

Atheist Ireland



A Secular State Protects A Pluralist Society

Follow-up Submission to the Plenary Meeting
of the Dialogue Process between the Government,
Churches, and Non-Confessional Organisations
on 4 July 2019

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Further Information

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Part 1

Atheist Ireland's Contributions to the Plenary Meeting

1. Atheist Ireland Contributions to the Meeting

1.1 Summary of our Contributions

Effective Structured Dialogue

- The dialogue process should be based on applying underlying principles that are just, rather than having everyone competing to promote their own self-interests.
- In order for the State to protect equally for everybody the right to freedom of conscience, religion, and belief, the State must remain neutral between religious and atheistic beliefs.
- We should not use the discriminatory phrase ‘a new Church State Covenant’. The State’s relationship should be explicitly equal with all belief groups, whether religious or atheistic.
- People have rights, beliefs do not. The State must treat people with respect, and protect us from discrimination and crimes based on our beliefs.
- But it must not protect the content of our beliefs from being challenged, and it must not insist that we respect beliefs that we consider irrational or harmful or unjust.
- Individual people, not majorities, have human rights. Indeed, the point of human rights law is to protect individuals from the tyranny of the majority.
- The Irish people have moved on. The State must remove legacy laws that discriminate against atheists, including in schools, healthcare, religious oaths for high office, charity law, and the Civil Registration Act.
- The dialogue process should treat everybody equally. The Government has already met bilaterally with some Christian churches. The next bilateral meetings should be with groups who have not yet met with this Government.

Inclusive and Diverse Communities

- Atheist Ireland promotes ethical secularism as the only way for a society to justly balance inclusive and diverse communities.
- Everyone must have the right to freedom of religion and belief. But there must be one law for all, based on human rights and democratic values.
- Atheists and religious people can both support secularism. Atheist Ireland has a unique working alliance with Evangelical Alliance Ireland and the Ahmadiyya Muslim Community of Ireland to jointly promote secular schools and human rights.
- We do not confine our joint work to Ireland. When the UN Human Rights Committee was questioning Pakistan in 2017, we sent a joint delegation to Geneva to address the Committee.
- Secularism correlates with many positive aspects of a just society. There is a pathway to secular values, as shown by the World Values Survey, triggered by investments in health, education, communication technologies and democracy.
- The developed world is relentlessly becoming more secular, with some fundamentalists fighting back. Ireland is following that trend.

Education

- Multiple patronage and multiple ethos as the basis for policy causes segregation and inequality in Irish schools. Divesting some schools will not solve this.
- The European Union, the European Court, and the United Nations all give secular parents (whether atheist or religious), the exact same rights as parents of the majority religions.
- However, in Irish schools, the State aims to contribute to the moral and spiritual education of our children through religion. This is indoctrination. It disrespects our right to ensure that the teaching of our children is in conformity with our convictions.
- The right to respect for our convictions includes a negative and positive right. The negative right is to not be indoctrinated, including the right to opt out of religion classes. The positive right is to the same active help that you give to majority religion parents.
- As two specific examples, the State has failed to protect the right of all students to objective sex education, and the right of atheist and minority faith teachers to equal access to jobs.
- The State must rebalance its approach to these rights, to ensure pluralism and to fulfil its duties under the Constitution, the Charter of Fundamental Rights, the European Convention, and the various UN Conventions that Ireland has ratified.

Responses to Comments Made About Our Contributions

We elaborated on what we meant when we said that we should treat people with respect, but that the State must not insist that we respect beliefs that we consider irrational or harmful or unjust.

- This goes to the heart of both secularism and human rights. There is a difference between on the one hand respecting people, and respecting their right to hold beliefs, and on the other hand respecting the content of those beliefs.
- To illustrate that, we asked would anybody in the room respect the beliefs of racism or antisemitism? We said that we do not respect the belief that being gay is an objective disorder.
- This distinction has been stressed by various UN and Council of Europe Human Rights Rapporteurs and Commissioners, as well as by the Venice Commission.

We elaborated on what we meant when we said that, in order for the State to protect equally for everybody the right to freedom of conscience, religion, and belief, the State must be secular.

- By secularism we mean that the State must remain neutral between religious and atheistic beliefs. This does not rule out the State engaging with religious or atheistic groups on the same basis as it engages with other groups within society.
- We simply argue that the State in its exercise of its functions should remain neutral between religious and atheistic beliefs, and should not give privilege to or discriminate against any people or groups on the basis of their religious or nonreligious beliefs.
- We argued that the people within society, not the State, should be pluralist. But the State, by being secular, can protect the pluralism of the people within society. We want a secular State to protect a pluralist society.

1.2 Our Contribution on Effective Structured Dialogue

Atheist Ireland proposes the following six principles as the foundation for this dialogue process.

1. The first duty of the State is to protect the rights of its citizens. Only when you do that can you help every citizen to live a flourishing life, as part of a just society.

In this dialogue process, your first duty is to protect our unconditional right to freedom of conscience, religion, and belief, and our conditional right to practice those beliefs as long we don't infringe on the rights of others.

2. To do this, the State must remain neutral between religious and atheistic beliefs. This is both a requirement of Article 17, and also the only way that you can protect these rights, equally and fairly, for every one of us.

We should not use the phrase 'a new Church State Covenant'. The State's relationship should be explicitly equal with all belief groups, whether religious or atheistic.

As atheists, we are not looking for any privileged advantage over our religious friends and neighbours. Indeed, we would be just as opposed to the State giving privilege to atheism as we are to the State giving privilege to religion.

3. People have rights, beliefs do not. The State must protect the right of every person to be respected and treated with dignity as an individual, to hold our beliefs, and to be protected from discrimination and crimes on the basis of our beliefs.

But you must not protect the contents of our beliefs from being questioned, challenged, or even ridiculed. And you must not insist that we respect beliefs, if we consider them to be irrational or harmful or unjust.

4. Individual people, not majorities, have human rights. Indeed, as the UN Human Rights Committee told Ireland on the abortion issue, the whole point of human rights law is to protect individuals from the tyranny of the majority, and majority votes cannot be used to deny human rights.

5. The people have moved on. The State must catch up. In recent referenda we have voted to respect individual rights to same sex marriage, abortion, and blasphemy.

The State must now remove other legacy laws and practices that discriminate against atheists and minority faiths, including in schools, healthcare, religious oaths for high office, charity law, and the Civil Registration Act.

6. This process should treat everybody equally. This Government has already had bilateral meetings with the Catholic Church, Church of Ireland, Presbyterian and Methodist Churches, and the Taoiseach has met with the Jewish community.

Atheist Ireland is awaiting a date for the meeting with us that the Government has agreed to hold. In the interest of fairness, we ask that the next bilateral meetings should be with groups such as us, who have not yet had a bilateral meeting with this Government.

1.3 Our Contribution on Inclusive and Diverse Communities

Atheist Ireland promotes ethical secularism as the only way for a society to justly balance inclusive and diverse communities. By secularism we mean politically separating Church and State.

Everyone must have the right to freedom of religion and belief. But there must be one law for all, based on human rights and democratic values. And we as citizens should act ethically.

Atheism is not the same thing as secularism. Atheists and religious people can both support secularism, and work together for secularism.

Atheist Ireland already does this. We have a unique working alliance with Evangelical Alliance Ireland and the Ahmadiyya Muslim Community of Ireland to jointly promote secular schools.

Unlike interfaith forums, that bring together only religious people, our work brings together both atheist and religious groups.

The key to our success is that we respect each other as people, we respect our right to hold our very different world views, and we accept that we disagree on the source and content of much of our world views.

But we can unite around our support for human rights and freedom from discrimination. We are all discriminated against in Irish schools and other situations.

We can jointly promote moral values like empathy, compassion, cooperation, reciprocity, fairness, and justice, while respecting that we have different beliefs about the source of our morality.

Our three groups do not confine our joint work to Ireland. When the UN Human Rights Committee was questioning Pakistan in 2017, we sent a joint delegation to Geneva to speak out for persecuted atheists, Christians, and Muslims who could not speak out for themselves.

Secularism correlates with many aspects of a just society.

In general, secular countries, which include atheist and religious people, have lower rates of homicide, juvenile and early adult mortality, STD infection rates, teen pregnancy, and abortion.

Studies published by social scientist Phil Zuckerman and others have shown that secularists are typically less nationalistic, less prejudiced, less racist, less dogmatic, less ethnocentric, less closed-minded and less authoritarian; and more politically tolerant and more supportive of gender equality, women's rights and gay rights.

There is a pathway to secular rational values. The World Values Survey, conducted by social scientists, suggests that as individuals move from survival values to self-expression values, which is triggered by investments in health, education, communication technologies and democracy, societies move towards secular rational values.

International trends are clear. The developed world is relentlessly becoming more secular, with some fundamentalists fighting a rearguard action against it, and some Governments unsure how to react.

