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THE CHURCH

THE STATE

AND THE CONSTITUTION

BY DONAL BARRINGTON

“ Your Constitution (Bunreacht na h-Eireann) is intended to be an instrument of Prudence, Justice and Charity ” at the service of a community which has never, through its long Christian history, had any doubt about the eternal, as well as the temporal implications of that common good, which it professes to seek through the conjoined prayer, toil and often-times heroic sacrifice of its children.

Grounded on the bed-rock of the natural law, those fundamental human prerogatives which your Constitution undertakes to assure to every citizen of Ireland, within the limits of order and morality, could find no ampler no safer guarantee against the Godless force of subversion, the spirit of faction and violence, than mutual trust between the authorities of Church and State, independent each in its own sphere, but, as it were, allied for the common welfare in accordance with the principles of Catholic faith and doctrine.”

His Holiness Pope Pius XII to An Taoiseach,
Mr. de Valera.

4th October, 1957.

THE CHURCH, THE STATE AND THE CONSTITUTION

BY DONAL BARRINGTON, M.A., LL.B.

The Irish Constitution is infused with a spirit of intense veneration for religion and respect for Almighty God. The Preamble opens by invoking “ 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.” It continues : “ We, the people of Eire, humbly acknowledging all our obligations to our Divine Lord, Jesus Christ . . . and seeking to promote the common good, with due observance of Prudence, Justice and Charity . . . do hereby adopt, enact, and give unto ourselves, this Constitution.” The framers finished their task by offering it up for the glory of God and the honour of Ireland.

But the Constitution is meant to apply to the whole of Ireland, North and South.¹ In 1937 the whole population of Ireland was something over 4,000,000, of whom over 1,000,000 were non-Catholics. In short, the Catholics amounted to roughly 75 per cent. of the population, while the non-Catholics (virtually all of whom were Christians) amounted to roughly 25 per cent. The framers of the Constitution had to face this fact, and the Constitution which they drew up is not completely Catholic.

Article 44 deals with religion. The State acknowledges that the homage of public worship is due to Almighty God and promises to hold His name in reverence and to respect and

1. See Arts. 2 and 3.

honour religion. It recognizes the special position of the Holy Catholic Apostolic and Roman Church as the guardian of the faith professed by the majority of the citizens. It "also recognizes the Church of Ireland, the Presbyterian Church in Ireland, the Methodist Church in Ireland, the Religious Society of Friends in Ireland, as well as the Jewish Congregations and the other religious denominations existing in Ireland at the date of the coming into operation of the Constitution."

The State guarantees not to endow any religion or to impose any disabilities or make any discrimination on the ground of religious profession, belief or status. It guarantees to every religious denomination the right to manage its own affairs, own, acquire, and administer property, and to maintain institutions for religious and charitable purposes. Finally, it binds itself not to take over the property of any religious denomination "save for necessary works of public utility and on payment of compensation."¹

Some few Catholic critics have attacked Article 44 on the ground that it appears to be indifferent to the truth or falsehood of the various religions which, they say, it recognizes. Error, the argument continues, has no rights against truth, and for the Constitution to confer the same rights on truth and error is scandalous. But what the Constitution deals with is not error but men in error, which is an entirely different matter. For a man in error falls within the law of love and charity. We must respect him, not for the sake of his ideas, which may be completely false and untrue, but because he is one of God's creatures and the possessor of an immortal soul. This is the attitude of the Catholics of Ireland towards their fellow-citizens who are outside the Church. It springs not from indifference to truth, but from respect for the personality of their fellow-men.

¹ Art. 44, S. 2. S.S. 6.

Just as the Catholic must respect and tolerate men in error, so he must respect and tolerate groups or societies of men in error, and this is a very different thing from tolerating error itself. If you examine Article 44 you will find that it tolerates the various Churches or religious Societies, but nowhere is there a word which suggests that one religion is as good as another. The relevant section runs: "The State also recognises the *Church* of Ireland, the *Presbyterian Church* in Ireland, the *Methodist Church* in Ireland, the *Religious Society* of Friends in Ireland, as well as the *Jewish Congregations* and the other religious denominations¹ existing in Ireland at the date of the coming into operation of this Constitution."

