

Climate Change and the Constitution

CONSTITUTION NA hÉIREANN
CONSTITUTION OF IRELAND

Nollaig 2009
December 2009



About Us



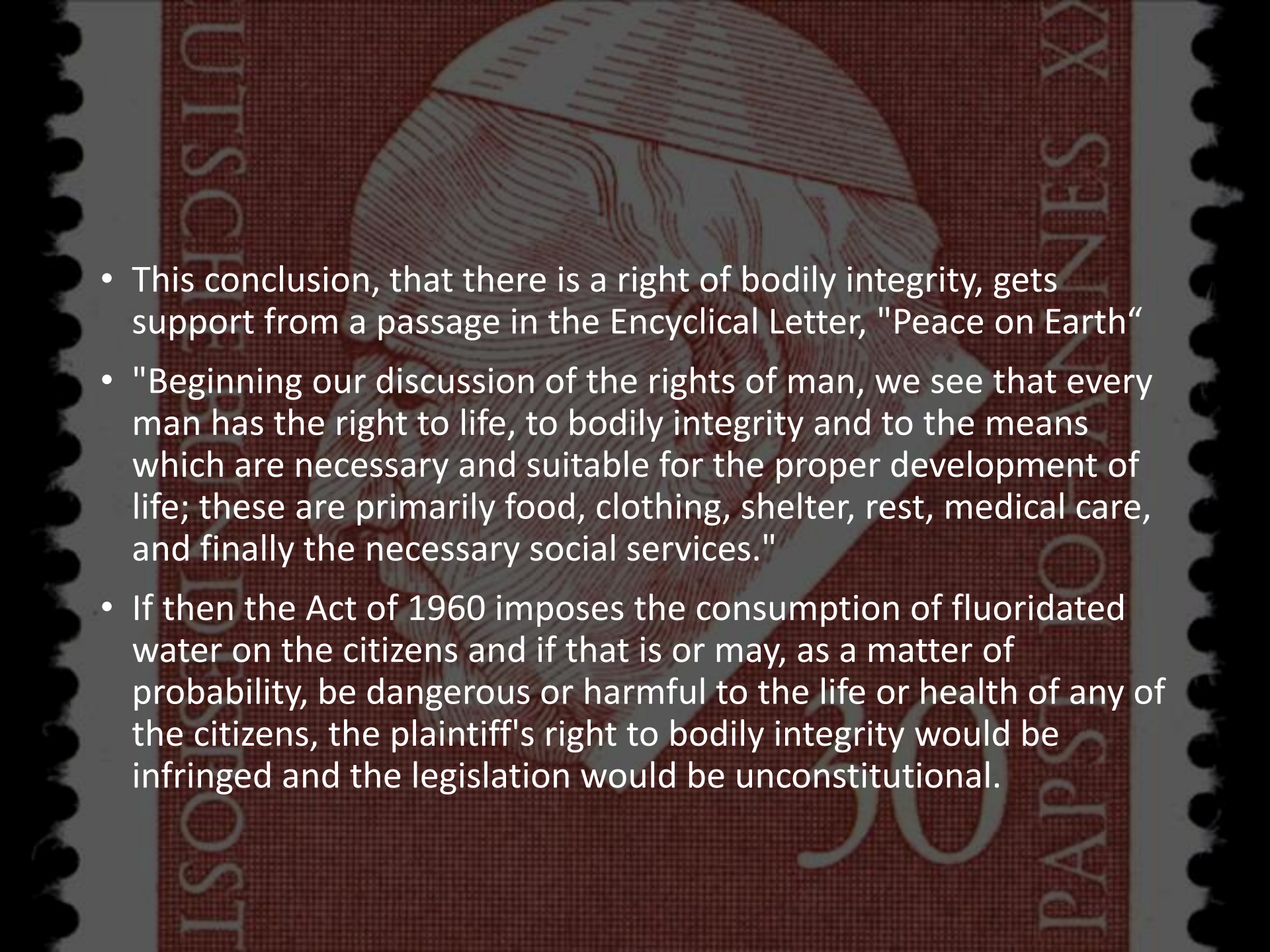
A lot can happen in a year

'Brave woman' who challenged State over fluoridation

© Sat, Mar 2, 2013, 00:00

Gladys Ryan v. AG [1965] IR 294



- 
- This conclusion, that there is a right of bodily integrity, gets support from a passage in the Encyclical Letter, "Peace on Earth"
 - "Beginning our discussion of the rights of man, we see that every man has the right to life, to bodily integrity and to the means which are necessary and suitable for the proper development of life; these are primarily food, clothing, shelter, rest, medical care, and finally the necessary social services."
 - If then the Act of 1960 imposes the consumption of fluoridated water on the citizens and if that is or may, as a matter of probability, be dangerous or harmful to the life or health of any of the citizens, the plaintiff's right to bodily integrity would be infringed and the legislation would be unconstitutional.

How a quiet mother of four took on the State in the Supreme Court and won

© Tue, May 7, 2013, 06:00

Carol Ryan

Mary McGee v. AG and the Revenue Commissioners [1974] 284



Mary and James McGee outside the High Court in 1972

How a quiet mother of four took on the State in the Supreme Court and won

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Carol Ryan

- “Justice is placed above the law ... natural rights or human rights are not created by law but that the Constitution confirms their existence and gives them protection.”
- “Legislature not free to encroach unjustifiably on the fundamental rights of individuals ... or by act or omission to abandon or neglect the common good or the protection or enforcement of the rights of individual citizens”
- Natural law in a pluralist society
- Influence of the US Supreme Court jurisprudence



Mary and James McGee outside the High Court in 1972

TD v. Minister for Education

- Courts have no power to supervise the Government provided it acts within the Constitution
- If not the Courts are not only entitled but in fact obliged to intervene
- Only entitled to intervene if there is a clear disregard by the Government of the powers and duties conferred on it by the Constitution

Denham J

Where do rights come from?

- “No interpretation of the Constitution is intended to be final for all times” – Walsh J in McGee
- “Civil and political rights ... were won for citizens in different societies over a period of centuries often in the face of bitter opposition” Murphy J in TD
- “The demand for a coherent system of socio-economic rights does not appear to have emerged until the widespread acceptance of socialist doctrines following the Second World War” – Murphy J in TD

Climate

- Is there an unenumerated right to live in a healthy environment?

Make a dent in the universe

To do great work, you need to feel that you're making a difference. That you're putting a meaningful dent in the universe. That you're part of something important.

This doesn't mean you need to find the perfect career. It's just that your efforts need to feel valuable.

Friends of the Irish Environment v Fingal Co Co and others

want your customers to say, "This makes me
You want to feel that you're making a dent in the universe.