Ireland is following that trend. The sooner we attain a secular State, the easier it will be for religious and atheist citizens alike to work together to shape a just society that accommodates inclusive and diverse communities.

1.4 Our Contribution on Education

Multiple patronage and multiple ethos as the basis for policy is the underlying problem in Irish schools. The Oireachtas Education Committee has already concluded that this brings about segregation of children and inequality. Divesting some schools will not solve this.

Article 17 of the Lisbon Treaty equally respects non-confessional minorities. But the Irish State does not respect us equally in Irish schools. The European Union, the European Court, and the United Nations all give us the exact same rights in schools as religious parents.

The European Court has said that the right to respect for parents convictions is an absolute right, and not one to be balanced against the rights of others.

The Irish Constitution speaks of the inalienable rights of parents, and the Irish Courts have never found that the State can disregard the rights of secular parents (whether atheist or religious) who seek secular education for their children.

However, in Irish schools, the State aims to contribute to the moral and spiritual education of our children through religion. It teaches our children the relevance of religion to their lives, and to respect religious beliefs.

Those aims are indoctrination. They disrespect our right to ensure that the teaching of our children is in conformity with our convictions. Imagine the outcry from religious parents if Irish schools sought to contribute to the moral education of their children through atheism.

The right to respect for our convictions includes a negative and positive right.

The negative right is to not be indoctrinated in beliefs contrary to our own. The positive right is to the same active help that you give to parents of the majority religions.

With regard to our negative right, the Constitution allows our children, without prejudice, to not attend religion classes in Irish schools.

But that right is often not vindicated in practice. And when it is, it is not vindicated without prejudice. Even State ETB schools do not offer an alternative subject to the NCCA religion course and the Goodness Me Goodness You course.

Even worse, with regard to our positive right, the State simply ignores this.

If you actively help Catholic parents to ensure that their children's education is in conformity with Catholic beliefs, you must also actively help secular parents (whether atheist or religious) to ensure that our children's education is in conformity with secular beliefs.

As two specific examples, the State has failed to protect the right of all students to objective sex education, and the right of atheist and minority faith teachers to equal access to jobs.

The State must rebalance its approach to these rights.

You must do this both to ensure pluralism, and to fulfil your duties under the Constitution, the Charter of Fundamental Rights, the European Convention, and the various UN Conventions that Ireland has ratified.

You must respect both the negative and positive sides of the right to education in conformity with our convictions, as part of the wider right to freedom of conscience, religion, belief, and expression, free from religious discrimination.

1.5 Responses to Questions on Feedback Form

Q1. Did the plenary meet with your expectations?

- We didn't have any specific expectations, but we think that the meeting could be a positive start to an ongoing dialogue process.
- We were happy that the Government representatives seemed to be there to listen rather than to dictate outcomes. We look forward to this approach continuing.
- The universality of the meeting was compromised by the fact that the Government had already had bilateral meetings with several Christian churches, but that imbalance can be corrected by having the next bilateral meetings with groups that the Government has not yet met.

Q2. Do you have any suggestions about how the dialogue process should progress going forward?

- From the perspective of the State, the primary aim of the process should be based on the relationships between each group and the State, rather than on the relationships of the groups to each other.
- The next bilateral meetings should be with groups that the Government has not yet met.
- The meetings should conclude with measurable proposed outcomes to build on the dialogue.
- Proposals that involve Constitutional or human rights obligations should be given priority over proposals that are in the realm of desirability.
- There is a qualitatively different approach between groups such as us, who are looking for a secular approach that treats everybody equally, and groups who are looking for the State to support their own beliefs. The Government should seek to understand the approach that we are taking to promoting secularism in this way.
- Future plenary meetings could have specific themes, with opening statements circulated beforehand so that others can effectively address issues during the meeting.

Q3. Could anything have been done differently to improve the meeting?

- The discussion could be kept more specifically to the themes of the sessions. We felt that several groups did not respect these themes, and just made random points.
- The Catholic Church should have been treated the same as other participants. Instead its representative had a relatively lengthy one-to-one dialogue with the Minister within the session on education, which was not given to any other group present.

Q4. Do you have a question or comment about a topic you felt was not addressed or adequately discussed throughout the sessions?

- We have addressed this throughout the rest of this document.

Part 2

Elaboration on Effective Structured Dialogue

2. Elaboration on Effective Structured Dialogue

2.1 Why It is Important To Have Underlying principles

We proposed six principles as the foundation for this dialogue process. We believe that the process should start by adopting these or similar principles because:

- They are consistent with the State's duties under the Constitution, the Charter of Fundamental Rights, the European Convention, and the various UN Conventions that Ireland has ratified.
- They do not give privilege to or discriminate against any participants on the basis of their religious or nonreligious beliefs.
- They provide an objective standard to refer to during the dialogue, instead of simply everybody arguing for what suits their own interests.

2.2 Review of the Six Principles that we Proposed

1. The first duty of the State is to protect the rights of its citizens, in this case the unconditional right to freedom of conscience, religion, and belief, and the conditional right to practice those beliefs as long we don't infringe on the rights of others.

2. To do this, the State must remain neutral between religious and atheistic beliefs. This is both a requirement of Article 17, and also the only way that you can protect these rights, equally and fairly, for every one of us.

3. People have rights, beliefs do not. The State must protect the right of every person to be respected and treated with dignity, but you must not protect the contents of our beliefs or insist that we respect beliefs, if we consider them to be irrational or harmful or unjust.

4. Individual people, not majorities, have human rights. Indeed, as the UN Human Rights Committee told Ireland, the whole point of human rights law is to protect individuals from the tyranny of the majority, and majority votes cannot be used to deny human rights.

5. The people have moved on. The State must catch up. The State must now remove legacy laws and practices that discriminate against atheists and people of minority faiths, including in schools, healthcare, religious oaths, charity law, and the Civil Registration Act.

6. This process should treat everybody equally. The next bilateral meetings should be with groups such as us, who have not yet had a bilateral meeting with this Government.

2.3 The Dialogue Process Must Have a Neutral Name

We are pleased that the Taoiseach acknowledged that the process should not have a name that privileges religious belief systems over atheistic belief systems. We also should have a name that reflects what it is, rather than an abstract name such as Dialogue of Hope. We suggest as one possibility "State Dialogue Process with Groups of Different World Views"

2.4 Secularism Means State Neutrality Between Beliefs

The Taoiseach began the meeting by using a different meaning of secularism than we do. He seemed to suggest that secularism would prevent the State from allowing religious bodies to have a place in the public square, or from funding activities engaged in by religious bodies.

We do not see secularism as ruling out either of these possibilities. For example, even a strongly secular State such as France funds faith schools in certain circumstances, on the condition that they don't discriminate on religious grounds.

We simply argue that the State in its exercise of its functions should remain neutral between religious and atheistic beliefs, and should not give privilege to or discriminate against any people or groups on the basis of their religious or nonreligious beliefs.

2.5 We Need a Secular State to Protect a Pluralist Society

The Taoiseach began by contrasting the concepts of secularism and pluralism in policy terms. We suggest that this conflates the role of the State and the role of society.

We agree that society should be pluralist. Indeed, that is simply an observation of fact: society is pluralist, because it includes people of many different religious and atheistic beliefs. We also agree that the State's policy should be to protect and support this pluralism.

However, we believe that the State itself must be secular, that is, neutral, precisely in order to protect and promote the pluralism of society, and as the only way to protect and promote **equally** everybody's right to freedom of conscience, religion, and belief.

That is, the State must remain neutral between the many religious and atheistic beliefs of its people, and the State must not give privilege to or discriminate against people on the basis of their religious or nonreligious beliefs.

The State itself cannot be pluralist, because the State itself cannot have a multiplicity of religious and atheistic beliefs, and it should not have any religious or atheistic beliefs.

2.6 Secularism Brings Together Atheists and Religious People

Atheist Ireland has a unique working alliance with Evangelical Alliance Ireland and the Ahmadiyya Muslim Community of Ireland to jointly promote secular schools and human rights. It is precisely because of our joint commitment to secularism that we are able to work together without seeking State privilege for any of our respective groups. We will address this more in our elaboration on Inclusive and Diverse Communities.

2.7 People Have Rights, Beliefs Do Not

We were concerned that some participants did not seem to understand the difference between respecting the right to hold a belief, and respecting the content of the belief itself.

The State must protect the right of every person to be respected and treated with dignity, and our right to hold our beliefs, but you must not protect the contents of our beliefs or insist that we respect beliefs, if we consider them to be irrational or harmful or unjust.

The former UN Rapporteur on Freedom of Religions and Belief, Heiner Bielefeld has expressed the distinction in this way:

“Rights holders are human beings who may exercise these freedoms as individuals and in community with others. While this may sound like a truism in the context of human rights in general, the right to freedom of religion or belief has sometimes been misperceived as protecting religions or belief systems in themselves.

