

**Supplementary Submission
from Atheist Ireland
to the Constitutional Convention**



First, Fix the Foundation: Separate Church and State

Overview

We have already made a submission to you on the need for a Secular Constitution with Separation of Church and State, including specific changes needed to make this happen. We include a copy of this submission here to save you looking it up again.

In this two-page supplementary submission, we give reasons why you should select Church and State as a final item on your agenda, ahead of the other five topics that you are considering.

We assume that you will recommend that either your mandate should be extended, or else a new Constitutional Convention should be established, to fully consider a more comprehensive revision of the Constitution.

If that is to happen, we suggest that you should use your final agenda item to set the tone for that more complete revision, rather than just add another standalone topic to the list of standalone topics that the Government put on your agenda.

First, Fix the Foundation: Separate Church and State

The Irish Constitution excludes many conscientious Irish citizens from identifying with the Constitution, and from holding the offices of President, Judge, Council of State member, Taoiseach, Tanaiste, Chair of Dail, Chair of Seanad, or Attorney General.

From the very first line, it is permeated with religious, Christian and Catholic references and requirements from the Ireland of the 1930s. These are embedded in the foundation of the Constitution, and everything else is built upon them and influenced by them.

Only when we fix that foundation can we build future amendments on a solid basis of equality for all Irish citizens regardless of our religious or atheistic beliefs.

Any proposed amendments related to ESC Rights, Political and Institutional Reform, Family and Morality or a Bill of Rights will all be compromised by the religious influence of existing clauses on matters related to those issues.

Our recent history books and many of our lived experiences have shown the central influence of religion on our Constitution and laws, and the many problems that this has caused for individual human rights and society generally.

This is your opportunity to make a historic change for true equality in Irish society. Please take this logical first step to systematically revise our Constitution based on freedom of conscience, freedom from discrimination and equality of all citizens before the law.

Ten Reasons to First, Fix the Foundation: Separate Church and State

1. The 1922 Irish Constitution was “a totally secular Constitution.”
- *Supreme Court, Corway v Independent Newspapers, 1999, 4IR 484, 499*
2. The 1922 Constitution was “a typical liberal-democratic document which would have been suited to a country of any religious complexion.”
- *J Whyte, Church and State in Modern Ireland, Gill and McMillan 1980, p51*
3. The 1937 Constitution “makes an open profession of Christianity.”
- *Justice Barrington, The Irish Constitution: Article 44 II Church and State, 1953 81 The Irish Monthly 1, p3*
4. The 1937 Constitution “indicated that the State considered it a duty to impose specifically Catholic doctrine on all citizens, irrespective of their personal convictions.”
- *JJ Lee, Ireland 1912-85: Politics and Society, Cambridge University Press 1989, p203*
5. In enacting the Constitution, the People “were proclaiming a deep religious conviction and faith and an intention to adopt a Constitution consistent with that conviction and faith and with Christian beliefs.”
- *Justice O’Higgins, Norris v Attorney General, 1984 IR 36, 64-5*
6. The 1937 Constitution “defines its ultimate notion of the good in explicitly religious terms.”
- *R McCrea, Religion and the Public Order of the European Union, Oxford University Press 2010, p56*
7. The Preamble is “a determined attempt to ground the authority of the State in the blessing and sanction of the Christian doctrine of God.”
- *R Barrett, Church and State in Light of the Report of the Irish Constitution Review Group, 1998 5(1) Dublin University Law Journal 51, p52*
8. Article 6(1) is “a clear, unequivocal statement that authority comes from God.”
- *Eamon de Valera, Dail debate on Constitution*
9. “The Trinitarian invocation goes much further than the phrase ‘under God’ in Article 6(1), since it aligns the subsequent text with a specific theological tradition that is not shared even by all monotheists. By doing so, it invited interpretations of our Bunreacht as a Christian Law for a Christian State.”
- *D Clarke, Ireland: A Republican Democracy, a Theocracy or a Judicial Oligarchy? 2011 29 Irish Law Times 81, P83*
10. “By allowing themselves to appeal to such amorphous concepts as the Christian and democratic nature of the State in order to recognise and potentially enforce rights as against the wishes of the Oireachtas, have the Courts given to themselves a carte blanche to write their own moral preferences into the fundamental law of the State?”
- *O Doyle, Constitutional Law: Texts, Cases and materials, Clarus 2008, p87*

See also

- Eoin Daly, Religion, Law and the Irish State, Clarus 2012
- Desmond Clarke, Church and State, Cork University Press 1985

Submission from Atheist Ireland to the Constitutional Convention

A Secular Constitution For a Pluralist People



1. Executive Summary

1.1 Atheist Ireland is an advocacy group for atheism, reason and ethical secularism. We are the only advocacy group in Ireland that promotes the political cause of separation of church and state as a primary aim. We are participants in the dialogue process between the Government and religious and philosophical bodies. We participate in events organised by international bodies such as the United Nations, the European Union, the Council of Europe and the OSCE. We work with other advocacy groups who are seeking to bring about an ethical society.