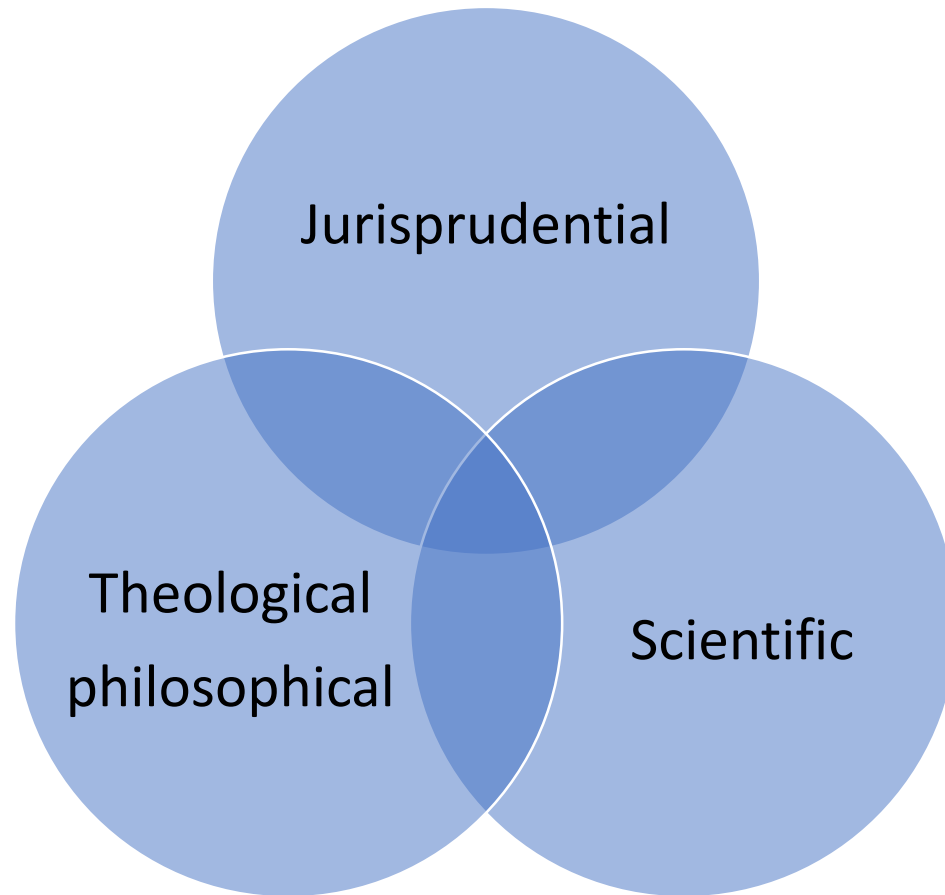
Dublin Airport North Runway



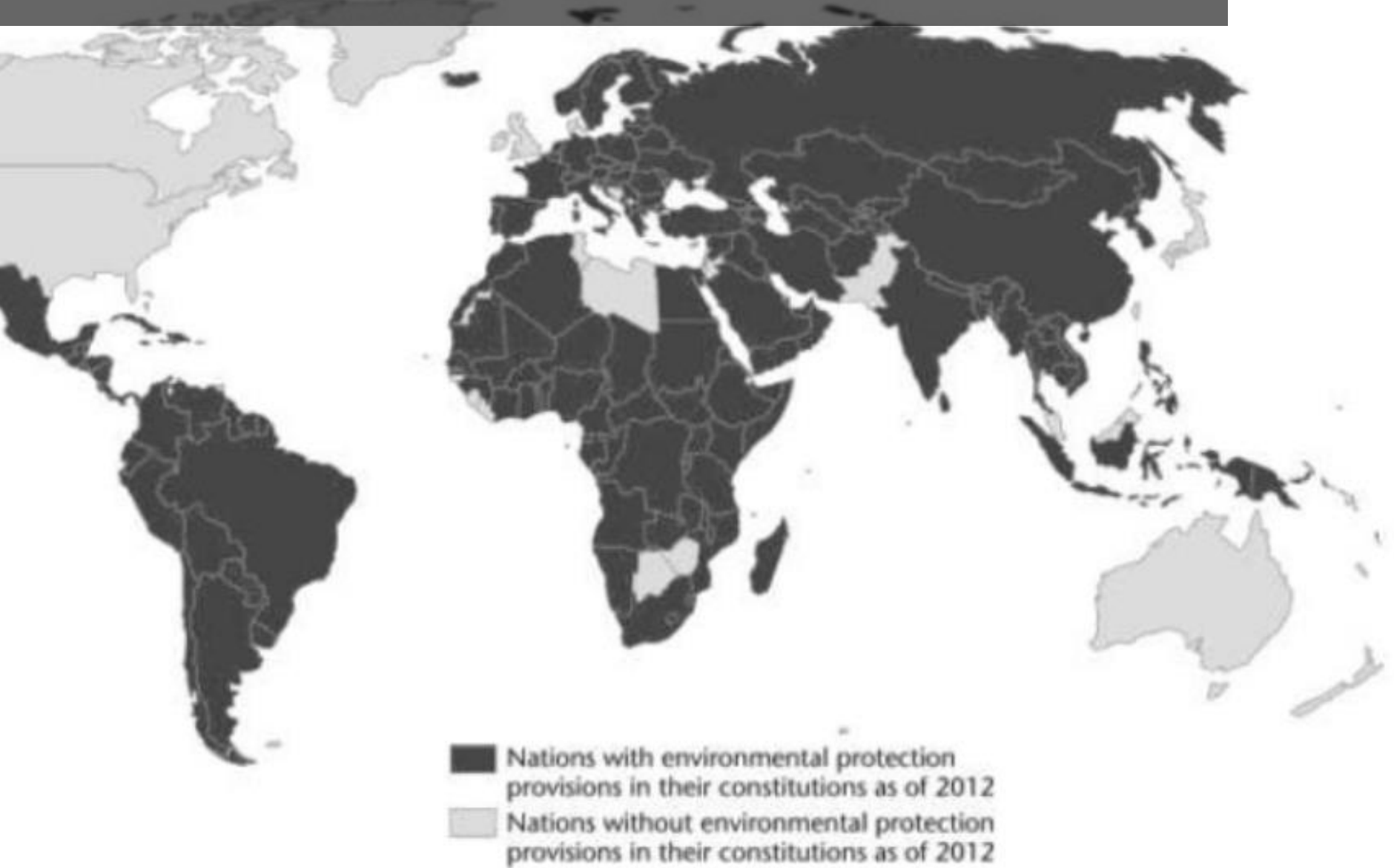
“There is and should be recognised by this honourable court as a constitutional right [a right] to an environment which is consistent with the bodily integrity, right to life, water, food and dignity of the Applicant’s members and the citizens at large.”