The toleration shown by Article 44 has, therefore, nothing in common with that religious indifferentism so often condemned by the Popes, but is an expression of one of the noblest Christian virtues. It grants to individual men and to religious bodies not only interior freedom of conscience but also the right to profess and practise their religion openly. To give a man political freedom to believe anything he likes, provided he keeps it to himself, is a small virtue. For the State cannot know what a man thinks in his own soul. As a fifteenth century judge put it: "The thought of a man is not triable, for the devil himself knows not the thought of a man."² The greatest tyrants have been prepared to allow men to think what they liked as long as they said nothing about it. The pagan empire of Rome persecuted the early Christians, but all it demanded of them was outward conformity. Had they conformed outwardly, they could have believed anything they liked in private.

Religion which aims at influencing a man's whole life naturally aims at influencing his external conduct. We must

¹ Art. 44, S. 1. S.S. 3. The word religious "denomination" is used in Art 44 as meaning not a religious "idea" but a religious "group," "society" or "person." This can be seen from S. 2, S.S. 4-6. An idea cannot manage schools or own, acquire, or administer property.

² Year Book. 17 Ed. IV. 1.

therefore agree with Father Pohle when he says : “ The modern State must guarantee to individuals and religious bodies not alone interior freedom of belief, but also, *as its logical correlative*, to manifest that belief outwardly—that is the right to profess before the world one’s religious convictions without fear of interference from others, and to give visible expression to these convictions in prayer, sacrifice and divine worship.”¹ The Irish Constitution does this. “ Freedom of conscience,” it says, “ and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.”² Note the qualification “ subject to public order and morality.” The State must, in its own interests, keep order and maintain a certain standard of public morality. Some practices, e.g., polygamy or human sacrifice, are such an outrage to public morality that no State should tolerate them.

Critics of Article 44 have also attacked it on the grounds that it “ places ” the One True Church “ on the same level as heretical sects.” It does not. It clearly recognizes the “ special position ”³ of the Catholic Church, although this does not give Catholics any privileged position in law. But before discussing this matter more fully, it is necessary to recall the distinction between “ Society ” and the “ State.” Each of these words means something completely different. To attempt to equate them is the essence of Totalitarianism. “ Society ” has been described as “ man in the full flowering of all the social aspects of his nature.”⁴ It includes all the groupings in which men find themselves on earth—the Church, the State, the family, the trade unions, the professions, and all the other associations. The State is merely a constituent element in society.

The Church aims at the supernatural welfare of man and the State at his temporal welfare. Church and State overlap,

¹ Cath. Encyc. “ Toleration,” p.765. The italics are mine.

² Art 44, S. 2, S.S. 1.

³ Ibid. S. 1, S.S. 2.

⁴ By Rev. J. C. Murray S.J.

but the Church does not exist within the State. Both exist in Society. The Church occupies her own position in society in virtue of her own inherent rights and privileges. The State does not “ place ” her in this position nor does it “ confer ” this position upon her. To attempt to do so would be the height of insolence. It may, however, “ recognise ” the position which the Church in actual fact does hold. That is what the Irish Constitution does.

Critics have again attacked the Constitution for not giving legal recognition to the decisions of the Catholic Hierarchy. They think that friction must inevitably result between a clergy which is disciplined from above and a government which democrats regard as receiving its instructions from below. But the Church, they say, has the right and duty to guide the State on moral problems, and, if it is to do this, it must be able to abrogate bad laws passed by the State and its own directions must receive the force of constitutional law. This brings us to the difficult question of how the power of the Church over temporal affairs should express itself in twentieth-century Ireland.

Apart altogether from her spiritual mission, the advent of the Church was of the greatest significance in the temporal order. The pagan state of antiquity claimed to control every aspect of man’s life. But Our Lord placed man’s spiritual life under the care of the Church, while He left to the State the task of looking after his temporal welfare. In this division of the two great powers which governed the world rested the greatest hope of human freedom. As long as it was maintained, the emergence of the Totalitarian State was impossible.

