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Natural Law series, 2/3: Tearing Down the House of Fundamental Law

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60-77 minutes

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What follows may on first sight appear to be of interest — even arcane interest — to people in Ireland only, but in reality it amounts to a salutary tale of the mechanisms used throughout the formerly free world, whereby natural law has been undermined, disabled and removed from meaningful influence over the legal and constitutional texts that would not exist were it not for its foundational logics. The Irish situation is emblematic of the total picture. What follows should be read, therefore, for what it reveals about the general patterns of such machinations, as much as for the specificities that, it is hoped, illuminate the

general picture.

In advance of the 2018 governmental assault by referendum on the rights of the unborn child as recognised in the Irish Constitution (*Bunreacht na hÉireann*) under Article 40.3.3°, I spent several months in cooperation with some friends and colleagues, attempting to persuade various lawyers that we should mount a challenge to the Government's proposal to 'repeal the Eighth [amendment]' — this being the popular name for that Article — on the grounds that such a proposal was illicit, iniquitous and an attack on the most fundamental rights of a category of human being. Our argument was that the rights bundled up in Article 40.3.3° were natural rights that existed not by gift of the electorate, nor at the whim of the Government, nor by permission of judges, but were untouchable rights, incapable of being taken away or diluted, because they were, in the language of the Constitution, 'natural', 'imprescriptible', 'antecedent to' and 'superior to' all positive law. In elaboration, we pointed out that these rights of the unborn child, as referred to in the Constitution, to which they were added by the Eighth Amendment following a referendum in 1983, were there simply by way of an *aide memoire* by the people to themselves, an interpretation borne out by the opening phrase of Article 40.3.3°: *'The State acknowledges the right to life of the unborn . . . '* It did not say that the State 'grants', 'extends' or 'enacts' the child's right to life, but that it *acknowledges* this pre-existing right for, as a lawyer might say, the avoidance of all doubt. This means that, although Article 46 of the same Constitution guarantees that the people have the right to amend that document, such a right is constrained in respect of the fundamental rights set out in Articles 40–44: The electorate had the right to delete the article, a move that could have no legal consequence, or make such rights more visible or clear within the Constitution, but had no entitlement whatsoever to annul the rights themselves. The sole issue the people had a right to vote

on was whether these rights should remain enumerated in the Constitution, or go back to being unenumerated rights, as — and several court judgments of the time confirmed this — had been the case prior to 1983.

In the months between October 2017 and approximately March 2018, we spoke to more than a dozen constitutional lawyers of various types, levels of seniority, experience and competence, about what precisely the problem was that, even though the rights of pre-born children expressed by Article 40.3.3° seemed to be of a kind that could not be annulled or diluted, the atmosphere created by political — and, shockingly, sometimes judicial — statements was increasingly giving the directly opposite impression.

We put forward a case that went approximately as follows:

Article 40 is the first of five articles of the Constitution that are utterly different to the others. Just above Article 40 is a heading — 'Personal Rights' — and above that another: 'Fundamental Rights'. These headings refer to a category of rights that is distinct and discrete in the context of the categories contained in *Bunreacht na hÉireann*: rights that do not derive from human dispensation, and therefore cannot be annulled by court, parliament or electorate. The right-to-life of the unborn child was — *is!* — one of these most fundamental rights.

We further argued that, in presuming to strike down the right-to-life of the unborn child, and replacing this with a provision asserting that the Oireachtas (the Irish parliament) would 'regulate for the termination of pregnancy', we would be supplanting the right-to-life with a right-to-kill. Not merely that, but this right-to-kill, by virtue of being situated within Article 40 (the first of the fundamental rights articles) would immediately assert a new 'fundamental right': the right to terminate pregnancies, which being translated meant the right to kill babies in the womb. If that were to happen, we pointed out, it

would be the first time anywhere in the world that abortion will have been deemed a ‘fundamental human right’. Not even the United States, which had had ‘legal’ abortion for 45 years and had used it to kill about 60 million of its own citizens — had reached the stage of making abortion a human right.

To put this in another way: When, in 1983, the Irish electorate voted in a referendum to insert Article 40.3.3° into its Constitution, it did not in doing so legally generate the right to life of the unborn child. This right already existed and its existence had long been reflected in numerous contexts in Irish statute law and in several *dicta* of the Supreme Court. What happened with the addition of Article 40.3.3° to *Bunreacht na hÉireann* was that this right, existing as of nature or divine ordinance, was rendered visible in the Constitution, as a reminder, and no more. In legal terms, having been previously regarded by the courts as an unenumerated right, the right-to-life of the unborn child was given enumerated form.

Article 40.3.3° stated: *‘The state acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate that right.’*

We pointed out to the lawyers something they already knew: that the use of the word ‘acknowledges’ made clear that the rights at issue here were fundamental ones — antecedent, inalienable, imprescriptible, anterior. They did not exist by concession of the state, or at the gift of the electorate. There was accordingly no legal, constitutional or moral basis for asking the Irish electorate whether or not it might dispense with the fundamental right to life of a section of the Irish population. In a certain sense, then — the point really was — the amending or deletion of Article 40.3.3° ought to make no legal or practical difference. The people voted this article into the Constitution and, in theory, could vote it out; but, since they did not vote into being the rights it contained, a vote of the electorate could not nor would not void

or dilute those rights, and it was dishonest to suggest otherwise. At most, the repealing of Article 40.3.3° could mean simply that the people have chosen to render ‘invisible’ again the rights a previous electorate chose to make visible, to restore the rights to their pre-1983 unenumerated status. In substance and effect, then, were it to go ahead unchecked, the meaning of the forthcoming referendum would be to ask the Irish people if they were willing to acquiesce in a move that might lead to the unlawful destruction of a category of human person. It was, in short, a plebiscite on the right-to-kill.