This misperception is the source of much confusion, as it obfuscates the nature of freedom of religion or belief as an empowering right. Ignoring that may lead to the wrong assumption of an antagonism between freedom of religion or belief and freedom of expression. Thus, it may warrant highlighting that freedom of religion or belief protects believers rather than religions or beliefs.”

As per the examples that we gave at the meeting, nobody in the room would respect (or expect others to respect) the beliefs of racism or antisemitism, and Atheist Ireland does not respect the

belief that being gay is an objective disorder. Also, we do not respect the belief that abortion is murdering children, while we can respect the right of individual people to hold that belief.

This distinction becomes very important when we address the topic of education, because the NCCA State Religious Education Curriculum has as a learning outcome that children should respect beliefs and practices arising from religious beliefs.

2.8 People Have a Human Right to Not Respect Beliefs

Attempts to shield religious dogma from criticism do not represent a clash between Human Rights, but, rather, are indicative of the misapplication of Human Rights principles.

In a recent Report to the UN Human Rights Council the UN Special Rapporteur on Freedom of Religion and Belief, Ahmed Shaheed stated that:

“55. Freedom of religion or belief and freedom of expression are closely interrelated and mutually reinforcing rights when they are exercised in the legal framework established by international Human Rights law.

Both rights are fundamental to a democratic society and individual self-fulfilment and are foundational to the enjoyment of Human Rights. The Special Rapporteur asserts that the cases presented in the present report are illustrative of the fact that measures for addressing the challenges posed by expression involving religion or belief are open to abuse and can be counterproductive, oftentimes victimizing adherents of myriad religions and beliefs in their application.

International law compels States to pursue a restrained approach in addressing tensions between freedom of expression and freedom of religion or belief. Such an approach must rely on criteria for limitations which recognize the rights of all persons to the freedoms of expression and manifestation of religion or belief, regardless of the critical nature of the opinion, idea, doctrine or belief or whether that expression shocks, offends or disturbs others, so long as it does not cross the threshold of advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence.”

“16. According to these opponents of widening the scope of limitations, attempts to shield religious dogma from criticism do not represent a clash between Human Rights, but, rather, are indicative of the misapplication of Human Rights principles. Moreover, freedom of religion or belief does not bestow a right on believers to have their religion or belief itself protected from all adverse comment, but primarily confers on them a right to act peacefully in accordance with their beliefs

Manifestations of religion or belief, they note, must comply with the duty to respect the fundamental rights and freedoms of others and may be subject to limitations on those grounds. In that regard, States have an obligation to prohibit any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence (Covenant, art. 20 (2)).

Proponents of restrictions on the freedom of expression also argue that limits pose an inherent threat to the exercise of the right to freedom of religion or belief for all, since such restrictions regularly target minority religions or beliefs whose very existence may challenge the convictions of majority religious communities. This includes the beliefs of atheists and humanists that, by their very definition, constitute blasphemy in the eyes of various faith groups”.

The Venice Commission in its Guidelines for Review of legislation pertaining to Religion or Belief stated:

“77. It is also worth recalling that an insult to a principle or a dogma, or to a representative of a religion, does not necessarily amount to an insult to an individual who believes in that

religion. The European Court of Human Rights has made clear that an attack on a representative of a church does not automatically discredit and disparage a sector of the population on account of their faith in the relevant religion and that criticism of a doctrine does not necessarily contain attacks on religious beliefs as such. The difference between group libel and individual libel should be carefully taken into consideration.”

2.9 Individual People, Not Majorities, Have Human Rights

In 2014, the UN Human Rights Committee told Ireland, very forcefully, on the issue of abortion, that the very *raison d'être* of human rights law is to protect individuals from the tyranny of the majority, and that majority votes cannot be used to deny human rights.

The UN Human Rights Committee asked Ireland why it was in breach of the human right of pregnant women to an abortion in wider circumstances than allowed by Irish law. The Irish State replied that Irish abortion law reflects the will of the Irish people, as allowed under Article 25 of the International Covenant on Civil and Political Rights.

The UN Human Rights Committee said that that was a completely unacceptable reason for denying human rights, and that the very core of human rights law is a safeguard against the tyranny of the majority. After a break in the session, the Irish Justice Minister Frances FitzGerald formally withdrew the remark and accepted that “the majority will does not and can not derogate from human rights obligations.”

Yuval Shany of the UN Human rights Committee said:

“I find this argument to be completely unacceptable, I should say, and one that strikes at the very core of human rights law as a safeguard against the tyranny of the majority, and one that cuts against the very *raison d'être* of having an international regime of universal human rights protections. And I call on the State Party to consider withdrawing that statement, on the ability of the Irish State to deviate from the Covenant at will, and to come up with some other explanations for why their laws and practices on abortion are compatible with the Covenant.”

Yuji Iwasawa of the UN Human Rights Committee added:

“I would like to join my colleague Mr Shany in pointing out that human rights cannot be denied by a majority vote in the Parliament. Arguments to justify a deviation from the protection of human rights under the Covenant by invoking article 25 of the Covenant cannot be accepted.”

Cornelis Flinterman of the UN Human Rights Committee added:

“There is no disagreement that a full and free discussion is crucial in any society, and that it is the cornerstone of any democratic and free society, as reflected also in our General Comment number 34 in which our former Irish member played such an important role, Michael Flaherty. Yet the outcome of such a discussion, even if it is full and free and informed, the outcome of such a discussion in the form of a parliamentary majority decision can never be used as an argument to legitimise the violation of substantive rights under the Covenant. As has been said, such an argument would indeed undermine the essence of the human rights framework both domestically and internationally.”

This distinction also becomes very important when we address the topic of education. The Taoiseach referred to more divestment of patronage as a way of protecting the rights of minorities, but suggested that in areas with only one school we must also consider the rights of majorities.

We believe the State should reconsider this approach. The European Court has said that the right to respect for parents convictions is an absolute right, and not one to be balanced against the rights of others. In order to achieve this, the current balancing of rights must be reconsidered.

The reason that parents have the right to ensure that their children are educated in conformity with their convictions is not because they are in a minority or in the majority. It is because they are individuals, with inalienable constitutional rights as individuals.

This is why plurality of patronage will not lead to plurality in education. State policy should vindicate **equally** the right of every individual parent and child to attend their local school without discrimination, regardless of their beliefs.

2.10 This Process Should Treat Everybody Equally

The Government has already met bilaterally with some Christian churches. The next bilateral meetings should be with groups such as Atheist Ireland, who have not yet had a bilateral meeting with this Government despite the Government agreeing to schedule one.

We were also concerned that the Plenary Meeting had one exception to its otherwise fair practice of treating each belief group equally. That practice, broadly speaking, was that the Government representatives listened to everybody then responded collectively to the meeting.

But during the session on education, there was a lengthy one-to-one dialogue between the representative of the Catholic Church and the Minister for Education. The Catholic Church was the only group that was given this privileged position at the meeting, of being engaged with on a different level to the rest of us.

Part 3

Elaboration on Inclusive and Diverse Communities

3. Elaboration on Inclusive and Diverse Communities

3.1 Atheist Ireland Promotes Ethical Secularism

Atheist Ireland promotes ethical secularism as the only way for a society to justly balance inclusive and diverse communities. By secularism we mean politically separating Church and State, in order to protect the pluralism of society.

This does not prevent the State from engaging with religious or atheistic people or groups, or prevent religious or atheistic people or groups from engaging in the public sphere.

We simply argue that the State in its exercise of its functions should remain neutral between religious and atheistic beliefs, and should not give privilege to or discriminate against any people or groups on the basis of their religious or nonreligious beliefs.

Everyone must have the right to freedom of religion and belief. But there must be one law for all, based on human rights and democratic values. And we as citizens should act ethically.

3.2 The Word 'Ethical' in Ethical Secularism

Atheist Ireland promotes not only secularism, but ethical secularism. In an ideal society, it would not be necessary for us to add the word 'ethical'. But unfortunately, many people still believe that ethics and morality are determined by gods and interpreted through religions, and that atheists have no basis for behaving morally.

We believe that morality and ethics are products of our brains, part of the natural evolution of generations of living together as sentient beings. They are based on natural attributes of our brains such as empathy, compassion, cooperation, reciprocity, fairness, and justice.

John Rawls' social contract theory of morality is based on the following question: How would a perfectly rational set of people design principles of justice for a society, if we don't know in advance what position we would hold in that society? That is, we don't know if we will be rich or poor, male or female, healthy or sick. This veil of ignorance forces us to be impartial, and to develop universally just principles.

On this basis, as a minimum, we should seek to minimise suffering and maximise flourishing of sentient beings, and to treat ourselves and other sentient beings fairly and justly. We do not need to invoke supernatural sources of ethics, and we should challenge such supernatural theories where they have the effect of causing injustice and unnecessary suffering.