1.2 One of the most striking features of the Irish Constitution is its overt theistic, religious, Christian and Roman Catholic character. This is a result of the political personnel and culture of the Ireland of the 1930s, and it is entirely inappropriate for the Ireland of the 21st century. If the Convention is to make serious substantive proposals for change, it must address this issue and the problems that it has caused over the decades. We ask you to add secularisation and separation of church and state as one of the additional items on your agenda.

1.3 Atheist Ireland wants a secular Irish Constitution, which respects equally the right of every citizen to our religious or nonreligious philosophical beliefs, with the State remaining neutral on these beliefs. Religious States promote religion, atheist States promote atheism, and secular States promote neither, but respect equally the right of each citizen to hold and manifest their personal beliefs. In a pluralist democratic society such as Ireland, a secular Constitution is the only way to protect equally the rights of religious and nonreligious people.

1.4 We recommend the following three categories of amendments:

- (a) Remove specific references to God, such as all authority coming from the Holy Trinity and our obligations to our divine Lord Jesus Christ (Preamble); powers of government deriving under God from the people (6); blasphemy being an offence (40); the homage of public worship being due to Almighty God and the state holding his name in reverence (44); and the glory of God (Closing Line).
- (b) Replace all religious oaths for public officeholders with a single neutral declaration that does not refer to either the religious or nonreligious philosophical beliefs of the person. As well as President (12), Council of State (31) and Judges (34), *please note that there is also in practice a religious oath for Taoiseach, Tánaiste, Chair of the Dail and Seanad, and Attorney General, as these officeholders are obliged to be members of the Council of State and are thus obliged to swear the oath for that office.*
- (c) Amend the Articles on Fundamental Rights to explicitly give equal protection to religious and nonreligious philosophical believers, particularly where the Articles are unduly influenced by Roman Catholic teachings. This includes the Articles on equality (40), the family (41), education (42) and religion (44). Frame Articles generally so that they are based on human rights and duties and not on religious beliefs.

2. Remove Specific References to God

2.1 - The Preamble and Closing Line

The Preamble to the Constitution is unambiguously sectarian, and is not appropriate for a pluralist democratic Republic. It begins: “In the name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred, We, the people of Éire, Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial...”

The Preamble is part of the Constitution, and it can be amended by referendum. The Attorney General’s Committee on the Constitution (1968) noted that the Preamble itself uses the phrase ‘this Constitution’ and that the title ‘Bunreacht na hÉireann’ precedes the Preamble, both of which suggest that the Preamble is part of the Constitution. The Preamble has also been cited in legal cases and judicial decisions.

We recommend: Amend the Preamble to simply state: “We the people of Ireland enact this Constitution.” Remove the reference to the Glory of God from the closing line.

2.2 - Article 6 - Powers under God

Article 6.1 states that: “All powers of government, legislative, executive and judicial, derive, under God, from the people...”

We recommend: Delete the words ‘under God’.

2.3 - Article 40 - Blasphemy

Article 40.6.1 states that: “The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.”

This is already on the agenda of the Convention. We have included it here for context.

2.4 - Article 44 - Homage of Public Worship

Article 44.1 states that: “The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.”

This is an extraordinary Section to have in the Constitution of a democratic Republic. It does not enshrine the right of citizens to publicly worship a God, but enshrines the right of that God to be publicly worshipped.

The 1996 Constitutional Review Group found that: “In effect, this section imposes an obligation on the State to refrain from engaging in what might loosely be termed ‘atheistic propaganda’ and prevents the State from adopting a policy which is actively hostile to religion.”

But atheistic beliefs are as much protected by the human right to freedom of conscience as are religious beliefs. In order to protect equally the beliefs of all citizens, the State should not engage in “what might be loosely described as” either atheistic or religious propaganda.

UN General Comment No. 22: The right to freedom of thought, conscience and religion on Article 18 of the ICCPR states: "Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community." ¹

We recommend: Delete Article 44.1

3. Replace Religious Oaths for Public Officeholders

3.1 - Article 12 - The Religious Oath for President

Article 12.8 requires the President to enter upon the office by taking and subscribing publicly to a declaration that begins "In the presence of Almighty God I do solemnly and sincerely promise and declare that I will maintain the Constitution of Ireland..." and ends with the words "May God direct and sustain me."

The option of providing the President with two alternative declarations, one religious and one neutral, is not appropriate for two reasons.