All the lawyers gave us more or less similar responses: the ‘anterior’, ‘inalienable’, *et cetera*, nature of the rights in Article 40.3.3° did indeed — ‘on paper’, one of them said — seem to render questionable the very idea of a referendum, but that was something that would ultimately depend on the view and interpretation to be taken by the courts, which might find — as the Supreme Court had once before in a 1995 case — that the Constitution is the source of all Irish law and the people have a right to amend it in whatever manner they see fit. The problem, they explained, was that concepts like ‘inalienable’ and ‘imprescriptible’ derive from natural law, a concept that was rapidly ‘going out of fashion’. The judicial climate of the age, they said, favoured positive and procedural law far more than in the past, and looked askance at the idea of absolute law — whether labelled as ‘divine law' or ‘natural law’ (somewhat, though not wholly, the same thing), concepts now regarded as weak precisely because they propose concepts of entitlement outside the gift of human agency.

This, indeed, was precisely the case we wished to make: that the rights referred to in the section of the Irish Constitution headed ‘Fundamental Rights’ — comprising Articles 40 to 44 – were not like other rights and not like any of the other sections of the Constitution, but accepting of the existence of a panoply of non-negotiable ‘given’ rights that preceded and were superior to

all positive — i.e. manmade — law. Being antecedent rights, they pre-existed the Constitution and could not be annulled by any human agency. While acknowledging that the ‘inalienable’ and ‘imprescriptible’ rights referred to in Article 40 were not, as it were, ‘absolutely absolute’ (they might, in certain situations of conflict, and on a case-by-case basis, be circumscribed or relaxed in some minimal fashion so as to resolve some otherwise intractable conflict) we argued that the right to life is as close to absolute as it is possible to imagine, and in the case of an unborn child qualified only by an urgent necessity to firstly preserve the life of the woman carrying the child, which is not so much a legal principle as a commonsensical appraisal of reality. Aside from this aspect, the child is entitled to the same absolute protection as any other human person. It would, we argued, immediately and commonly be thought invidious if the State were to attempt, by way of referendum vote, to exclude any particular section of the ‘walking around’ population from such fundamental protections, and (we argued) the principle should therefore hold with regard to human persons who are not only incapable of walking around, but of speaking in their own defence. There was, we believed, an irreproachable argument to be made that, even if Article 40.3.3° were to be repealed, by whatever means, and even replaced with a provision directing responsibility for legislating for 'care during pregnancy’, et cetera, to the Oireachtas, it would remain not merely unconscionable but actually illegal, illicit, unconstitutional and immoral to allow anyone to deliberately discontinue a pregnancy — i.e. kill a child/human person — simply by attaching to this the pseudo-medical word ‘abortion'.

What we were proposing was that it was time to confront the new reproductive rights’ regime being constructed by politicians, requiring its sponsors to explain how they proposed that the law against murder was to be elided, how the architects of this proposed obscenity were to get around the fact that capital

punishment, even for the most serious crimes, had been forbidden by the Irish Constitution for nearly two decades, or how the natural, inalienable and imprescriptible rights of the child were to be dismantled without any attempt to initiate a public debate as to any legal redefinition of these rights or any outlining of a constitutional or legal basis of any kind for their elimination. The evasion of these questions, we argued, was allowing a completely false and dishonest sense of things to permeate the public realm. Several sleights-of-hand had been perpetrated in order to make what was happening appear coherent, legal and constitutional, when in fact what we were witnessing was a series of disconnected manoeuvres, creating the impression of that some kind of logical path was being traversed from the old dispensation to some new, ‘modern’ but equally legal understanding. It was surely quite obvious to lawyers, we proposed, that nothing like what was happening should be regarded as in any degree legal or proper. Therefore, to confront the courts and compel them to rule on this coherently would either cause them to confirm the status quo as the only moral option, or embark upon a road leading inexorably to a destination morally indistinguishable from Auschwitz.

All the lawyers we spoke to agreed with us — ‘100 percent’, ‘110 percent’, ‘150 percent’, and more. But most of them then went on to repeat that, although we were entirely correct in our analysis, such concepts as ‘absolute rights’ and ‘natural law’ have little purchase in ‘modern judicial thinking’. Even if we got a hearing, the judges would find some way of declaring that these were matters for the Government and the People — a nonsense, though a highly plausible one, and yet something that we believed ought at least be put to the test in open court, so the people could be enabled to see into the mechanism of what was happening and about to happen. Even avowedly pro-life lawyers, while agreeing with what we were proposing, seemed to think it fruitless and somewhat absurd to try to challenge

these trends.

