

Women and the Constitution

Dr Susan McAvoy

Paine:

- ‘The constitution of a country is not the act of its government, but of the people constituting its government ... contains the principles on which the government shall be established ...

entitled to expect in return that their constitution will:

- place limitations on the government they have created in order to protect the rights of both society and the community
- ensure equal access to the benefits of society

1916

- *The Republic guarantees religious and civil liberty, equal rights and equal opportunities to all its citizens, and declares its resolve to pursue the happiness and prosperity of the whole nation and of all its parts, cherishing all the children of the nation equally, and oblivious of the differences carefully fostered by an alien government, which have divided a minority from the majority in the past.*

1922 Constitution

- Guaranteed citizenship 'without distinction of sex' (article 3).
- Gave the vote to women as well as men at 21. (article 14 – vote at 21 was important)
- Stated that citizens aged over 21 were eligible for election to the Dáil. (article 15)

1937

- Article 40.1:
-
- ‘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.’

Delegates

- ‘broadly representative of Irish society’ but what does that mean?
- Given that issues to be discussed include some specifically women’s issues, instead of randomly selecting them, shouldn’t matters like gender have been fore-fronted in a selection process, as well as the responsibility of a democratic state to protect minority interests?

Politicians

- By what criteria are they selected?
- The Taoiseach's proposal spoke of the selection of
- 'members of the Houses of the Oireachtas, so as to be impartially representative of the Houses' [What does impartially representative of the House actually mean?]

Specifically women's issues

- 'amending the clause on the role of women in the home and encouraging greater participation of women in public life; (associational democracy)'
- 'increasing participation of women in politics;'
- Such issues **'as may be recommended by' the convention.**

Women in the home

- Article 41. 2.
- 2. 1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.
- 2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

Quadragesimo Anno 1931

- Stated: 'Intolerable and at all costs to be abolished, is the abuse whereby mothers of families ... are forced to engage in gainful occupations outside the domestic walls, to the neglect of their own proper cares and duties'
- The idea certainly had merit if it involved financial supports rather than a sense of guilt for women.
- The article is understood as symbolic rather than placing any obligations on either the state or women.

Bacik report

- Cash;
- Confidence;
- Childcare;
- Culture;
- Candidate selection (which has begun to be addressed by quota legislation).
- Class is definitely an issue we could add .
(Mary Roche)

40.3.3

- Proposal - 'The State acknowledges the right to life of the unborn child from the moment of fertilisation and guarantees to protect that right by its laws' (Hesketh, 1990: 49-50).

Article 40.3.3:

- 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.

1993 Second Commission:

- Given eight years since the amendment was passed – ‘failure of the legislature to enact the appropriate legislation is no longer just unfortunate, it is inexcusable.’ (p31)
- (x case previous year + referendums on information and freedom to travel)
- Suggested one choice was to delete 40.3.3 (and leave the issue to the legislature).
- Sort information and travel without interfering with the rights of a woman facing real and substantial risk
- Noted the protocol to Maastricht Treaty implied that European Treaties could not affect application of 40.3.3 – but

ECHR

- Meanwhile in Europe –
- ECHR judgement recognised that A and B could have obtained abortions on request in 30 of the contracting states of the Council of Europe, that 40 provided for abortion for reasons of health and well being, and 35 on the ground of well-being (para: 235).
- This of all issues is a matter for women being dealt with in a legislature in which only 25 of 166 members are women.
- Repeal of 40.3.3 would be a start in serving the rights of women.