3.3 We Promote Internationally Agreed Human Rights

We promote internationally agreed human rights as the best way to protect inclusive and diverse communities. In particular, we support the right to freedom of conscience, religion and belief, the right to equality before the law, the right to freedom from discrimination, the right to private and family life, the right to freedom of expression, and the right to an effective remedy to vindicate rights that are breached.

The 1948 Universal Declaration on Human Rights is a strong foundation upon which to build ethical secular policies, along with the two main treaties that seek to implement it: the International Covenant on Political Rights and the International Covenant on Economic, Social and Cultural Rights. There are also other agreements based on particular areas of rights.

While these agreements are not perfect, they provide the strongest approximation we have to a set of human rights that can be objectively monitored. And while the UN Human Rights Council is political in nature, the UN Human Rights Committees are composed of independent legal experts who regularly question every State about their human rights record.

Human rights are not lofty aspirations, but are the absolute rock bottom minimum standards that we should expect to have without even having to campaign for them. Human rights standards are the most difficult for opponents to argue against, because they are not merely our personal preferences, but minimum standards agreed by many States around the world.

3.4 We Promote Fair and Just Societies

As ethical atheists, we promote fair and just societies. We can each share this goal while having different specific ideas about how best to pursue it.

- We seek to tackle specific injustices that are related to religious dogmas, such reproductive health rights, same sex marriage, blasphemy and apostasy accusations, genital mutilations and ‘honour’ killings.
- We build alliances with others who, like atheists, also face prejudice and social discrimination. We seek to identify and work together on specific issues of mutual interest, and support and empower each other.
- We seek to objectively examine the impacts of social discrimination, and identify the best ways to promote fair and just societies, so that we can develop evidence-based arguments that can guide our ethical instincts.
- We directly take positive actions to help others through community outreach projects, such as holding charitable events, helping existing charities, and supporting each other in times of illness and other problems.

3.5 Our Alliance with Evangelicals and Ahmadiyya Muslims

Atheists and religious people can both support secularism, and work together for secularism. Atheist Ireland already does this. We have a unique working alliance with Evangelical Alliance Ireland and the Ahmadiyya Muslim Community of Ireland to jointly promote secular schools.

Unlike interfaith forums, that bring together only religious people, our work brings together both atheist and religious groups. The key to our success is that we respect each other as people, we respect our right to hold our very different world views, and we accept that we disagree on the source and content of much of our world views.

But we can unite around our support for human rights and freedom from discrimination. We are all discriminated against in Irish schools and other situations. And we can promote ethical secularism while agreeing to differ on the source of our morality. These are the founding principles around which we organised in early 2016:

- We will promote the fundamental human rights of freedom of conscience, religion and belief, equality before the law, and freedom from discrimination for all citizens.
- We will promote these human rights within Irish society and Irish political institutions, and at United Nations and other international human rights regulatory bodies.
- We will ask General Election candidates to support Separation of Religion and State. We will publish an analysis of the secular content of the political parties’ manifestos.
- We will specifically seek Separation of Religion and State in our schools. We want a State-funded secular education system that is neutral between religious and atheistic beliefs.
- We will ask the NCCA and politicians to ensure that the new proposed primary school curriculum on religion, beliefs and ethics is delivered objectively, critically and pluralistically.
- We will develop and promote more detailed agreed principles to promote a Secular State for a Pluralist People, where the State protects everybody’s human rights equally.

Our three groups do not confine our joint work to Ireland. When the UN Human Rights Committee was questioning Pakistan in 2017, we sent a joint delegation to Geneva to speak out for persecuted atheists, Christians, and Muslims who could not speak out for themselves.

3.6 Secularism Correlates With Many Aspects of a Just Society.

In general, secular countries, which include atheist and religious people, have lower rates of homicide, juvenile and early adult mortality, STD infection rates, teen pregnancy, and abortion.

Studies published by social scientist Phil Zuckerman and others have shown that secularists are typically less nationalistic, less prejudiced, less racist, less dogmatic, less ethnocentric, less closed-minded and less authoritarian; and more politically tolerant and more supportive of gender equality, women's rights and gay rights.

There is a pathway to secular values. The World Values Survey has been conducted by a team of interdisciplinary social scientists over recent decades. It suggests that, as individuals move from survival values to self-expression values, which is triggered by investments in health, education, communication technologies and democracy, societies move towards secular values.

Based on this research, the developed world is relentlessly becoming more secular, with some fundamentalists fighting a rearguard action against it. Ireland is following that trend. The sooner we attain a secular State, the easier it will be for religious and atheist citizens alike to work together to shape a just society that accommodates inclusive and diverse communities.

3.7 The People Have Moved On. The State Must Catch Up

We have had three recent referendums to respect individual rights to same sex marriage, abortion, and blasphemy. The State must now remove other legacy laws and practices that discriminate against atheists and people of minority faiths.

One way of testing whether a law respects everybody equally is to reverse it and see how just or unjust it seems. For example, would the following laws be just:

- A law that allowed most State-funded schools to actively teach children that there is no god, and to teach morality through atheism, in circumstances where most religious parents had no practical option other than to send their children to those schools?
- A law that required religious Presidents, Judges and Council of State members (including Taoiseach and Tanaiste) to swear that there is no god as a condition of holding office?
- A law that allowed the advancement of atheism as a charitable object, but disallowed the advancement of religion as a charitable object?
- A recently-passed law that overtly gave atheistic groups privileges that religious groups do not have in solemnising marriages on behalf of the State?
- A Parliament that started each day with a public recitation of atheism, then allowed religious representatives to silently contemplate their religious beliefs?

It should be clear that these laws and practices would be unjust. The reverse position, as it now stands, in which our laws give privilege to mostly majority belief religious people, and discriminate against atheists and people of minority faiths, is equally unjust.

Part 4

Elaboration on Education

4. Elaboration on Education

4.1 The Underlying Problem Is Multiple Patronage and Ethos

Multiple patronage and multiple ethos as the basis for policy is the underlying problem in Irish schools. The Oireachtas Education Committee has already concluded that this brings about segregation of children and inequality.

Divesting some schools will not solve this. Even with the maximum implementation of the proposed Government plan of 400 multi-denominational or non-denominational schools, that would still leave about 85% of schools with a denominational ethos.

Also, given that most areas have standalone schools, parents in those areas will have no chance other than to send their child to a denominational school, where the ethos is not in conformity with their philosophical convictions.

Indeed, given that the Catholic Church wants to trade off any potential divestments for a stronger Catholic ethos in the schools they retain, these parents would have no choice but to send their children to a school with an even stronger Catholic ethos.

It is not a just response to say that, in these areas, the State must give preference to the wishes of the majority of parents in a given area. That is precisely the response that European Court of Human Rights has said would undermine the basic premise of human rights law, which is to protect individuals from the tyranny of the majority.

In any case, the question of determining parental wishes has been compromised because debates about school divestment have taken place in an emotional and misleading atmosphere. However, ten years ago, in a calmer and more neutral atmosphere, the Department of Children produced a report on Parents' Perspectives on Parenting Styles.

https://www.dcy.gov.ie/documents/publications/Parents_Perspectives_on_parenting_styles.pdf

On page 47 of the report, parents rated their perception of nine skills or values in raising children. Personal moral values came top, with 94% rating it very important. The next seven skills or values all had ratings of between 70% and 90%. Religious faith came last of the nine, with only 32% rating it very important. And that was in 2009, ten years ago.

But more importantly, as the Catholic Church representative at the Plenary Meeting confirmed, the divestment process is in practical terms over. It is not happening and it will not happen. Ultimately the State must put in place a secular education system based on human rights and equality before the law for everybody, regardless of their religious or atheistic beliefs.

4.2 The State Has a Duty to Respect the Rights of All Parents

Article 17 of the Lisbon Treaty equally respects non-confessional minorities. But the Irish State does not respect us equally in Irish schools. The European Union, the European Court, and the United Nations all give us the exact same rights in schools as religious parents.

The European Court has said that the right to respect for parents convictions is an absolute right, and not one to be balanced against the rights of others.

The Irish Constitution speaks of the inalienable rights of parents, and the Irish Courts have never found that the State can disregard the rights of secular parents (whether atheist or religious) who seek secular education for their children.

In the Irish High Court case in 1996 Campaign to Separate Church and State v Minister for Education, Justice Costello cited the rights guaranteed to parents under the European Convention and the United Nations. He said:

“The parties to the First protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms agreed that States when assuming functions in relation to education “shall respect the rights of parents to ensure such education and teaching in accordance with their own religious and philosophical convictions (Article 2). The Irish Constitution has developed the significance of these parental rights and in addition has imposed obligations on the State in relation to them.”

The Minister and the Department of Education are simply ignoring this part of the ruling. The Irish Courts have never suggested that these rights apply only to Catholic parents or only to the majority faith parents in any given locality.