The lawyers we spoke to all referred to a 1995 case in which the status of natural law had become a central issue. All of them said that, in that case, known as *Re: Article 26 of the Constitution and the Regulation of Information (Services outside the State for Termination of Pregnancies) Bill* [1995], the Supreme Court had definitively set out the basis upon which it was allegedly established that natural law no longer had any currency within our legal system. The case in question was a referral to the court by the then President, Mary Robinson, of a Bill passed by the Oireachtas giving statutory effect to the logic of an amendment passed by referendum in 1992, which permitted the dissemination in Ireland of information about abortion clinics abroad. Though this remains unclear, it is a reasonable inference that the decision did not arise from any fear concerning the Bill's constitutionality, but to guard against a challenge later on.

The Supreme Court, led by Chief Justice Liam Hamilton, a Labour Party appointee, found that the Bill was not repugnant to the provisions of the Constitution, and in doing so rejected the idea that natural law supersedes positive law in the Constitution of Ireland.

The Supreme Court had some form in the matter, having in *AG v X* [1992], caused a number of judges to observe that the unenumerated right to travel did not permit travel for the purposes of obtaining a termination of pregnancy, and any such travel could accordingly be restrained by injunction. The court's task had been simplified in the meantime, however, by two referendums (the 13th and 14th amendment of 1992) resulting in the insertion into the Constitution of a sub-section guaranteeing the right to such information, with the clear objective of preventing restrictions on travel or the provision of information about abortion, and in particular to preclude any interpretation of the Constitution which could lead to the granting of any order

restraining the provision of such information or undertaking of such travel. The purpose of the Bill being examined by the court was to give effect to the legal remit of these amendments.

It was inevitable, therefore, that in the 1995 case, the court would follow this logic and find the *Information (Services outside the State for Termination of Pregnancies) Bill* [1995] to be constitutional. Indeed, from the pro-life side, it was absolutely clear in advance that the information argument was lost before the case even began. That this was for political rather than legal reasons did not in any degree alter that situation — on the contrary. And, sure enough, the outcome of the case was such as not merely to defeat the argument against the promulgation of abortion information, but to convert these political factors into a *de facto* definitive legal bar on the pro-life argument being mounted in court. In particular in view of the increasingly political colour of Supreme Court decisions, it was inconceivable that any argument — not excluding the natural law argument — would be allowed to overturn the decision of the electorate to permit the promulgation of information concerning abortion. Perhaps it is only with the benefit of hindsight that it can clearly be perceived that, in these circumstances, it was profoundly unwise of the team appointed by the court to defend the rights of the unborn child, to advance the natural law argument in circumstances where its success in court would have resulted in an unprecedented situation whereby the Supreme Court, at an extremely fraught juncture in a profoundly controversial issue, would have been overruling a decision of the electorate.

There is a rather disturbing aspect to all this, however, which relates to the ostensible disproportionality of raising the fundamental issue of the natural law basis of fundamental rights in the context of a rights-claim that might be deemed considerably less vital, and — at that stage — pretty much incontestable.

On the face of things, the wording of the sub-section added by

the 1992 amendment to Article 40.3.3° could not be clearer, providing that Article 40.3.3° 'shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state.' But this observation is to a high degree otiose, since there is no necessary conflict between the two provisions, and where there may be, the people have already decided the distantly secondary matter of information, which of itself does not offend against Article 40.3.3°. The fourteenth amendment was therefore in no sense at odds with the Constitution. There was no need to open up the natural law questions. The court also, incidentally — and validly — sought to decide whether the provisions of the legislation before it represented a fair and reasonable balance between the conflicting rights of mother and unborn child (it did), but then went far beyond that question, proceeding to address the argument, raised by counsel for the unborn, that natural law is 'superior to the Constitution'. For one thing, the idea that a clear-cut connection may be made between the receipt of information and the procurement of an abortion is highly speculative. It may well occur in a given situation, for example, that a woman who seeks and obtains such information may *ipso facto* decide against having an abortion — the point being that there is no self-evident connection between the information *per se* and the action of aborting the child. A citizen may peruse a book about how to to use an AK 47, and this of itself in no sense places him under suspicion of intent to murder.

The Court considered it desirable to assign two teams of counsel and solicitors to argue against the constitutionality of the Bill, one set of arguments to be based on the right to life of the unborn and another on the right to life of the mother, 'neither team to be limited in the making of any arguments against the constitutionality of the Bill or any provision thereof.'

Peter Kelly SC, assigned to the unborn child, opted to advance

as his central argument that the natural law was superior to the Constitution and that no provision of the Constitution, or of any legislation enacted by the Oireachtas, or any judicial interpretation thereof, could be contrary to natural law. He submitted that the legislature and people could not amend the Constitution in a manner inconsistent with natural law, and that consequently the Bill was unconstitutional.

Kelly went on to argue that abortion is a choice for death, but that there is no choice for the person who will thereby die, namely the unborn; that the Irish State has a Christian Constitution — and, accordingly, that its laws should protect innocent human life at its most defenceless; that the natural law is the bedrock of that Constitution; that the Bill violated that law by permitting information which knowingly assisted abortion; that it was also unconstitutional in that the definition of ‘woman’, by failing to distinguish between adults and minors, failed to protect the rights of minors, parents and guardians; further, that the rights of the lawfully married father of an unborn child were violated — the information which would be used to destroy the unborn life could be dispensed without notice to the father.

