should be made here today. The whole point about the religion and about the religious ethos in school, like Gerry, I was a teacher in a religious-led secondary school. And certainly, you talk about the discrimination about the children certainly, and looking after the children, and the children are more than looked after in the constitution. We've only got to look at some of the services and some of the failings from the services, and that's going off on a totally different route. If you want to see, are we upholding and are we looking after our children? But in some of the cases where they talk about the child, as has been pointed out, the chief educator in a child's life is the parent. And whether you be at a Protestant school or a Catholic school or whatever, it certainly, and I have five children who have gone through it, it certainly wouldn't interfere my bringing up of them, no matter what kind of a school that they attended. So I think that's just, it's pushing the issue out. We all deserve a religious freedom, and we all deserve, I've been contacted by loads of people, as I'm sure other people here have, about please can you ensure that I have the right to a marriage, please can you. Why should they have to even ask? I think that the time has long gone where we need to vote. And I don't think it needs to be permissive. I think it should be shall.
Just two observations. I think there would be a real danger if the debate was simply around the unintended consequences, whatever they might be, of potential constitutional change. The focus in the first instance needs to be on the intended consequence of this change, which is not an attack on marriage. It's in fact an affirmation of the legal and social institution of marriage and it is as others have said in my view a simple equality call. You know if you were to second-guess in a very technical way constitutional change and become almost captive to the fear of unintended consequences I doubt that we would have seen any level of constitutional change for any social grouping over the generations. The other thing I wanted to say is this, because the issue of freedom of expression, the protection of religious liberties is absolutely essential and I for one would be a strong advocate of parental rights to faith-based education. I think that's really, that's an important freedom. However, I don't think that that should be used to assert an argument that says therefore the Constitution needs to reflect a particular ethos. And the Constitution has to be a place where you accommodate difference, where you afford equality to citizens, and then as part of that that you acknowledge people's religious freedoms and liberties. But we have a history and a tradition in this state of a Catholic ethos driving and guiding the constitutional parameters of our state. I don't think that was ever a good thing and it's certainly not an acceptable thing now and I just get very anxious if an argument around protecting your religious liberty is used in effect almost as a Trojan horse to say the Constitution needs to remain to remain within a Catholic ethos. That's not and that's what I understood to be advanced I think that's a very very dangerous thing I think the ballot paper is entirely adequate I don't see a difficulty in people being asked the directive versus permissive question. Let's take a view on it. But let's not wrap ourselves up in knots and try to second guess the courts. The question is, should marriage rights, full marriage rights, be afforded to citizens irrespective of their sexual orientation? That's the core of what we're being asked here.

Very, very briefly, I'd just like everyone to please remember what one of the people who spoke to us yesterday said about these unintended consequences. What were the consequences when he got married? A gay couple got married, simple as that. And all throughout the world, where gay people are able to get married, the consequence is that they get married, nothing more. Thank you.
Needless to say it's not exactly ideal circumstances for legal drafting. I think I gave that 28 seconds. So I think the point, first of all in relation to, it's not just religious freedom, it's philosophical freedom. And I think allowing people to espouse views even vis-a-vis polygamous marriage, might not like it myself, but we're talking about freedom of expression, that wouldn't necessarily suggest that the state has to enact such a definition of marriage, needless to say. But it's the idea of allowing people, as I say, to live and breathe their culture. People have questions about textbooks in schools, about the state is allowed to dictate a certain curriculum, for example. And we all have to be honest. The courts have to, as Gerry said, take these things harmoniously. And there can be surprising decisions from courts. The second issue is the idea of making appropriate distinctions in relation to the best interests of children. We've had a children's rights referendum, as you all know, very recently. Again, the issue here is that we didn't really get much of a chance to discuss what the impact of the European Convention on Human Rights and Fundamental Freedoms would be. But there is case law where once member states set up a law and change their laws, they can then tie their hands and they can then be interpreted as having to do certain things. And if it was a thing that the state did want to make distinctions around adoption, same-sex adoption, the context of inter-country adoption, or indeed in relation to assisted human reproduction, it is possible that a blunt statement of equality might actually tie our hands, whether through the decisions of our own courts or the decisions of the European Court of Human Rights specifically. I haven't even considered it, nor have I had the chance to consider the impact of the European Union Court, or the ECJ. So anyway, that's just my attempt to speak to those two issues. We did get a lot of chance to talk about religious freedom, although it's not just religious freedom, it's philosophical freedom. This isn't about protecting the rights of bigoted people to have bigoted views. This is about allowing people to express their values in full, and not to feel like second-class citizens. We've already heard from one gentleman who feels the vibe of intimidation, I'm not to put words in his mouth. But we can... Now I'm feeling it. But I think we did not... And it is true to say that some of the politicians have gone in very heavy with their influence today. I'm in a minority of one among the politicians. But I think we all have to be able to have our values expressed in full. But the second question is, which we really didn't have a chance to discuss in this morning's discussion, is that question about whether the state will have the necessary freedom to make distinctions that it might see as being in the common good, or whether we would tie its hands, tie the Oireachtas' hands, by an overly blunt statement. And that is the issue, and I think it's a serious issue,