

# God in the Irish Constitution

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Upon first reading, God, and some of his consistent personages, plays a striking and prominent role in the [Irish Constitution](https://www.citizensinformation.ie/en/government_in_ireland/irish_constitution_1/constitution_introduction.html) ([https://www.citizensinformation.ie](https://www.citizensinformation.ie/en/government_in_ireland/irish_constitution_1/constitution_introduction.html)

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[/constitution\\_introduction.html](https://www.citizensinformation.ie/en/government_in_ireland/irish_constitution_1/constitution_introduction.html)). But like many things, the meaning and effect of this is not as clear and as obvious as one might think, and the

real story of the God in the Irish Constitution is more complicated than one might initially assume.

## A Godly Preamble

In their first week of law school, I have my Constitutional Law students read the Irish Constitution and ask for their impressions. For almost all of them, it is their first time reading the text in full. Every year, multiple students note the religiosity of the text as the most striking feature.

Before even that most common invocation of popular power “We, the people,” our Constitution’s Preamble begins with a very different invocation:

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 Trinity, and Christ as “Divine Lord,” are at the very forefront of the document. The Preamble goes on to cite the Christian virtue of prudence, justice, and charity, alongside the dignity and freedom of the individual, as some of its core values.

### **Other divine influences**

Later, in Article 6, the Constitution clarifies and restates this hierarchy: “All powers of government, legislative, executive, and judicial, derive, under God, from the people.” The people are in charge but subject to God. The Constitution also mentions “Almighty God” in oaths to be sworn by the President, the Council of State, and the judiciary.

Article 44, on religion, begins: “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.”

Though not directly invoking God, some of the rights provisions of the Constitution expressly suggest a natural law, with some rights existing “antecedent and superior to all positive law.” Behind many of the rights protected, in particular family, property, and education, we can find inspiration from Thomistic teaching, paper encyclicals, and Catholic social thought.

From this survey, we would suspect that the Irish Constitution is an overwhelmingly Catholic document, and certainly, for most of its 80-year history, the Irish State was in many ways entangled with the Catholic Church.

But it is not quite so simple. The Constitution includes robust rights protecting the free practice of religion and freedom for religious discrimination which protects all faiths. The rights in the Irish Constitution have been used in a manner starkly inconsistent with their religious foundations, for example, by protecting a right to travel outside the State with the intention of procuring an abortion at a time when abortion was constitutionally banned (*Attorney General v. X*

[http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/\(WebFiles\)/B95A1F8B726975F18025765E003C2C6E/\\$FILE/AG%20v%20X\\_1992.rtf](http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/(WebFiles)/B95A1F8B726975F18025765E003C2C6E/$FILE/AG%20v%20X_1992.rtf), 1992), or, less dramatically, protecting private property rights in a manner inconsistent with their communitarian, Catholic roots[1]. The story of God in the Irish Constitution requires more detail and context to understand.

## Religious provisions

Immediately after the statement that the homage of public worship is due to Almighty God, Article 44 of the Irish Constitution goes on to espouse religious protections provisions that would seem at home in a contemporary secular constitution. It upholds the values of freedom of conscience and free practice and profession of religion, subject to public order and morality. It includes a prohibition on State endowment of religion, which is a *de facto* non-establishment clause. And it includes a guarantee that the State “shall not impose any disabilities or make any discrimination on the grounds of religious profession, belief or status.”

These clauses, it has been noted by several scholars[2], combine to give something not far from the protections enjoyed in a more separationist constitutional order such as the First Amendment to the US Constitution. Freedom of practice and profession protects the rights of all religious groups, while non-endowment and a seemingly strong non-discrimination protection might protect a freedom from religion, insisting on equality between faith and non-belief and a limitation on church/state entanglement.

However, the lingering influence of God can be seen in the manner in which these provisions have been interpreted and applied. When working out the meaning of these provisions, the Irish courts prioritised the freedom of religion practice provisions over the non-discrimination provisions on the theory that the Constitution is very favourable to religion. In the case of *Quinn Supermarkets v. Attorney General* (1972) the Supreme Court held that where discrimination in favour of religion is necessary to enable freedom of religious practice, this would not only be allowed but might be required, by the Constitution. The primary aim

of the non-discrimination clause, the Court held, was in fact to protect free practice of religion.

In *McGrath and Ó Ruairc v. Trustees of Maynooth College* (1979), two men who left the priesthood and were dismissed from the religious educational institution at which they taught lost their discrimination claim, with the Supreme Court finding that the rights of the religious college not only allowed but required this discrimination.

The courts have not enforced the endowment provisions very strictly, allowing, for example, state funding of religious chaplains in schools. In short, freedom for religion has been read as far more important than any freedom *from* religion. To take one example from recent years, admissions to State-funded but religiously controlled schools were, until very recently, allowed to discriminate in favour of children of the religious group in control of the school. With the overwhelming majority of state-funded primary schools being under the religious control, this was a major discrimination against children of no religion. Yet it was often alleged that preventing such discrimination might be an

unconstitutional violation of the rights of the religionists. It was never feared that the persistence of this rule would violate the rights of the irreligious. To put it another way, the Constitution has not been at all separationist in character.