In view of what was to transpire, there is almost a sense of Kelly walking into a trap, laying out the most complete and — it seemed — irrefutable Constitution-based arguments against abortion, but in a situation in which they were already set up to fail. Without doubt, the argument used in this last-ditch attempt to shoot down the case against abortion information was utterly disproportionate to the issue at hand. Although, on the face of things, the argument about natural law required to be raised in order to put the best foot forward on behalf of the unborn child, the unlikelihood of it succeeding made it a very poor tactical choice. The people had spoken on the question of the right to information, and seeking to overturn this by advancing the theoretical argument that this would lead directly to the deaths of pre-born children, was so politically charged and unprovable that

it was obvious no court could in those circumstances accept it.

To be fair to Peter Kelly, he did not have much choice — other than to refuse the case. He was required to put forward whatever arguments might have a chance of succeeding in demonstrating the unconstitutionality of the legislation. It was a pretty hopeless case: on the face of things, it seemed the question of constitutionality could only be disproved by establishing some kind of causal relationship between specific abortion information and a specific abortion. The route he took to draw attention to the antecedent nature of the rights in Article 40.3.3° had the feel of a last desperate pitch — three kings against a hand of fake aces. A conspiracy theorist might observe that had the purpose of the whole thing been to deliver a near-lethal kick to natural law within the Irish Constitution, it would hardly have been approached much differently.

Kelly argued that the Bill was invalid because it was contrary to natural law, which was itself the bedrock of the Constitution and the ultimate governor of all the laws of men. He told the court that ‘for so long as the present Constitution remains in force, nothing in it, or in any laws passed by the Oireachtas, or any interpretation thereof by the judiciary can run counter to the natural law.’ All true and correct, but at the same time a misstatement of the true point and authority of the natural law as expressed in the Irish Constitution. Its purpose is in no sense sectarian or even overtly religious. The natural law, as we have seen in Part I of this series, predates Christianity by some 300 years. Its purpose is to provide a first-cause bedrock for the rights of human beings so that these cannot readily be usurped or confiscated. Natural law is rooted in accumulated knowledge of how human beings behave, and what the risks of such behaviour may be. Such understandings frequently take on a religious demeanour — as they do, superficially, in the Irish Constitution — but that is as much as a reflection of the culture and beliefs of a society in a particular time — a particularised

mode of expressing timeless truths. Above and beyond that, what it expressed are self-evident principles rooted in an understanding of man's tendency towards tyranny and malevolence, and precisely for this reason contrives to place the rights of humanity outside his reach. It will be argued that they have been placed out of reach by man himself — and that is, in a sense, the case — but they are placed out of reach in much the way that an alcoholic might break the bottle of whiskey he had been gifted, to prevent him becoming tempted by its contents.

In any event, Peter Kelly's contentions were expressly rejected by the Court, which jumped upon his assertion of the Christian nature of the Constitution, declaring: 'The Court does not accept this argument. By virtue of the provisions of Article 5 of the Constitution, Ireland is a sovereign, independent, democratic state.'

This was a red herring. The standard political/judicial/media practice of couching these questions solely in terms of 'Catholic/Christian traditions versus the sovereignty of the people' renders the issue in a fashion that both distorts the core issue and serves to raise public hackles. In fact, the issue relates in the most profound way to the very basis of human rights as expressed in constitutional terms, and is not in the least confined to the rights of unborn children. What the Preamble of the Irish Constitution safeguards is not merely a Christian tradition but an expression of the foundational nature of all rights, so that, in arriving at the decision it was to make, the Supreme Court can be said to have initiated an entirely new way of seeing human rights within the Irish Constitution, thereby rendering their foundations much less secure than they had previously been. To some extent, it is true, the situation was not assisted by the loose drafting of certain provisions of the Constitution purporting to address the relationship between the natural law and the will of the People, for example Article 6

— cited in this context by the court — which declares that ‘All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good.’ In the first instance, it is clear that this Article is intended more as a limitation upon the powers of government than a precise assertion of the extent of the people’s authority. A lawyer at the time would undoubtedly have seen it as corralling the people within the implicit logic of the various belief-systems of the time the Constitution was drafted, by which I mean not merely Catholic teaching so much as the far greater idea that all fundamental rights are and must continue to be seen as antecedent. Seen in the logic that one might intuit to obtain in 1937, it seems clear that the meanings of the phrases ‘under God’, ‘questions of national policy’ and ‘the requirements of the common good’ would have reflected an entirely different worldview to that given life to by the Supreme Court judges in 1995, and would therefore have represented a more than adequate protection for these fundamental rights. The God issue was seen in context as an invocation of absolute reality; the question of ‘national policy’ was a feeble matter by comparison, and the ‘common good’ meant something entirely different to what it has since been reduced to.

In being obliged by the arguments advanced to decide whether positive law or natural law amounted to the superior entity, the Supreme Court was for the first time called upon to address what could easily be presented as a choice between democracy and theocracy, but in reality amounted to an unprecedented and previously unthinkable question: Could the electorate overrule the very basis of personal and fundamental rights? Had this argument been raised in circumstances where the life of an actual, particular child was on the line, it is all but certain that, at that 1995 moment at least — the outcome might have been

different. But the couching of the question in the context of information rendered it inevitable that the court would seek a way out. The natural law argument was therefore, it might in charity be said, thrown away in advancing a hopeless argument that allowed the court to permanently disable the entire case — and more besides — without getting its hands dirty.