At the time of the Counter-Reformation St. Robert Bellarmine stated the theory of Church and State in terms applicable to his own age. Church and State, he said, were each perfect societies, fully competent to achieve their own ends. The end of the Church was the eternal happiness of man, and that of the

State his earthly happiness. The Pope, as Pope, had no direct temporal authority over kings or governments. But as the eternal welfare of man must take precedence over everything else and as all that related to man's eternal happiness fell within the sphere of the Church, the Church had an "indirect" power in temporal affairs where spiritual interests were concerned but only for the purpose of advancing man's spiritual welfare.

The indirect power of the Papacy over temporal affairs is not a distinct power from its direct power over the spirituals. It is merely the application of the spiritual power in the temporal domain for the purpose of preserving spiritual interests.¹ It does not seek to coerce men by physical force. It acts through their consciences and thereby produces its results indirectly in the temporal sphere. At times in the past it may have been assisted by the State, which gave it constitutional recognition and used the force of the State to carry out its commands. But this was the result of historical accident. It was by no means essential to an exercise of the indirect power, nor is it, in the circumstances of modern Ireland, desirable.

Father J.C. Murray, S.J. has suggested² that the indirect power of the Church over temporals should be exercised in a manner consistent with historical circumstances. In the time of the Holy Roman Empire the Church acted on the conscience of the Emperor and sought, through him, to keep the Empire in conformity with Christian doctrine. In the period following on the Renaissance it acted on the conscience of individual kings for a like purpose. But, to-day, Father Murray says, the Church finds itself confronted not with an emperor or an absolute monarch, but with the democratic citizen, armed in the full panoply of all his democratic rights. The Church should, therefore, address itself to the consciences of the

¹ Maritain : *The Things that are not Caesar's*, 1st ed., P.10.

² See a *Church State Anthology* (the work of Fr. Murray) edited by Victor R. Yanitelli : "Thought," Spring 1952, p. 6.

citizens, and the citizens, by their collective action under the spiritual guidance of the Church, will produce the desired effect in the temporal sphere.

But there does not seem to be any reason why the Church should not address itself to the consciences of Catholic ministers, members of Parliament, and citizens simultaneously if it thought fit. In olden times the Church could in the last analysis threaten a recalcitrant ruler with releasing his subjects from their oath of allegiance. But it could not actually depose him unless his subjects were prepared to act. In a democratic State the citizens can peacefully remove a government which is following a policy which the Church considers immoral, so that it is quite possible for the Church to make itself felt in the temporal sphere without ever resorting to anything in the nature of force or legal coercion.

Don Luigi Sturzo has also emphasized this point.¹ He instances the condemnation of the Action Française by Pope Pius XI. In the time of the Confessional State of the *Ancien Régime*, the Pope would have drawn up the condemnation in the form of a Papal Bull. The Bull would have come before the Council or State or the Parlement de Paris. If these approved of it, it would then have been published by Royal Order and become part of the constitutional law of France. As it was, the Pope merely condemned the Action Française and forbade priests and faithful to support it. This produced the desired effect without any formalities or any legal coercion. This is one way a Papal direction would take effect in modern Ireland.

Critics of the Constitution say that the position of the Church in Ireland should correspond to that which she occupied in the Confessional State of the *Ancien Régime* which they proclaim to be the Catholic ideal on Church-State relationships. But, of course, it is quite wrong to hold up any form of socio-

¹ Sturzo : "Church and State" : Centenary Press : London, 1939, pp. 548-9.

religious organization which has actually existed in history, e.g., that of France under Francis I or of Spain under Ferdinand and Isabella, as the ideal solution of the Church-State problem to which all future solutions must correspond unless they are to be considered inferior.

The Confessional State performed a useful service in its own particular time and place, but it had many defects. When it first appeared in history, it was at least as great a triumph for the forces of regalism as for those of religion.¹ It is quite true that it was vigorously defended by the Popes towards the end of the 19th and the beginning of the 20th centuries, especially by Pope Leo XIII. But it is necessary to recall the circumstances in which this defence was made.