- (a) The President should not be obliged to reveal his or her religious or nonreligious philosophical beliefs. Instead, the President should be a President for all of the people, representing the State, which itself has no religious beliefs.
- (b) If alternative declarations were to be provided, the opposite to a theistic oath would not be a neutral declaration. The opposite to a theistic oath would be a declaration that there is no God. If you realise why it would be inappropriate for the President to swear that there is no God, then you should also realise why it is inappropriate for the President to swear that there is a God.

We recommend: Replace this oath with a single neutral declaration that has no reference to either the religious or nonreligious philosophical beliefs of the President.

3.2 - Article 31 - The Religious Oath for Council of State Members

Article 31.4 requires every member of the Council of State, at their first meeting, to take and subscribe publicly to an oath that begins "In the presence of Almighty God I do solemnly and sincerely promise and declare that I will faithfully and conscientiously fulfil my duties as a member of the Council of State."

The option of providing Council of State members with two alternative declarations, one religious and one neutral, is not appropriate for two reasons.

- (a) Members of the Council of State should not be obliged to reveal their religious or nonreligious philosophical beliefs. Instead, they should be a Council for all of the people, representing the State, which itself has no religious beliefs.

- (b) If alternative declarations were to be provided, the opposite to a theistic oath would not be a neutral declaration. The opposite to a theistic oath would be a declaration that there is no God. If you realise why it would be inappropriate for members of the Council of State to swear that there is no God, then you should also realise why it is inappropriate for them to swear that there is a God.

We recommend: Replace this oath with a single neutral declaration that has no reference to either the religious or nonreligious philosophical beliefs of the members of the Council of State.

3.3 - Article 31 - The Religious Oaths for Taoiseach, Tánaiste, Chairman of Dáil Éireann, Chairman of Seanad Éireann, and Attorney General

Article 31.2 states that the “The Council of State shall consist of the following members: i. As ex-officio members: the Taoiseach, the Tánaiste, the Chief Justice, the President of the High Court, the Chairman of Dáil Éireann, the Chairman of Seanad Éireann, and the Attorney General.”

This means that there is also a religious oath for Taoiseach, Tánaiste, Chairman of the Dail, Chairman of the Seanad and Attorney General, as these officeholders are obliged to be members of the Council of State and are thus obliged to swear the oath for that office.

This additional obligation became clear in recent months when Tanaiste Eamon Gilmore became the first person who is publicly on record as saying that he does not believe in God had to attend his first meeting of the Council of State and had to swear the religious oath.

Mr Gilmore stated that he had taken legal advice, that he respected the Constitution, and that he would comply with his constitutional obligations.

These obligations include not only swearing the oath at his first Council of State meeting under Article 31.4, but also being a member of the Council of State under Article 31.2.

We recommend: As above, replace the oath for Council of State members with a single neutral declaration that has no reference to either the religious or nonreligious philosophical beliefs of the members of the Council of State.

3.4 - Article 34 - The Religious Oath for Judges

Article 34.5.1 requires every person who is appointed a judge to make and subscribe a declaration that begins “In the presence of Almighty God I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my power...” and ends with the words “May God direct and sustain me.”

The option of providing Judges with two alternative declarations, one religious and one neutral, is not appropriate for two reasons.

- (a) Judges should not be obliged to reveal their religious or nonreligious philosophical beliefs. Instead, Judges should be Judges for all of the people, representing the State, which itself has no religious beliefs.
- (b) If there were some Judges who were known to have opted to ask God to direct and sustain them in their duties, and some Judges who had opted to not do this, then it could be impossible to find a Judge (from either group) who would be publicly viewed as impartial to hear any case that involved making rulings on questions related to religion. ²

- (c) If alternative declarations were to be provided, the opposite to a theistic oath would not be a neutral declaration. The opposite to a theistic oath would be a declaration that there is no God. If you realise why it would be inappropriate for a Judge to swear that there is no God, then you should also realise why it is inappropriate for a Judge to swear that there is a God.

We recommend: Replace this oath with a single neutral declaration that has no reference to either the religious or nonreligious philosophical beliefs of the Judge.

4. Amend Articles on Fundamental Rights

4.1 - Article 40.1 - Equality

Article 40.1 states: "All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function." The way that equality is protected under article 40.1 is inconsistent with the principle of nondiscrimination.

In 2002 the United Nations committee on economic social and cultural rights stated that:

"16. The Committee regrets that the State party [Ireland] has not yet undertaken any measures with regard to the Committee's 1999 recommendation concerning the inconsistency of article 40.1 of the Constitution on equality before the law with the principle of non-discrimination as set out in articles 2 and 3 of the Covenant." ³

We recommend: (as did the Irish Human Rights Commission In March 2011, under the UN Universal Periodic Review) that a referendum be held to amend article 40.1 to guarantee equality to all and to proscribe discrimination (direct or indirect) in any area of law on non-exhaustive grounds (such as race, sex, language or religion). ⁴

4.2 - Article 40.3.3 - The Unborn

Article 40.3.3 states that: "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."