The judgement went on to say that the courts, ‘as they were and are bound to’, recognised the Constitution as the fundamental law of the State to which the organs of the State were subject. But, because the Constitution was the fundamental and supreme law of the State, representing as it did the will of the People, the court could not accept the argument that the natural law was the fundamental law of the State, or was antecedent and superior to all positive law, including any other part of the text of the Constitution, or that it was impermissible for the People to exercise the power of amendment of the Constitution unless such amendment was compatible with the natural law and existing provisions of the Constitution, or that if the People purported to do so, such amendment could have no effect. From a consideration of all the cases which had recognised the existence of a personal right not specifically enumerated in the Constitution, the court said, it was manifest that the court in each such case had satisfied itself that such a personal right was one which could be reasonably implied from, and was guaranteed by, the provisions of the Constitution, interpreted in accordance with the ideas of prudence, justice and charity. But, for all that, the judges asserted, the courts had at no stage recognised the provisions of natural law as superior to the Constitution.

In this reasoning, I believe, the court misused a judgment in another case, *Byrne v. Ireland* [1972] in which Budd J. states: ‘It is the people who are paramount . . . . The State is not internally sovereign, but, in internal affairs, subject to the Constitution, which limits, confines and restricts its powers.’ Clearly, this statement relates to counterposing the People with the State,

whereas at the heart of the 1995 case was an implicit counterposing of the People with the Holy Trinity (or the uncaused cause), from Whom/which the Preamble of the Constitution makes clear all rights are derived.

This reasoning was entirely bogus. It is not in doubt that the State, the Oireachtas (parliament) and the courts are subject to the Constitution, but the Constitution itself is rooted in natural law — the bedrock of rights deemed to pre-exist the existence of every human being — and it is not possible to speak of its contents or logic without recognising that this rootedness in a given schema of understandings, and its significance for the contents of the Constution, have been accepted and co-opted by the people in ‘giving themselves’ their Constitution in the first place. The People, in ‘giving’ themselves their Constitution, did not in the same action, give themselves the right to life. That was already given, in other words it was antecedent, and being antecedent could not be taken away or surrendered. There can, accordingly, be no demarcation between the natural law foundations of the Constitution and any of its content. Everything must be interpreted by the light of the premise that the rights and freedoms enumerated and implied within the constitutional text are given to the people and adopted by them in total accordance with their derivation, rather than merely raised up in some administrative, whimsical or random fashion. This assumption applies especially, though not exclusively, to Articles 40-44. Many of the other matters dealt with in the Constitution are of a more ‘technical’ nature — the organisation of Government and sundry State institutions — and are therefore, self-evidently, not ‘antecedent’ or ‘absolute’; but this undeniable fact cannot be used to selectively treat patently fundamental rights as though they fall within the same category. The idea, for example, that the people had a right to vote up or down on the right to life of people over a certain age would be regarded by all and sundry, including all but the most morally derelict among the

judiciary, as an abomination. Yet, hiding behind the utterly marginal issue of information-rights, the court sought to begin the process whereby the rights of unborn children could be stripped away.

The mechanics of this judicial coup, conducted simultaneously against the Holy Trinity and the legacy of Aristotle, are interesting. Essentially, the court adopted what has become a familiar trick of contemporary judiciary establishments: what is called ‘presentism’, the technique of redefining words in constitutional texts according to their modern meanings. Under this cloak, the court went on to revisit old constitutional ground by re-parsing the undertaking within the Preamble that the common good will be pursued ‘with due observance of prudence, justice and charity so that the dignity and freedom of the people may be assured, true social order attained, the unity of our country restored and concord established with other nations . . . ’ By focusing on the terms of this provision in the light of 1995 rather than 1937, the implication was conveyed that the words ‘prudence’, ‘justice’ and ‘charity’ had acquired new and quite different meanings, with the court arrogating to itself the right to alter, as necessary to the present, these concepts which it argued ‘may gradually change or develop as society changes and develops and which fall to be interpreted from time to time in accordance with prevailing ideas.’ Citing Walsh J. in *McGee v Attorney General* [1974], the judges noted that it was not open to them to choose between ‘differing views . . . of experts on the interpretation by the differing religious denominations of either the nature and extent of these natural rights as they are to be found in the natural law.’ But — the court elaborated — since the People were entitled to amend the Constitution, and had done so in the matter of permitting freedom of information on abortion, this amounted to ‘the fundamental and supreme law of the State representing as it does the will of the people.’ For the purposes of dealing with the

matter before it, that would have been an appropriate frontier for the court to stop at. The judgment, however, continued — gratuitously, I would say — to deliberate and rule in the same fashion and logic on the more fundamental question of the status of natural law within the Constitution.

The court could have rejected Peter Kelly's argument on a far less bombastic basis, citing the new sub-section of Article 40.3.3 and perhaps referencing Article 40.6, which guarantees 'the right of the citizens to express freely their convictions and opinions', perhaps noting also that counsel for the unborn child had failed to demonstrate a causal link between the flow of abortion information and any actual abortions, thus comprehensively demolishing the claim that such information could any longer be said to offend against Article 40.3.3°. The court chose to go much further — cutting to the very root of the nature of human rights as expressed in law. Yet, in its own judgment, it exposed the gratuitousness of this enterprise, emphasising that the Fourteenth Amendment to the Constitution (a right to abortion information) and the attendant Bill were 'concerned solely with the freedom to obtain or make available information', and did not purport 'to make lawful any act directly affecting the life of the unborn which would not have been lawful prior to the passing of the Fourteenth Amendment', but were 'exclusively concerned with the question of information' and do not deal with 'the use which may be made of the information obtained.' The court further asserted that the case did not 'address circumstances in which abortion may be legal either in this jurisdiction or outside the State.' This was sufficient for the court to decide the case, so why, then, did the court accept the validity of Peter Kelly's argument, rather than simply dismissing it as, in the circumstances, otiose?