The years between 1870 and 1914 marked the heyday of Continental Liberalism. This Liberalism was more extreme and more godless than the Utilitarian Liberalism of the Anglo-Saxon countries. It rejected all authority, both moral and political, and was extremely hostile to the Church. The French Parliament attempted to abolish religion completely from public life. It secularized education, placed all hospitals under the care of laymen, removed the motto *Dieu protège la France* from the coinage, introduced divorce, expelled religious orders, subjected priests to military service, separated the Church from the State, denied to the Church its sacred character and attempted to reduce it to the rank of a voluntary association. In Portugal, Alfonso Costa, when introducing a law for the separation of Church and State, declared that his object was to de-Christianize Portugal in two generations.² In these circumstances it was hardly surprising that the Popes came out strongly against the Liberals and on the side of the established order, i.e., the Confessional State, which they

¹ 'A Church-State Anthology, "Thought," Spring, 1952, P. 24.

² cf. Church and State, ed. by Fr. C. Lattey, S.J. Burns Oates and Washbourne, 1936.

defended with all its logical implications, for the choice seemed to be between a State-Church and no Church at all. At no time, however, did the Popes say that the Confessional State was the ideal solution to the problem of Church and State and that it must be adopted wherever Catholicism was in the ascendant. There may be another approximation to the ideal more suited to the needs of modern Ireland.

An ideal solution of the problem of Church and State demands the recognition of certain fundamental principles. The first is that the final end of man is the salvation of his soul and that the Church has been instituted by God to assist him in reaching this end. As a result, she has primacy in dignity over all other societies on earth and must be free to teach, rule, and sanctify, while men must be free to listen to her teaching, to obey her laws, and to practise their religion.¹ The second is that earthly happiness is a legitimate end of man where it does not conflict with his eternal salvation and that the State should be completely free to assist him in attaining this happiness as long as it does not transgress the moral law. The third principle is that, as men are subject to two authorities, it is necessary for the sake of men's consciences that these two authorities should not be in conflict, but should co-operate. This co-operation is likely to reach its highest point in the case of a union of Church and State and union is therefore a Catholic ideal.

But there is no necessity for this union to take that formal and juridical character which it took in the Confessional State, with its established Church, stipendiary clergy, State enforcement of Church decrees, and governmental veto over the appointment of bishops. The essentials of the Catholic ideal on the union of Church and State are that the State should profess its belief in God, and should recognize the Catholic

¹ cf. A Church-State Anthology (the work of Fr. Murray) in "Thought," Spring, 1952, P. 20.

religion as the religion of the State ; it should invite the blessing of the Church on the work of the State and the ceremonial participation of the Church in important public functions ; representatives of the State should attend the important religious celebrations of the Church ; the State should recognize and sanction the laws of the Church ; and finally, it should protect the rights of the Church and of Churchmen from unjust attack.¹

The Irish Constitution places the rights of the Church and of religious orders in a very strong position. It protects Church property even more strongly than that of ordinary citizens.² The Canon Law has the same status in Ireland as the law of a foreign country.³ It is recognized as binding on priests, and religious, and ordinary citizens may, by their own act, make themselves legally subject to it, e.g., by making a contract under its forms. At the same time every effort has been made to see that the law of the country should contain nothing which might offend the conscience of Catholics or of other Christians. The articles in the Constitution dealing with fundamental rights are almost a synopsis of Catholic teaching on the matter. Some slight anomalies⁴ remain in the ordinary law, but these will pass with time.

The most friendly relations exist between leading statesmen and the leaders of the Church. Ireland has a representative at the Vatican and the Papal Nuncio is recognised as the doyen of the diplomatic corps here. Catholic statesmen profess their religion openly and attend Church ceremonies diligently, while national festivals invariably open with the blessing of the Church. The State, as we saw, acknowledges its duties towards Almighty God. It makes an open profession of Christianity.

¹ Ryan and Millar. "The State and the Church," New York, 1922. pp. 34-5.

² Art. 44, s.2, s.s. 6.

³ O'Callaghan v. O'Sullivan, I.R., 1925, p. 90.

⁴ cf. Rev. P. McKevitt, "The Plan of Society," pp 151-3.

It recognizes the "special position" of the Catholic Church.

The Irish Constitution treats the Church and religion with great respect, and there are few constitutions in the world which could equal it in this regard. But, nevertheless it must be freely admitted that the position of the Church under the Irish Constitution falls short of the ideal. It remains to consider whether there are any special factors in present-day Ireland which justify this recession from the ideal.