The Forum in Patronage and Pluralism stated that:

“The current situation for children opting out of Denominational Religious Education in primary school is inappropriate and inadequate on human rights grounds” (page 88)

It seems to us that Human Rights law is used to support and protect the rights of Catholic and some other religious parents, but when it comes to supporting the human rights of non religious parents and their children the Minister and the Department of Education ignore those rights.

You can find the High Court case here <https://www.teachdontpreach.ie/wordpress/wp-content/uploads/2019/06/Campaign-Separate-Church-and-State-High-Court-Judgement.pdf>

4.3 The State Ignores Its Duty to Respect the Rights of All Parents

In practice, in Irish schools, the State aims to contribute to the moral and spiritual education of nonreligious children through religion. It teaches our children the relevance of religion to their lives, and to respect religious beliefs and practices arising from them. Article 42.3.2 obliges the State to ensure that children receive a basic moral education. It purposely does not say that this moral education should be delivered through religion.

Those aims are indoctrination. They disrespect our right to ensure that the teaching of our children is in conformity with our convictions. Imagine the outcry from religious parents if Irish schools sought to contribute to the moral education of their children through atheism, and taught them to respect atheistic beliefs and practices arising from atheism.

For context, we have described earlier in this document the difference between on the one hand respecting people, and respecting their right to hold beliefs (which is good), and on the other hand insisting that people respect the content of other people’s beliefs (which is both bad, and is a violation of human rights).

We have described earlier in this document how this distinction has been stressed by various UN and Council of Europe Human Rights Rapporteurs and Commissioners, as well as by the Venice Commission.

4.4 The Right to Respect Includes a Negative and a Positive Right

The State has a duty, under the Constitution and international human rights law, to protect the right of all parents to have their children educated in accordance with their religious or atheistic philosophical convictions. That means all parents, not just those of religious majorities in particular areas.

The European Court in *Lautsi v Italy* 2011 has stated that secularism is a philosophical conviction alongside religious beliefs under the Convention. <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-104040&filename=001-104040.pdf>

“58. 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 (see *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 36, Series A no. 48). 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 (*ibid.*.)”

This right to have our children educated in conformity with our convictions includes a Negative and a Positive Right.

The negative right is to not be indoctrinated in beliefs contrary to our own. The positive right is to the same active help that you give to parents of the majority religions.

With regard to our negative right, the Constitution allows our children, without prejudice, to not attend religion classes in Irish schools. But that right is often not vindicated in practice. And when it is, it is not vindicated without prejudice. Even State ETB schools do not offer an alternative subject to the NCCA religion course at second level and the Goodness Me Goodness You course in Community National Schools.

Even worse, with regard to our positive right, the State simply ignores this. One of the General Principles of the European Court of Human Rights in relation to education and respect for all parents convictions states that:

“The verb “respect” means more than “acknowledge” or “take into account”. In addition to a primarily negative undertaking, it implies some positive obligation on the part of the State. The term “conviction”, taken on its own, is not synonymous with the words “opinions” and “ideas”. It denotes views that attain a certain level of cogency, seriousness, cohesion and importance (see *Valsamis*, cited above, pp. 2323-24, §§ 25 and 27, and *Campbell and Cosans*, cited above, pp. 16-17, §§ 36-37).”

And the European Court in *Alrey v Ireland* 1979 stated:
<http://hudoc.echr.coe.int/eng?i=001-57420>

“Furthermore, fulfilment of a duty under the Convention on occasion necessitates some positive action on the part of the State; in such circumstances, the State cannot simply remain passive and “there is ... no room to distinguish between acts and omissions” (see, *mutatis mutandis*, the above-mentioned *Marckx* judgment, p. 15, para. 31, and the *De Wilde, Ooms and Versyp* judgment of 10 March 1972, Series A no. 14, p. 10, para. 22)”(para 25)

“The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, *mutatis mutandis*, the judgment of 23 July 1968 in the “*Belgian Linguistic*” case, Series A no. 6, p. 31, paras. 3 in fine and 4; the above-mentioned *Golder* judgment, p. 18, para. 35 in fine; the *Luedicke, Belkacem and Koç* judgment of 28 November 1978, Series A no. 29, pp. 17-18; para. 42; and the *Marckx* judgment of 13 June 1979, Series A no. 31, p. 15, para. 31).”(para 24)

If you actively help Catholic parents to ensure that their children’s education is in conformity with Catholic beliefs, you must also actively help secular parents (whether atheist or religious) to ensure that our children’s education is in conformity with secular beliefs.

4.5 How the State Helps Religious But Not Minority Belief Parents

Here are some examples of how the State positively helps religious, but not minority belief, parents with the religious education of their children:

- Funding religious schools.
- Funding teacher training in particular denominational religion courses.
- Funding the salaries of teachers to deliver denominational religion courses.

- Funding the roll out and development of the NCCA Religious Education course and the GMGY course in Community National schools.
- Funding state exams and recognition of studies in the NCCA Religion course at junior and leaving certificate level.
- Funding the inspection of the delivery of the courses in schools.
- Funding Catholic Chaplains in ETB schools.
- Funding denominational religion classes, and worship in ETB schools.
- Funding the NCCA Religion class in ETB schools.
- Funding religious retreats.
- Funding the training of teachers to do retreats.
- Funding Catholic courses in ETB schools for students to evangelise other students and become faith leaders in their community.
- Funding Accord to deliver Catholic sex education classes in denominational and ETB schools.
- Funding Catholic Youth Ministry Services.

Helping religious parents in this manner with the religious education of their children, while refusing to help non religious parents with the philosophical education of their children, and refusing to ensure that students from non religious families can choose another curriculum subject, is religious discrimination and contrary to Article 40.1, Article 44.2.4 and Article 42.1 of the Constitution.

Informing ETB schools that it is up to them to decide if the NCCA Religion course is mandatory or not incentivises religious discrimination.

4.6 The State Must Rebalance Its Approach to These Rights

You must do this both to ensure pluralism, and to fulfil your duties under the Constitution, the Charter of Fundamental Rights, the European Convention, and the various UN Conventions that Ireland has ratified.

You must respect both the negative and positive sides of the right to education in conformity with our convictions, as part of the wider right to freedom of conscience, religion, belief, and expression, free from religious discrimination.

Importantly, the right of all parents to have their children educated in accordance with their religious or atheistic philosophical convictions does not mean that the State has a duty to provide schools that explicitly promotes or supports a parents specific religious belief.

An education system that explicitly promotes or supports every parents specific religious belief would be impossible in practice, because you could not have that many schools in each area of the country. It would also be undesirable as social policy, as it would be based on segregation of children because of their parents' beliefs.

4.7 Constitutional Conditions for State Aid to Schools

The Constitution Review Group Report in 1995 was clear that the State is not Constitutionally obliged to give aid unconditionally to schools. Article 44.2.4 has conditions for State aid and it is not unreasonable or unfair for the state to interfere in how Patron bodies manage their own affairs (Article 44.2.5).

The argument that the state cannot interfere in how publicly funded schools manage their ethos (Characteristic spirit) is unfounded. The State already interferes in characteristic spirit, because it obliges schools to respect all parents convictions (Section 15.2(e) of the Education Act) and to permit parents to opt out their children from anything that is against their conscience (Section 30.2(e) of the Education Act). However the State has issued no guidelines, statutory or other, as to how that interference is managed on the ground.

Article 44.2.4 was meant to safeguard the rights of members of minorities so it is reasonable and proportionate that the state takes positive and practical steps to protect that right.

The state 'provides for' (Article 42.4) the education of members of minorities in publicly funded schools with a religious ethos (denominational and some ETB). Our inalienable right to respect for our convictions and our right to not attend any religious teaching must be given practical application on the ground, and given without discrimination or else those rights are meaningless.

Article 42.3.1 must also be taken into account here. The State obliges us against our conscience and lawful preference to send our children to schools where the State has failed to give practical application to our inalienable right to respect for our convictions and the right of our children to not attend religious teaching.

Parents are deterred from seeking an opt out in schools because of how the exemption is applied. There is no procedure in place and the burden placed on parents in seeking an opt out deters them from exercising their rights. In some schools they are even coerced to permit their child to attend religious teaching.

The understanding and practical application of our Constitutional and Human Rights rights cannot be left to the educational philosophy or mission of a given Patron body. Parents cannot be expected to constantly challenge school authorities as this is far too much of a burden and deters them from exercising their rights. It is the state that is obliged to respect the inalienable right of parents under Article 42.1, that is a positive obligation to respect and it should be given a practical application without discrimination.

The Education Act 1998 has failed to guarantee respect for our Constitutional and Human Rights and we now need a rebalancing of those rights in order to give them practical application on the ground.