The court, no doubt, were it in the business of defending its decision, would most likely argue that, once the natural law argument was proffered, and the court, as it were, forced to

choose between the People seeking to defend the right of citizens to obtain information on the subject of abortion and some future advocate disposed to argue against this, the decision to knock down the house of natural law was its only watertight recourse. On its immediate merits, it is hard to argue with the court's desire not to be seen as a kind of Catholic Taliban assembly. The real problem, however, arises from the broader significance of the ruling, since, though it had not entered into any of the fundamental arguments that might be deemed to obtain in the broadest context of rights-generation, it now, in its crude assertion of the primacy of the electorate and the reach of its authority over natural law, can be said to have opened the door to a situation in which all fundamental rights exist at the whim of the popular vote. In the instant case, this had the immediate effect of placing the rights of the unborn child in grave jeopardy, but indeed had enormous potential ramifications for any or all fundamental rights 'acknowledged' in the constitutional test. After this, anything and everything might be up for grabs.

It is hard to shrug off the idea that the gratuitousness, excessiveness and disproportionality of the court's ruling here was an attempt to make a start on something nefarious, to lay down lightly a novel principle that, though out of kilter with the instant case, would become the first move in an entirely new assault on the nature of human rights in Irish law.

It is clear today that the *Information (Services outside the State for Termination of Pregnancies)) Bill, 1995* case has at its heart a tautology: If it is the case that natural law has no remaining purchase in guaranteeing the 'given' rights of human beings in Ireland, is it not a contradiction in terms for the court to even put to the test the allegedly now absolute right of the electorate to retain or dispose of rights as it pleases? Whence or from whom might such a right emanate? If from the People themselves, what then might be the means of preventing the People

confiscating, on a majority vote, the fundamental rights of other categories of their own number? If one set of rights — explicitly stated and accompanied by quasi-absolute language — can be so cavalierly disposed of, how could it be presumed that other rights remained inviolable if it was indeed the case that the electorate in general possessed an absolute right to have its political/ideological opinions treated as gospel?

The Supreme Court ultimately found that the *Regulation of Information (Services outside the State for the Termination of Pregnancies) Act 1995* was constitutional, and decisively rejected the argument that natural law superseded positive law in the Constitution of Ireland. As would emerge, the outcome of the case prepared the way for the final assault on Article 40.3.3°, by disabling and — to all intents and purposes — disallowing the sole argument capable of defending it from attack.

Beyond this case, the lawyers we spoke with in 2018 were unable to identify a moment at which this unmooring of natural law from the Irish Constitution — of which it had been the very bedrock — might have been initiated. They were unable to direct us to any prior occasion when, perhaps, these same rights might have become destabilised or undermined in circumstances where the fundamental substance of the rights was adequately canvassed, and that argument comprehensively defeated, which most certainly did not occur in the 1995 ‘abortion information’ case. All the lawyers observed, in a rather vague way, that this process had been in train for some time. The only thing they seemed absolutely certain of was that they did not wish to mount such a case now. Courts nowadays extended primacy to positive law, they repeated, to the will of the People expressed via referendum. No weight was any longer extended to laws that deemed to be ‘given’, ‘antecedent’, or deriving from anyone, Anyone — or any*thing* — higher. Of course, such a proposition renders nonsensical the language of the Irish Constitution, which remained then, and remains now, the only basis for the authority

of the Irish courts.

The lawyers we spoke to — most of them claiming to be pro-life — referred to the means whereby natural law was abandoned as though this process had been executed in a foreign language that they could comprehend to a degree but had not learned to speak. The core of what they were saying was a nonsense — yes, they agreed wholeheartedly, *yes, yes, yes it was* — but this was the turn things had taken. Only one of them — a BL (junior counsel), who would have ben unable to take the case alone — offered to join our endeavour.

When we got right down to it, it emerged that what they were really saying was that judges just didn't want to hear about natural law. The starkness or absurdity of the situation we had arrived at, several of the lawyers implied, mattered much less than that judges not be placed in the uncomfortable position of having to state in clear terms why words like 'imprescriptible' and 'antecedent' no longer had the meanings given in the most commonplace dictionary.

The obvious conclusion, then, was that there had been a kind of judicial *coup d'état*, in which the very basis of Irish legal understandings had been altered without consultation or discussion. It seemed that by a process of avoidance, dissembling, and nod-and-wink, the foundations of Irish constitutional law had stealthily been removed and carted away, without a murmur of protest from lawyers or intellectuals. We had moved from a place in which human rights have been guaranteed by virtue of some understanding of transcendent or antecedent derivation, or, if it be preferred, of *a priori* legitimacy, to a dispensation in which even the most fundamental and indispensable rights were to be regarded as existing at the whim of the electorate and/or the courts.