John Kenny BL, Day 7

Consensus



Ireland the outlier



- “The earth, our home, is beginning to look more and more like an immense pile of filth. In many parts of the planet, the elderly lament that once beautiful landscapes are now covered with rubbish. Industrial waste and chemical products utilized in cities and agricultural areas can lead to bioaccumulation in the organisms of the local population, even when levels of toxins in those places are low. Frequently no measures are taken until after people’s health has been irreversibly affected.”
- “The climate is a common good, belonging to all and meant for all. At the global level, it is a complex system linked to many of the essential conditions for human life. A very solid scientific consensus indicates that we are presently witnessing a disturbing warming of the climatic system.”



Greenhouse gas emissions projected to increase strongly as economic growth takes hold

Date released: Apr 13 2017

Greenhouse gas emissions projected to increase strongly as economic growth takes hold

- ▶ Ireland is unlikely to meet 2020 EU greenhouse gas emission targets for sectors including agriculture, transport, residential, commercial, non-energy intensive industry and waste;
- ▶ Ireland's greenhouse gas emissions reduction target is 20% below 2005 levels by 2020: EPA projections indicate that emissions will be only 4 - 6% below 2005 levels by 2020;
- ▶ Current and planned policies and measures are not sufficient to meet the 2020 targets, with emissions projected to continue to increase out to 2030 and beyond.

The judgment

- Consensus?
- Recognising expressly a right not previously recognised expressly
- Caution required
- Parameters of the right contended for
- Who decides?
- Companies and personal rights
- Is it distinct from existing rights?

Judgment of
Barrett J (21
November
2017)

"A right to an environment that is consistent with the human dignity and well-being of citizens at large is an essential condition for the fulfilment of all human rights. It is an indispensable existential right that is enjoyed universally, yet which is vested personally as a right that presents and can be seen always to have presented, and to enjoy protection, under Art. 40.3.1 of the Constitution."

IRELAND AND THE ATTORNEY GENERAL

First Notice Party

Second

Observations

- Direct line from Ryan/McGee to FIE (I O'T and TD not applied)
- Clearly a personal right not a socio-economic right
- Court noted religious and secular consensus via e.g. Assisi Declaration and Deep Ecology Movement but nevertheless relied on legal reasoning
- Court accepts
 - Everyone at risk from environmental degradation
 - Climate change poses a real and immediate risk to population
 - Right to an environment Underpins other rights
 - Right engaged in airport extension decision
- The rule of law protects people from their government
- “Actio popularis” – (role of eNGO)

A scenic landscape featuring a dirt path that winds through a lush, green field. Several trees of varying sizes are scattered throughout the scene, some in the foreground and others in the background. The overall atmosphere is peaceful and natural.

Outlook

“Concrete duties and responsibilities will fall in time to be defined and demarcated. But to start down that path of definition and demarcation, one first has to recognise that there is a personal constitutional right to an environment that is consistent with the human dignity and well-being of citizens at large and upon which those duties and responsibilities will be constructed”

An aerial photograph of an airport terminal and tarmac. The terminal building is a large, modern structure with a curved roof and multiple levels. Several airplanes are parked at gates, and others are on the tarmac. The sky is clear, and the overall scene is busy and active.

“You know, I used to enjoy
going to the airport!”

Barrett J

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