This means that the Constitution has allowed various forms of entanglement of church and state; it places minimal constitutional obstacles to the public display of religion, or the general favouring of religion, once this does not involve discriminating against another denomination. However, this does not go so far as to see overly religious arguments advanced in courts, say, or allowing the *de jure* showing of preference for the Catholic Church in law.

## **Fundamental Rights**

Despite their partly religious origins, Ireland's fundamental rights jurisprudence has not had a great deal of religious influence. The natural law language was invoked as a basis to recognise new rights for a time, but even this was done without any great religious overtone.



Sometimes, indeed, these new rights cut directly against Catholic social teachings.

Famously in the 1970s, in the celebrated case of *McGee v. Attorney General* ([http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/\(WebFiles\)/0286CA9AA1EF1DE28025765E0038230B/\\$FILE/McGee%20v%20AG\\_1973.rtf](http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/(WebFiles)/0286CA9AA1EF1DE28025765E0038230B/$FILE/McGee%20v%20AG_1973.rtf)), these rights were used to strike down a criminal law prohibiting the importation and sale of contraceptives, something very much contrary to Catholic visions of the good. Some people feared the courts might deliver a *Roe v. Wade* (<https://supreme.justia.com/cases/federal/us/410/113/#tab-opinion-1950137>)-style judgment legalising abortion, and added a constitutional prohibition on abortion (<https://revistas.ufpr.br/rinc/article/view/60967/37484>) to the text of the Constitution in 1983. Though such a judgment was never likely, this gives a good sense of the extent to which constitutional rights were seen as not conforming to Catholic social thought.

Even aside from such pointedly non-Catholic rulings such as *McGee*,

the rights jurisprudence of the courts bore almost no mark of religiosity, and the origins of these rights became irrelevant to their use. Or, as Hogan puts it, the “average litigant could not give two straws as to whether the constitutional right in question was inspired by the writings of Thomas Aquinas on the one hand or by Thomas Paine on the other”[3].

## Assessing Ireland’s Constitution

What can we make of this Constitution? What does it say about Ireland and its religiosity?

I have argued in a [forthcoming paper \(https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3692388\)](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3692388) that Ireland’s Constitution represents a fraught and incoherent but ultimately *workable* compromise between two groups in Irish society that had to be accommodated in the constitutional settlement on religion: Ireland’s pious Catholic majority, and its vulnerable protestant minority.

Ireland in 1937 was a very Catholic country—93.6% according to the

1936 Census (<https://www.cso.ie/en/census/censusvolumes1926to1991/historicalreports/census1936reports/>)—and very pious. A constitutional document that was insufficiently Catholic would not have been passed by referendum. The draft Constitution was sent to the Vatican for comment in an attempt to offset criticism from the Catholic Church in Ireland. While the Constitution fell well short of the Catholic ideal, it was sufficient to secure a stance of acquiescence and silence from the Pope, and thus from the Irish Church. Even with this, the Constitution passed by only 56.5% of the vote, and it is very likely that condemnation from the Church would have scuppered its passage. In essence, the document had to be Catholic *enough*, and its religious rhetoric and pro-religious stance were how this was achieved.

At the same time, Ireland contained a very small but very important group protestant minority. While a tiny fraction of the population of the 26 counties of Ireland, on the island as a whole—including Northern Ireland—they constituted about a quarter of the population. Those drafting the Irish Constitution had sincere aspirations to unite the island.

But protestants, north and south, feared they would be oppressed in a very Catholic Ireland. Making the Constitution too Catholic would make this aspiration for unity impossible. Thus a generally Christian and religious constitution would be essential, but it could not be exclusively Catholic and had to be pluralist in accommodating different religious viewpoints.

While the aim of unification was far more complex than those in 1937 imagined, in terms of accommodating Ireland's protestant minority while placating its Catholic majority, the Constitution broadly worked, and religious peace in the south of Ireland was largely kept. In more recent years, however, some of the more Catholic content—a prohibition on divorce, the abortion ban, a heterosexual conception of marriage, the blasphemy offence—has been removed, and this process is likely to continue as Ireland becomes a much more secular society.

God, Jesus Christ, and the Most Holy Trinity, then, do a lot of work in the Irish Constitution. They characterise the Constitution as religious and give the impression of a religious state. They have real effects in

influencing the interpretation of the religious provisions. But they stop short of dominating the Constitution, which in its rights provisions and elsewhere have a strong independent character. They are likely to seem more dissonant as time goes on, and the Constitution is changed to reflect a less religious society. This means that the Irish Constitution is hard to understand with a simple reading. But knowing its context and history, its strange mix of provisions can be understood.

[1] Rachael Walsh, “Private Property Rights in the Drafting of the Irish Constitution: A Communitarian Compromise” (2011) 33 *Dublin University Law Journal* 86.

[2] GW Hogan, “Legal Aspects of Church/State Relations In Ireland” (1988) 7 *St. Louis University Public Law Review* 275, 278; Gerard Whyte, “Religion and the Irish Constitution”, (1996-1997) 30 *John Marshall Law Review* 725, 735.

[3] Gerard Hogan, “De Valera, The Constitution, and the Historians” (2006) 40 *Irish Jurist* 293, 306-307.