Clearly, in using the strongest card in the pack to slap down the idea that there could be a residual constitutional impediment to

the promulgation of abortion information in some quirk of the antecedent elements of Article 40, the court over-reached itself, issuing a sledgehammer judgement to crack a straightforward nut. This may have been simply incompetent overreach, or something more disturbing. Let us not forget that President Robinson, an arch feminist, referred the Bill to the Supreme Court without there being any particular context of concern that it was in any sense unconstitutional, it having been passed by the electorate in a referendum. For such a straightforward legal matter to be the basis for the, in effect, striking down of the far more fundamental right to life, is a tremendous and utterly disproportionate abuse of the legal process. Unlike the lobbyist seeking to secure freedom for information about abortion, the claim of the person whose life is in danger is likely to be a very urgent matter indeed, and precisely specific to herself in her instant circumstances. To have the absolute backstop guarantee of having one's right to life vindicated by the State removed on such a flimsy, gratuitous and unnecessary basis, is bordering on criminal damage. Moreover, the right-to-life cannot be deemed — as with the right to specific categories of information — to derive from statute, judicial diktat, governmental ordinance, or concession of the electorate. No matter what judges or lawyers have to say about the status of natural law within the Irish Constitution, the fact remains that no authority in the land has the power to end the life of a human being. The last vestige of capital punishment was erased from the Constitution in 2001, when the people voted out the final provision in respect of capital punishment, which provided for the execution of murderers of police officers in the course of their duty. How, then, is it possible that, in effect, legally sanctioned killing could be re-admitted by the back door, by dint of an — at the time — imperceptible nod of the Supreme Court?

Having set up its straw man, the court then proceeded ritually to strike him down, thus implying — quite egregiously and

ludicrously — not only that nothing of the natural law foundations may be adduced against any provision which the people may be persuaded in a political process to insert into the constitutional text, but by implication that the people had a right not merely to strike down all or any rights set out or referred to therein, and also — by implication — that no right not expressly listed within that text could any longer be impervious to a decision by the people to annul it. In this the Supreme Court appeared to negate its own primary function, which is to protect the constitutional text and meanings in accordance with the imprescriptible rights set down within its text. If these are no longer to be seen in the light of natural law, what possible measure might exist by which the court could in future come to its decisions, apart from seeking to look into and weigh in the balance the various expressed ‘wishes’ of the electorate, no matter how inconsistently or incoherently expressed? Natural law is either primary or it is nothing but an adornment, which means that if it is to be trumped by other factors, there is no foreseeable end to the logic in question but the eventual obliteration of all fundamental rights. The issue is not whether natural law is superior to the Constitution but whether natural law, as an intrinsic element of the Constitution, is to be regarded as inviolable, and if it is not, what then protects anyone’s and everyone’s fundamental human rights?

But far and away the most serious aspect of all this is that the decision in *Information (Services outside the State for Termination of Pregnancies) Bill,* [1995] has since then been proffered by lawyers as a basis for insisting that matters pertaining to the primacy of natural law within the Constitution were now closed.

In fact, in its time, the statement of the 1995 court was very lightly set down, and, lacking either substance or integrity, could very easily be overturned by an ethical court. The rather flimsy and unconvincing assertion of the judgment, expressed on an

almost ‘by the way’ basis, had nevertheless become the *de facto* law of the land because lawyers were agreeable to treat it as such, nurturing a consensus among themselves that natural law did not any longer enjoy primacy within the Constitution, and should no longer be canvassed before the courts.

The idea that this incoherent ruling could be transplanted to negate something as fundamental as the right to life itself seems irrational and wrong, and yet the idea that it had already had this impact appeared to be the settled view of every lawyer we encountered. And this situation in turn appears to have meant that no one had, in the years between 1995 and 2018, seen fit to test the underlying principle at stake (the child’s right to legal protection) in the only context in which this could be said to have real purchase: by putting the fundamental right to life of the unborn child to a court and challenging that court to don the black cap and declare the child defenceless against the ‘surgical’ instruments of the abortionist.

As it happens, even as we were sitting frustrated and growingly enraged with various lawyers, a case had been ongoing in the run-up to the 2018 referendum which seemed to be taking things in a quite different direction, and which had attracted my attention a couple of years earlier for this reason. This was an immigration-related case, *IRM. & ors v. The Minister for Justice and Equality & ors* [2016]*,* heard by Mr Justice Richard Humphreys in the High Court, in which something deeply unusual had occurred. The case became a media talking-point following the publication of Humphreys J.’s judgment in the late summer of 2016 because of the ways in which it touched on the meaning and scope of Article 40.3.3°, and much else besides. The case, somewhat incongruously, arose from a rather wearyingly typical speculative tilt at the asylum process by a rejected would-be asylum seeker. The case was taken by a Nigerian man, ’IRM’, his female Irish ‘partner’, and their child ‘SOM’, who had been born in Ireland in 2015. IRM came to

Ireland as an asylum seeker in 2007. He had been through the asylum process and ultimately refused. His deportation was first ordered in 2008 but he managed to remain, and, as well as working illegally here, in 2009 married a Czech national, a union which broke up within a few months, although the couple did not divorce. In 2010, the man pursued an application to remain in Ireland based on his marriage to an EU citizen. This application failed. In September 2014 he became involved with a Cameroonian woman, who gave birth to his child in July 2015. This woman was subsequently awarded Irish citizenship. IRM was engaged also in a concurrent relationship with an Irishwoman, Sarah Jane Rogers, with whom he had another child, born a month after the first, on August 21st 2015.