4.8 What the Constitution Review Group Said in 1995

The Constitutional Review Group Report stated that:

“Article 44.2.4° may be thought to represent something of an exception to the general rule contained in Article 44.2.3° that the State shall not endow any religion. Accordingly, if a school under the control of a religious denomination accepts State funding, it must be prepared to accept that this aid is not given unconditionally. Requirements that the school must be prepared in principle to accept pupils from denominations other than its own and to have separate secular and religious instruction are not unreasonable or unfair.

If Article 44.2.4° did not provide these safeguards, the State might well be in breach of its international obligations, inasmuch as it might mean that a significant number of children of minority religions (or those with no religion) might be coerced by force of circumstances to attend a school which did not cater for their particular religious views or their conscientious objections. If this were to occur, it would also mean that the State would be in breach of its obligations under Article 42.3.1°”

“In summary, therefore, the present reality of the denominational character of the school system does not accord with Article 44.2.4°. The situation is clearly unsatisfactory. Either Article 44.2.4 should be changed or the school system must change to accommodate the requirements of Article 44.2.4.”

4.9 The Right to Not Attend the NCCA Religious Education Class

There is currently a major Constitutional and human rights issue relating to the right to opt out of the NCCA Religious Education class in ETB schools and to be provided with an alternative timetabled subject.

Under recent circular letters, this right is granted to students who choose not to attend what the Department calls 'Religious Instruction' but is denied (or undermined) to students who choose not to attend what the Department calls 'Religious Education.'

But that depends on the Department making a new definition of Religious Instruction, that does not match with the way the law uses the term. The NCCA Religious Education Course is still legally Religious Instruction, whatever its name or content. Students therefore still have the right to not attend it (under both Article 44.2.4 of the Constitution and Section 30 of the Education Act).

Instruction simply means teaching any subject, whether the subject is religious or secular. Both the Constitution (Article 44.2.4, Irish language version) and the Education Act (Sections 22, 25, 30, 41) describe Instruction in this way.

Religious Instruction includes any class teaching religion. You can choose for your child to not attend any class teaching religion (Constitution, Article 44.2.4), and to not attend any class teaching anything that is contrary to your conscience (Education Act Section 30).

In the Supreme Court ruling in the Campaign to Separate Church and State case in 1998, Justice Barrington legally defined the distinction in a directly opposite way to the way the Department of Education is now defining them.

Referring to Article 44.2.4 (Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.) He said:

“The Constitution therefore distinguishes between religious ‘education’ and religious ‘instruction’ – the former being the much wider term. A child who attends a school run by a religious denomination different from his own may have a constitutional right not to attend religious instruction at that school, but the Constitution cannot protect him from being influenced, to some degree, by the religious ‘ethos’ of the school. A religious denomination is not obliged to change the general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.”

4.10 The Right to an Alternative Subject to the NCCA RE Class

Justice Barrington’s Supreme Court ruling brings us back to the duty of the State to treat all parents and students equally in the education system.

Article 44.2.4 says that the State may not “affect **prejudicially** the right of any child to attend a school receiving public money without attending religious instruction at that school.”

But, given that Religious Instruction legally encompasses both the Patrons Programme course and the NCCA course, the State is affecting **prejudicially** the rights of one set of students over another in this circumstance.

- Students who exercise their right to not attend the Patron’s Religious Instruction class get an alternative timetabled subject, whereas
- Students who exercise their right to not attend the NCCA Religious Instruction class (which the Department refers to as Religious Education, contrary to the Constitution, Supreme Court, and Education Act) do not get an alternative timetabled subject.

There is no legal justification for treating these children differently.

There is no legal justification either for treating children differently in denominational schools with a religious Patron. These schools combine their Patron’s Programme with the NCCA Religion course and in some instances make it compulsory.

It is clear from Circular Letter 0062/2018 that the Department of Education are aware that schools combine Catholic instruction with the NCCA course.

“In addition, parental experience conveyed to the Department suggests that in some schools there has been a practice of delivering Catholic religious instruction within class periods where the NCCA Religious Education syllabus is time- tabled.”

The above is happening in all second level denominational schools that offer the NCCA Religious Education course. This is an example of the failure of the State to respect all parents’ convictions in the education system and to ensure that a practical application is given to the right to not attend religious teaching (Article 44.2.4 of the Constitution). These schools and their Patrons have gone way beyond ‘influencing to some degree’ minorities, who have no option but to attend the school.

4.11 The Effect of the 1998 Ruling on Denominational Schools

Within the above quoted paragraph, Justice Barrington said:

“... the Constitution cannot protect (a child who does not attend religious instruction) from being influenced, to some degree, by the religious ‘ethos’ of the school. A religious denomination is not obliged to change the general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.”

There are two important caveats within this paragraph.

- Justice Barrington refers to a child being influenced, “to some degree”, by the religious ethos of the school. This is not a carte-blanche for the ethos to influence a child to any random extent, and the extent that ‘some degree’ refers to has never been determined.
- Justice Barrington refers to a child “who wishes to attend that school.” But, as the European Court ruled in the Louise O’Keeffe case, she did not in reality have any choice other than to attend that school. So the Supreme Court ruling would not extend to a child who did not wish to attend that school, but in practice was obliged to attend the only standalone school in the area.

4.12 Ethos May Influence But Only ‘To Some Degree’

Section 15(2) - e of the Education Act 1998 states that:

“(e) have regard to the principles and requirements of a democratic society and have respect and promote respect for the diversity of values, beliefs, traditions, languages and ways of life in society,”

The State recognises and obliges schools to ‘respect’ the diversity of values, beliefs, traditions and ways of life in society. However it has not legally defined what exactly ‘respect’ means and given it a practical application on the ground. It has left it up to Patron bodies to define what ‘respect’ means to them.

Patron bodies define ‘respect’ according to their educational philosophy and the mission of the schools under their patronage. The European Court has defined ‘respect’ and given it practical application through their General Principles.

The State must stop absolving itself of the Constitutional and Human Rights obligation to give practical application to the right to respect parents convictions by delegating that to private bodies and institutions. The State has a positive duty to respect the philosophical convictions of parents that seek secular education for their children.

Justice Barrington said that an ethos can ‘influence’ to some degree, non co-religionists if a parent chooses to send their child to a particular school. The Irish courts recognise that there is a limit to how schools can influence non-co-religionists if they choose to attend that school. If the courts recognised that an ethos influences (the general atmosphere of a school) and seeks to influence children, then the state has a positive duty to ensure that such influences ‘respect’ the

inalienable right of parents to ensure that the teaching of their children is in conformity with their convictions.

The phrase “influence to some degree” must have some practical meaning on the ground. The state cannot continue to leave it up to private Patron bodies to decide what respecting the inalienable rights of parents means on the ground.

For example, the Catholic Church does not accept a pluralist approach to teaching about religion. In its submission to the NCCA on Education about Religions, Beliefs, and Ethics, the Commission for Education and Formation of the Irish Episcopal Conference said:

“The Catholic school exists to educate children in Catholic religious life and in Catholic religious beliefs which are normative for them.

[Under the NCCA proposals] young children could be given the impression that beliefs are things which they create themselves, as if human beings were the source of religious beliefs. In secular approaches to Religious Education, reason is primary... In Catholic schools, Revelation is primary and the learner’s experience and reason are brought into dialogue with it.

These [NCCA] approaches require teachers to adopt and promote a pluralist approach to religion. This is an approach to religion that goes against the philosophical basis of Catholic religious education.”

4.13 The State Cannot Absolve Itself of Legal Responsibility

The European Court has said that:

“(h) The second sentence of Article 2 of Protocol No. 1 implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions. That is the limit that must not be exceeded (ibid.).”

Despite requiring schools to respect the diversity of values (S. 15 2(e) Ed Act), the State obliges Boards of Management (S. 15 2(d)) to uphold the ‘characteristic spirit’ of the Patron. This is the state absolving itself of its positive duty to respect the right of all parents to ensure that the teaching of their children is in conformity with their convictions.

In addition the words ‘Characteristic Spirit’ are not defined in the Education Act. It can mean different things to different schools and Patron bodies. The Education Act does not even oblige schools to write down their ethos and inform parents exactly where and how it will influence their children.

This leaves parents in the position that they cannot ensure that the teaching of their children is in conformity with their convictions. It leaves schools and Patron bodies in the position that they can ignore the words of Justice Barrington in the Supreme Court because the State is not vindicating the right to respect for the inalienable rights of all parents, despite recognising that the right exists, and is instead delegating its duty to Patron bodies.

ETB/VEC schools are presented as the alternative to denomination schools so if a parent chooses not to send their child to a denominational school or an ETB school because of the religious influence and discrimination, where are they to access education? Home schooling is not a valid option.