That a recession from the ideal can be justified under certain circumstances goes without saying. When applying their theories, statesmen must take into account not only the logic of the metaphysician but also the habits, the likes and dislikes, the prejudices, of the people whom they are trying to govern, and in doing this they must show the highest degree of political prudence. Politics must be adjusted not only to human reasoning, but to human nature.

The purpose of the State is to promote the common good of the governed. Statesmen attempting to do this must never do anything which is unjust. But they may, in order to avoid some greater evil, refrain from doing something which is ideally good. "God Himself," Pope Leo XIII wrote, ". . . though infinitely good and powerful, permits evil to exist in the world, partly that greater good may not be impeded, and partly that greater evil may not ensue. In the government of States it is not forbidden to imitate the Ruler of the world . . .¹ Whether such toleration of the presence of specific evils or the absence of ideals goods is justifiable is a matter to be decided in each case in accordance with the rules of political prudence.

There were many special considerations which the framers of the Irish Constitution had to bear in mind. First they had to remember that they were not drawing up a Constitution for a completely Catholic State. Father Pohle defined the term

¹ The Gt. Encyc. Letters of Leo XIII, New York, Benziger, 1903, P. 157.

“Catholic State” as one which consisted exclusively of Catholics and rightly doubted whether such a State still existed in the world. The Irish Constitution was intended for a people one quarter of whom were non-Catholics. These do not believe that the Catholic Church is the One True Church, would resent the inclusion of such a statement in the Constitution, and might feel bound in conscience to deny it their allegiance on that account.

The second factor is the tragic history of Ireland. There is no necessity to dwell upon it here. Religious animosities are dormant at present. The framers of the Constitution preferred to let them slumber in the hope that they might die. This is a factor which militates with special force against any attempt to alter Article 44 by means of a constitutional amendment. The movers of such an amendment might have the most lofty intentions in the world. But one can easily see how a popular referendum on such a subject could open up old wounds and lead to terrible outbursts of religious bigotry. How far such outbursts might go, what effect they might have on Catholics in the Six Counties and on the whole Partition problem, how they would be interpreted abroad, and what damage they might do to the cause of Catholicism in other countries, are all matters which cannot be lightly dismissed.

The third factor relates to the whole position of religion in Ireland as governed by Article 44. One of the greatest objections to Home Rule was the fear of Protestants that Home Rule would mean Rome Rule and that this in turn would lead to the persecution of the Protestant denominations. The Catholics knew that these fears were unfounded and did not hesitate to give guarantees of religious liberty and equality to their Protestant fellow-countrymen. These guarantees were included in the three Home Rule Bills and in the Treaty by which the Free State undertook not to “make any law so as either directly or indirectly to endow any religion or prohibit,

or restrict the free exercise thereof or give any preference or impose any disability on account of religious belief or religious status.¹” This guarantee was reproduced verbatim in the Constitution of the Irish Free State² and was carried over in substance into the present Constitution. In this respect it is worth recalling the words of Father Pohle: “If religious freedom has been accepted and sworn to as a fundamental law in a Constitution, the obligation to show this tolerance is binding on conscience. The Catholic Church recognises unreservedly the inviolability of Constitutions confirmed by oath³”

I think we can say then that the solution which the framers of the Constitution adopted was the best attainable under the circumstances. It is not perfect. It does not claim to be. Prudence has dictated a recession from the ideal and this fact is freely acknowledged. This being so, it is not legitimate to attack the Constitution in the light of the ideal. That is to say the critic must show not only that his alternative solution corresponds more closely to the ideal but also that in advocating it he is being wiser and more prudent than the framers of the Constitution.⁴

In the debates on the draft Constitution which took place in the Dáil in 1937, Article 44 was one of the few Articles of which all sections of the House approved. In the course of the discussion on the Article, Mr. de Valera said: :

“I need not tell the Deputy that I gave this matter very careful consideration In fact, it was put down here only after careful consideration, and I might add, testing, as to whether there was anything that was going to cause

¹ Art. 16.

² Art 8.

³ Cath. Encyc., “Toleration,” p. 772.