This Article was inserted into the Constitution after a campaign based on enforcing Catholic teaching about abortion on all citizens through the Constitution. It discriminates against women who wish to terminate a pregnancy in order to protect their bodily autonomy and maintain the highest attainable standard of physical and mental health. Women do not have the same right as men to physical and mental health when living in Ireland.

We recommend: Remove this Section from the Constitution to enable the Oireachtas to pass laws that base healthcare decisions on compassion, human rights, personal autonomy, and the medical needs of patients.

4.3 - Article 41 - The Family

This is already on the agenda of the Convention. We have included it here for context.

4.4 - Article 42 - Education

Article 44.2.4 states that: “The State shall provide for free primary education...”

Because the State is only obliged to provide for education, as opposed to providing education directly, it absolves itself of this responsibility and delegates it to private bodies and institutions.

In 2008 the UN Human Rights Committee stated that it “notes with concern that the vast majority of Ireland’s primary schools are privately run denominational schools that have adopted a religious integrated curriculum thus depriving many parents and children who so wish to have access to secular primary education. (Arts. 2, 18, 24, 26) *

The State party should increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State party, in view of the increasingly diverse and multi-ethnic composition of the population of the State party.”⁵

* Note on the Articles referred to above

- Article 2 is the Right to be free from Discrimination
- Article 18 is the Right to Freedom of Conscience
- Article 24 the Rights of the Child
- Article 26 the Right to Equality before the law

Under the European Convention, the State has a positive obligation to respect the philosophical convictions of secular parents in the education system.⁶

We recommend: That Article 44, on Education, be amended comprehensively to explicitly give equal protection to religious and nonreligious philosophical believers.

4.5 - Article 44 - Religion

We have referred earlier (in our section on removing specific references to God), to our recommendation that Article 44.1 be removed.

Article 44.2.3 states: “The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.” This prevents the state from discriminating between one religion and another religion, but it does not prevent the state from discriminating between religions and nonreligious philosophical convictions.

The ECHR has stated that the secular viewpoint is worthy of respect in a democratic society, and must be regarded as a “philosophical conviction” within the meaning of the Convention:

“Secondly, the Court emphasises that the supporters of secularism are able to lay claim to views attaining the “level of cogency, seriousness, cohesion and importance” required for them to be considered “convictions” within the meaning of Articles 9 of the Convention and 2 of Protocol No. 1. More precisely, their views must be regarded as “philosophical convictions”, within the meaning of the second sentence of Article 2 of Protocol No. 1, given that they are worthy of “respect 'in a democratic society”, are not incompatible with human dignity and do not conflict with the fundamental right of the child to education. “⁷

We recommend: That Article 44, on Religion, be amended comprehensively to explicitly give equal protection to religious and nonreligious philosophical believers.

5. Further Information

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Dublin Declaration on Secularism
<http://bit.ly/jqJ5GZ>

6. Footnotes

¹ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en

² Here are two examples of Judges recusing themselves from cases because of concerns about impartiality. Note that the standard is not whether or not the Judge is actually impartial, but that there is no reasonable apprehension of objective bias, that others should be "free of doubt" about impartiality, and that there should also be a public perception of impartiality.

In November 2012, High Court judge John Cooke said he will cease managing a long-running action by Goode Concrete against cement giant CRH and other companies over alleged anti-competitive practices after the Goode firm expressed concern that the purchase of CRH shares on behalf of the judge raised a reasonable apprehension of objective bias.

In December 2008, High Court judge John Hedigan, who had refused to grant an interim order halting the deportation of a Nigerian mother and her two daughters on grounds the children are at risk of genital mutilation, agreed to disqualify himself from hearing further proceedings by the woman. Justice Hedigan said that, while he believed he would fairly and impartially hear the judicial review, and might come to a different conclusion if a case was sufficiently convincing, it was important Ms Izevbekhai should be "free of doubt" about the impartiality of such a hearing and there should also be a public perception of impartiality.

³ [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.77.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.77.En?Opendocument)

⁴ http://www.ihr.org/download/pdf/ihr_report_to_un_universal_periodic_review_march_2011.pdf para 11

⁵ International Covenant on Civil and Political Rights CCPR/C/IRL/CO/3:22.

⁶ [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81356#{"itemid":\["001-81356"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81356#{)

⁷ Lautsi v Italy (App No. 30814/06) 18th March 2011 – Extract 58.