The European Court has already told Ireland in the O’Keeffe case that:

“151. Finally, the Government appeared to suggest that the State was released from its Convention obligations since the applicant chose to go to Dunderrow National School. However, the Court considers that the applicant had no “realistic and acceptable alternative” other than attendance, along with the vast majority of children of primary school-going age, at her local National School (*Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 8, Series A no. 48). Primary education was obligatory (sections 4 and 17 of the School Attendance Act 1926), few parents had the resources to use the two other schooling options (home schooling or travelling to attend the rare fee-paying primary schools) whereas National Schools were free and the National School network was extensive. There were four National Schools in the applicant’s parish and no information was submitted as to the distance to the nearest fee-paying school. In any event, the State cannot be released from its positive obligation to protect simply because a child selects one of the State-approved education options, whether a National School, a fee-paying school or, indeed, home schooling (*Costello-Roberts*, cited above, § 27).”

4.14 European Court Case-Law Guide on the Right to Education

Article 2 of Protocol 1 to the European Convention on Human Rights states that:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

The European Court of Human Rights has published a Case-Law Guide to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court regarding Article 2 of Protocol 1. Here are some relevant extracts from this document: https://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf

4. It cannot, however, be inferred that the State only has obligations to refrain from interference and no positive obligation to ensure respect for this right, as protected by Article 2 of Protocol No. 1.

14. Furthermore, the State is responsible for public but also private schools (*Kjeldsen, Busk Madsen and Pedersen v. Denmark*). In addition, the State cannot delegate to private institutions or individuals its obligations to secure the right to education for all. Article 2 of Protocol No. 1 guarantees the right to open and run a private school, but the States do not have a positive obligation to subsidise a particular form of teaching (*Verein Gemeinsam Lernen v. Austria* (dec.))... Lastly, the State has a positive obligation to protect pupils in both State and private schools from ill-treatment (*O’Keeffe v. Ireland* [GC], §§ 144-152).

58. The word “respect” means more than “acknowledge” or “taken into account”; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State (*Campbell and Cosans v. the United Kingdom*, § 37).

66. The second sentence of Article 2 of Protocol No. 1 prevents States from pursuing an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions (*Kjeldsen, Busk Madsen and Pedersen v. Denmark*, § 53).

4.15 European Court *Folgero v Norway* 2007

The European Court, in the case of *Folgero v Norway* in 2007, addressed the question of exemption from religious education. The court found that there had been a violation of Article 2 of Protocol 1.

Here are some relevant extracts from this ruling.
<http://hudoc.echr.coe.int/eng?i=001-81356>

General Principles

(b) It is on to the fundamental right to education that is grafted the right of parents to respect for their religious and philosophical convictions, and the first sentence does not distinguish, any more than the second, between State and private teaching. The second sentence of Article 2 of Protocol No. 1 aims in short at safeguarding the possibility of pluralism in education, which possibility is essential for the preservation of the “democratic society” as conceived by the Convention. In view of the power of the modern State, it is above all through State teaching that this aim must be realised (see Kjeldsen, Busk Madsen and Pedersen, cited above, § 50).

(f) Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position (see Valsamis, cited above, § 27).

(h) The second sentence of Article 2 of Protocol No. 1 implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions. That is the limit that must not be exceeded (ibid.).

4.16 The Right to Objective Sex Education

Atheist Ireland welcomes the Oireachtas Education Committee report on Objective Sex Education. The report has recommended, as Atheist Ireland asked it to do, that the law must be changed to remove the role of ethos as a barrier to the objective and factual delivery of sex education curriculums. It has set a target date of the end of the year for this to happen.

This is the first time that an Oireachtas Committee has recognised that students have a right to an objective education for the State curriculum, even in denominational schools, outside of the patron’s religion or values programmes. All students have a human right to have the state curriculum delivered in an objective, critical, and pluralistic manner.

The Committee has recommended that the Education Act 1998 be amended or at least reviewed, so that ethos can no longer be used as a barrier to the effective, objective and factual teaching of the RSE and SPHE curriculum to which every student is entitled.

The Committee has also recommended that the necessary legislative amendments required to remove the role of ethos as a barrier to the objective and factual delivery of the RSE and SPHE curriculums be made as soon as possible and at the latest by the end of 2019.

This is the second time that an Oireachtas Education Committee has accepted Atheist Ireland’s arguments against the use of religious ethos in Irish schools. In 2014 the Committee concluded that multiple patronage and ethos as a basis for policy can lead to segregation and inequality in the education system.

4.17 The Catholic Bishops and RSE

The Catholic Bishops have issued Guidelines on RSE in schools under their patronage which you can find here <https://www.catholicbishops.ie/wp-content/uploads/2014/04/RSE-Guidelines-Rofl-for-web.pdf>

Those Guidelines state that:

“3. The Catholic school, in the formulation of its policy, should reflect Catholic moral teaching on sexual matters. Even more fundamentally, it needs to be specific in excluding approaches which are inconsistent with the very foundations and formulations of Catholic moral thought.”

“Because RSE is an integral part of both the RE curriculum in a Catholic primary school and of the SPHE curriculum, schools are not required to ask parents to sign a permission slip to allow their child to attend lessons on the sensitive issues in RSE.”

This is an example of how ethos (Characteristic Spirit) goes beyond what Justice Barrington in the Campaign case referred to as ‘influence to some degree’. The vast majority of parents are not aware that it is Catholic sex education that their children will be taught, they are never informed that ethos (Characteristic spirit) influences sex education or that their children will be receiving sex education that they have campaigned against.

Christian charities such as Accord and Pure in Heart deliver sex education classes in denominational and ETB schools, as well as in some Educate Together schools. The State funds this. This teaching delivers the State curriculum according to the mission of the Catholic Church. Parents can have Catholic sex education or no sex education at all for their children.

Many parents have campaigned on Issues such as Marriage Equality and Abortion and see Catholic teaching on these issues as undermining the dignity of the human person. Many Catholic parents voted for marriage equality and abortion and they do not agree with Catholic teaching in these matters.

The inalienable right of parents takes second place to the mission of the Catholic Church. Section 9 of the Education Act obliges schools to consult with Parents. Again there is no no practical application given to consulting all parents and ensuring that they are informed that it is Catholic sex education that their child will be taught. Most schools do not even have a written policy in this area.

The State has failed to ensure a balance in relation to the rights of all children and their parents. Children have a right to objective sex education which is ignored.

Some schools can and do ignore Catholic sex education guidelines. However, all it takes is a change in the Principal of a school, teacher or Board of Management for that same school to stick to these Catholic Guidelines rigidly.

4.18 The Rights of Atheist and Minority Faith Teachers

As well as being able to legally discriminate against pupils and their parents, State funded Irish schools can also legally discriminate against teachers on the ground of religious belief.

Conscientious atheists, secularists and religious minorities are an under-represented group in the teaching profession. Indeed, they are effectively barred from accessing the teaching profession, because they cannot get a job teaching consistently with their religious or philosophical convictions, given Section 37.1 of the Employment Equality Act 1998.

This gives a religious, educational or medical institution that is under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values permission to discriminate on religious grounds.

In order to train as a teacher and gain employment, trainee teachers must take a Certificate in Religious Studies (CRS). As the vast majority of schools in the state are religious, it is nearly impossible to gain employment as a teacher without a CRS.

St. Patricks Teacher Training College and the Mater Dei Institute are now colleges of Dublin City University. Both colleges still retain their religious ethos which is incompatible with human rights.

The DCU website says of the Certificate in Religious Studies that:

“The part-time Certificate in Religious Studies prepares primary teachers to teach in Catholic schools in accordance with the requirements of the Council for Catechetics of the Irish Episcopal Conference. In making appointments, Catholic school management boards will normally require the CRS as a condition of employment.”

The Mater Dei Centre section of the DCU website states that:

“Within the DCU Institute of Education, the MDCCE seeks to ensure that teachers and other educators, graduating from DCU programmes, will have a deep appreciation of the Catholic understanding of the full development of the human person which informs every aspect of work in a Catholic setting.”

So we now have a secular University promoting religious discrimination in access to the Teaching profession.

Dublin City University has a public sector duty under the Human Rights and Equality Act 2014. To date, there is no indication from Dublin City University how they intend to comply with their public service duty to eliminate discrimination and promote human rights in the teaching profession.

The Joint Managerial Body AMCSS Secretariat’s ‘Guidelines on the Inclusion of Students of Other Faiths in Catholic Secondary Schools’ states that “The general programme of the school will be considered as a form of pre-evangelisation.”

Teachers would fall foul of Section 37 if they refused to pre-evangelise, as they would not be upholding the religious ethos of the school. In essence, in order to take up employment as a teacher, a person must be willing to undermine the human rights of minorities who have no option but to send their children to school.

Part 5

Other Issues Arising from the Meeting

5. Other Issues Arising From the Meeting

5.1 Religious Oaths in the Constitution

Atheist Ireland runs a 'One Oath For All' campaign, to enable conscientious atheists and other non-Christians to hold the office of President, Judge, Taoiseach, or other members of the Council of State.

Currently, in order to take office as President, Judge, or Taoiseach, we have to swear a religious oath that would force us to dissemble about our beliefs, and breach our human right to freedom of conscience and belief.