⁴ cf. Father Gustave Weigel, S.J., *The Church and the democratic State*, “Thought,” Summer, 1952, p. 175.

reasonable objection in any quarter. In the form in which it is I think we can let it remain without any qualms or fears."¹

The Constitution came into force on December 29th, 1937. On New Year's Day, 1938, the late Cardinal MacRory, Archbishop of Armagh and Primate of All Ireland, who was in a very good position to appreciate the difficulties which the Constitution had tried to solve said :

"The past year will be memorable for the inauguration of the new Constitution of Ireland. The Constitution is a great Christian document, full of faith in God as the Creator, Supreme Law-giver, and Ruler, and full also of wise and carefully thought-out provision for the upholding and guidance of a Christian State. Nothing human is perfect, but the new Constitution is a splendid charter, a broad and solid foundation on which to build up a nation that will be at once reverent and dutiful to God and just to all men."

It would be possible to quote many such statements from members of the Hierarchy and eminent theologians. But I have space here to mention but one more matter. In Belgium the Catholics form at least as great a percentage of the population as they do in Ireland.² It is interesting therefore to note the attitude which Pope Leo XIII adopted towards the Belgian Constitution of 1830, especially as the critics of the Irish

¹ Dáil Debates : June 4th 1937 ; Col. 1892-3.

² The Catholic Year Book for 1952 puts the number of Catholics in Belgium at more than 90% of the population, but this figure is hardly reliable.

Constitution rely so strongly on some of the dicta of this famous Pope. The Belgian Constitution seems to be much more "tainted with Liberalism" than the Irish. The provisions dealing with religion are as follows :—

"Article 14—Religious liberty and the freedom of public worship, as well as free expression of opinion in all matters, are guaranteed, with the reservation of power to suppress offences committed in the exercise of these liberties."

"Article 15—No one shall be compelled to join in any manner whatever in the forms or ceremonies of any religious denomination or to observe its days of rest."

In the year 1878 some of the more conservative Belgian Catholics started a movement for the reform of the Constitution which they attacked as being based on Masonic principles.¹ Their movement gained considerable support and worried the Government which referred the whole matter to Rome. Pope Leo XIII was well acquainted with Belgian problems as he had been Papal Legate to Belgium at the time of the adoption of the Constitution. His attitude was peculiarly interesting for it illustrates the distinction between that portion of the Pope's teaching which relates to the ideal solution of the problem of Church and State in the abstract, and the practical compromises which Catholic statesmen, faced with grave concrete problems, may legitimately accept provided they do not do anything which is unjust or connive at injustice.

On March 3rd 1879 M. George Reusens, the Belgian Chargé d'Affaires at the Holy See, in a letter to the Belgian Minister for Foreign Affairs, quotes Pope Leo XIII as follows :—

¹ For an account of this incident see *Histoire de la Belgique Contemporaine*, Bruxelles, 1929, Tome II, pp. 543-6.

“The works of men are not perfect : evil is found beside good, error beside truth. So it is with the Belgian Constitution. It recognises certain principles of which I, as Pope, could not approve,¹ but the position of Catholicism in Belgium shows, after the experience of half a century, that in the present condition of modern society the system of liberty established in that country is the most favourable to the Church. Belgian Catholics, then, should not only refrain from attacking that Constitution but should defend it.”²

On April 28th 1879 Baron d’Anethan, the Belgian Minister to the Holy See, quotes the Pope as follows :—

“People have wrongly concluded that the head of the Church was hostile to the Belgian Constitution. I have never ceased to repeat that your institutions suit the character of the nation. I myself studied the carrying into effect of your Constitution and I know that it safeguards the rights of Catholics. It would be running counter to the views of the Holy See to attack or find fault with your Constitution. Catholics should submit to it without reservation. I hope that this matter is finally settled and that no Catholic will raise it again.”³

¹ The Belgian Constitution permits divorce, but the majority of the people being Catholics, few citizens seek it.

² Reusens to the Belgian Foreign Minister, March 3rd 1879, *La Belgique et le Vatican*, Vol. I, Extract 26, P. 90.

³ *Ibid.* Extract 32, P. 103.

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His Eminence, John Cardinal D’Alton, D.D. (1958).

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