We need a referendum to replace these religiously discriminatory oaths in our Constitution, so that all citizens of our Republic can be treated equally regardless of their religious or nonreligious beliefs.

These public office-holders should instead make a single declaration of loyalty to the Irish Constitution, State, and people, that does not reveal anything about the person's religious or nonreligious beliefs.

The oath that the President must swear is contained in the Constitution (Article 12).

While it is described as a declaration, it is clearly a religious oath. It is a solemn promise, invoking a divine witness described as Almighty God, regarding the President's future action or behaviour, and asking Almighty God to direct and sustain him or her.

It is clear from the Preamble that the 'Almighty God' involved is the Christian God, explicitly naming 'the Most Holy Trinity' and 'our Divine Lord, Jesus Christ.'

If instead, in order to become President, the Constitution required that an elected candidate had to swear that there is no God, everybody would immediately realise that this would be a breach of their rights. But there is a blind spot when the discrimination is the other way around.

A similar religious oath exists for Judges and members of the Council of State.

The Council of State includes the Taoiseach, Tanaiste, Chairs of the Dail and Seanad, Chief Justice, Presidents of the High Court and Court of Appeal, Attorney General, former Presidents, former Taoisigh, former Chief Justices, and seven nominees of the President.

Our Constitution should vindicate the right to freedom of religion or belief of every citizen, regardless of whether those beliefs are religious or philosophical. But our Constitution should not give preference or privilege to the beliefs of either religious or atheist citizens.

5.2 Amending the Civil Registration Act

During the session on structured dialogue, the Humanist Association of Ireland called for the amending of the Civil Registration Act. We agree with the HAI about this.

This has been a major campaign issue for Atheist Ireland since we made a detailed submission to all members of the Oireachtas during the debate on the then Civil Registration Amendment Bill.

The Civil Registration Amendment Act is the most overtly discriminatory law that has been passed in Ireland since Atheist Ireland was founded.

For arbitrary reasons, it applies different legal standards for religious and secular groups who can solemnise marriages. Among these different legal standards is that a secular group that

solemnises marriages may not promote a political cause, whereas a religious group can. This places religious groups at a particular advantage over secular groups in the public sphere.

It also discriminates between different secular bodies, creating a three-level hierarchy of religious discrimination. This is because the original Bill was intended to facilitate specifically the Humanist Association of Ireland, rather than secular bodies generally.

The Government claims that this discrimination has a legitimate aim, which is to ensure that the institution of marriage is protected, so we have tried to find out if there a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

What we have found is that this government has just brought in a new law that directly discriminates against the non-religious and undermines our human rights without any ratio of proportionality to their stated aim of protecting marriage.

Equality before the law without discrimination is a basic principle in the protection of human rights. It is a principle worth fighting for, as inequality and discrimination undermine human rights. Atheist Ireland campaigns for equality and non-discrimination.

Minister Joan Burton in the Dail said that the reason for the different legal standards is that only stable, long-standing and reputable organisations should qualify to solemnise marriages, and that nobody in the Oireachtas wants a situation in which Elvis impersonators can solemnise marriages.

Yet religious bodies that solemnise marriages have successfully nominated the following:

- Psychic mediums, tarot card readers, public entertainers, ghost whisperers and ghost busters (Ministers of the Spiritualist Union of Ireland).
- People who have overseen a culture of covering up child sex abuse, and lied to and positively misled a state inquiry into child sex abuse, and sworn victims of child sex abuse to silence (Bishops of the Roman Catholic Church).
- People who have defaulted on six-figure debts, and failed to file income tax returns (Pastors of the Abundant Life Christian Centre and Victory Christian Church).

The application of the law has also been implemented in a typically Irish nod-and-wink way.

- The Humanist Association of Ireland has promoted political causes with impunity since it started nominating solemnisers for marriages.
- Its solemnisers are overtly charging fees as personal entrepreneurs of up to €500 a wedding, despite Section 55-1-(c)(ii) of the Civil Registration Act forbidding solemnising marriages for profit or gain. Some of its solemnisers are even registered for VAT.

5.3 Strengthening the Standards in Public Office Law

During the session on structured dialogue, the Humanist Association of Ireland called for the weakening of the funding restrictions on third parties for political purposes under the Standards in Public Office law. We disagree with the HAI about this.

The suggestion was made, and seemed to be accepted in the State response to the question, that this law was not operating as intended, and that it was restricting the ability of civil society groups to function. We disagree with both of these assertions.

The SIPO law is operating as it was intended to, as is clear from the Oireachtas debates when it was passed. The change that some people are complaining about is that SIPOC has been able to apply it more robustly since 2015. The reason for this is that the law was then amended, making it an offence to fail to co-operate with enquiries made by the Commission.

Atheist Ireland is registered with the SIPO Commission as a Third Party. We have never found SIPOC to be ambiguous or inconsistent in their interpretation or enforcement of the Act. Complying with it has not in any way prevented us from functioning effectively.

We suggest that the SIPO law needs to be strengthened not weakened. This would enable us, and other Non-Governmental Organisations, to campaign on human rights issues, on a fair and equal basis, in a battle of ideas not bank accounts.

Under human rights law as reflected in the IHREC Act, each person has a fair and equal opportunity to participate in the economic, political, social or cultural life of the State. We ask you to vindicate this right.

We ask you to consider the following ways that the SIPO law should be strengthened:

- The SIPO law should continue to apply to all parties, including third parties, at all times, and not just during election or referendum campaigns.
- While maintaining limits on political donations, the trigger for being accountable should be moved away from political donations and towards political spending.
- Both political spending and political donations over a set threshold, and their sources, should be published immediately.
- The law should be modernised to cover international social media campaigns that can influence our democracy from abroad.
- For referendum campaigns, there should be public funding for both sides, limits on spending, and no anonymous donations, as recommended by the Citizens' Assembly.

Atheist Ireland has made a submission on this issue to the consultation process on the establishment of an electoral commission. We would like to be invited to any dialogue processes arising from these written submissions.

5.4 The Census Figures on Religion are Unreliable

The minimalist change to the religion question in the 2021 census will mask, but not stop, the relentless increase in the number of nonreligious people in Ireland.

Some change to the religion question was inevitable, as the results were increasingly not reflecting reality, but this is the smallest improvement to the question that could have been made.

The old question was 'What is your religion?' That was a leading question, that resulted in a higher figure for religion, by assuming that the respondent is a member of a religion.

Atheist Ireland had argued for the question 'Do you practice a religion?' followed by 'If so, what religion do you practice?' That would have been a more neutral question, and would have given a more accurate figure in the census results.

The census has a practical purpose, which is to assist the government and local authorities in planning the allocation of resources, as well as the size of constituencies for elections.

The CSO website says that the census statistics are essential for planning the provision of education, health care, and employment, including likely demand for schools and health care facilities, and areas of relatively high unemployment.

It is the practice of religion, not people's inner beliefs, that is relevant to this purpose. For example, where is the best place to build a new place of worship, what are the traffic and resource implications of likely religious ceremonies, etc.

The new question for 2021 is 'What is your religion, if any?' This is slightly better than the old question, but is still a leading question, as it assumes that religion is the default, and that not having one is an aberration.

The new question will still underestimate the number of nonreligious people in the country. The current number is in reality is far higher than the one in ten nonreligious shown in the 2016 census results.

The current results show an absurdly small number of atheists, because of yet another flaw in the question. There is no tick-box on the census form for atheist. There is, however, a write-in box that says "Other religion, if any."

A small number of atheists write the word "atheist" in that box, either as a result of misreading the question or for some personal reason. But most atheists do not do this, because atheism is not a religion.

So most atheists tick the "No religion" box. It is likely that most people of no religion (about 10% in the last census) are atheists, but the census format does not allow an accurate calculation of the number of atheists in Ireland.

Also, some self-identified Catholics are atheist. At the time of the Eucharistic Congress in Dublin, an opinion poll showed that 15% of Irish Catholics don't believe Jesus was the son of God, and 8% don't believe in God, which should be a low hurdle for being a Catholic.

Atheist Ireland had also argued for the check-boxes to be removed entirely, and for a return to the write-in answer that had been used for a century until the check-boxes were introduced in 2002, and that are now given to the five highest religions from the previous census.

These check-boxes overstate those religions that are given a check-box. Church of Ireland, Presbyterian, and Methodist all dropped consistently from the 1960s to the 1990s. When given check-boxes, they all increased in 2002. Methodist doubled when given the check-box in 2002, then halved when it was taken away in 2011.

During the consultation process, the Census office had argued for a minimalist approach to changing the question, because they said it was important to be able to compare results from census to census.

Atheist Ireland had argued that it was more important to get accurate results, rather than to be able to compare one set of flawed results with another. In any case, the current question has only been there since 2002. We will continue to publicise the flaws in the census question on religion, despite the new question being slightly better than the old one.