On April 28th 2015, while both women were in an advanced stage of pregnancy, the Children Amendment, passed by referendum in November 2012, but having had its insertion in the Constitution delayed by a court challenge, was finally enacted, becoming Article 42A of the Irish Constitution. In May 2015 the man applied for the revocation of the deportation order against him. Leveraging the birth of his child, SOM, to Sarah Jane Rogers, he applied for residency based on parentage of an Irish citizen.

Humphreys J. approached the case in a rather unusual manner — by exploring and tabulating the totality of the rights of an unborn Irish child, including the extent to which such rights might impact on or benefit that child's parents, especially those of a father in a union not blessed by marriage.

The family-related and fundamental-rights aspects of the case essentially revolved around the circumstance of the unmarried father, with otherwise no rights to remain in Ireland, seeking to avail of his fatherhood of an Irish-born child in order to remain in the country.

Humphreys' J., in effect, combed through every facet of the Irish

Constitution, as well as statute law, common law, European law and rights conventions, delving also into the undertow implications of recent amendments to the Constitution, to draw up a comprehensive and impressive list of rights which he said accrued to the unborn child, in addition to the fundamental right to life expressed in Article 40.3.3°. The upshot for IRM was that he was granted leave to stay, but, for a brief moment at this late stage in Irish constitutional history — quite against the run of play — it also appeared that a court was taking seriously the idea that the unborn child was a full human person, and setting down the precise legal context for this.

'In my view,' said Humphreys J., 'an unborn child is clearly a child and thus protected by Article 42A. Any other conclusion would fly in the face of the ordinary meaning of language, the use of the term "child" in numerous statutory contexts prior to the adoption of Article 42A, and the sheer social, biological and human reality that an unborn child is, indeed, a child. Ask any happily expectant parent.' The end-point of the State's logic, he said, was 'either to dismantle constitutional rights more generally,' or alternatively 'to adopt a bespoke system of constitutional interpretation aimed at cutting back the rights of the unborn and only the unborn . . . ' The Minister, the judge made clear, had a responsibility to consider all rights the child might acquire on birth in whatever decision-making (relating to immigration) as might arise. He was not suggesting, he made clear, that these considerations might necessarily amount to decisive factors on a decision to deport or otherwise. But they had to form part of the deliberative process.

Judge Richard Humphreys, I wrote at the time, 'is not easily boxed'. A left-leaning liberal who had in the past been associated with the Labour Party, he seemed to fit into the mould of a thinking classical liberal whose ultimate loyalty was, in perhaps equal measure, to the integrity of the legal system and the will of the people. In 2012, he led the masterful attack on

government referendum corruption in the McCrystal case, in the run-up to the so-called Children Referendum, a case in which I was a witness for the applicant. The IRM judgment had the feel of that of a mind that welcomed the drift of recent changes in culture and law, but also insisted that these be accompanied by consistency, coherence and human values. It was as though, on the cusp of a much vaunted new era, he sought to establish at the very outset the widest possible framework of acknowledgment of unenumerated rights for unborn children and their parents — and 'born children' and their parents — regardless of marital status, thus counterbalancing a prevailing mentality infecting politics and the media whereby only those categories of the human family covered by Cultural Marxist protection were deemed worthy of support or protection.

The Supreme Court hearing of the issue arose from a leapfrog appeal by the Minister for Justice and Equality pleading urgency in respect of ‘some of the broader issues’ in Humphreys J.’s judgement. Rather bizarrely, while upholding the High Court’s decision in respect of the substantive immigration issue, the Supreme Court also dismissed seriatim each of the other putative rights of the unborn child divined by Humphreys J. in his judgment. Thus it was that the highest court in the land came to deliver its eviscerating decision on the ancillary rights of the unborn child outside of Article 40.3.3° almost exactly 11 weeks before the electorate was due to announce its verdict on the fate of that Article — and, as it appeared, its contents — in a referendum scheduled for May 25th.

Amounting to a quite extraordinary farrago of sophistry, illogic, casuistry, verbal semantics and meretricious argument, the judgement in the case of IRM & Others, known to the Supreme Court as *M v. The Minister for Justice & Others,* essentially lines up all of the arguments mounted in Humphrey’s J. chronicle of the multifarious rights of the unborn child, and knocks the lot down — leaving to that most vulnerable of human beings only

whatever Article 40.3.3° might mean when the electorate was finished with it, less than three months later.

A central example of the court's amoral logic occurred in its finding (pages 68-70) that the phrase 'all children as it appears in Article 42A of the Constitution, does not — contrary to the finding of the trial judge — include unborn children, but refers only to children who have been born.'

In arriving at its determination, the court took us through a number of processes involving words in both the English and Irish languages, and a succession of deductions — purporting to be logic based — on the alleged intentions of the electorate in voting Article 42A — the 'Children's Rights Amendment' — into the Constitution in 2012. In his submissions, the Minister for Justice asked the Supreme Court to declare that when the People decided in the Children Referendum to affirm the rights to protection of 'all children', the People did not mean 'all children' but only children who had been born. Somewhat gratuitously, not to say tendentiously, the Supreme Court judges said it would be 'illogical and meaningless' to interpret the words 'all children' to include the unborn.

To back up this absurd statement, the court advanced a dizzying array of pseudo-arguments, chiefly designed to confuse. For example:

It is undoubtedly the case that the phrase 'the unborn' is unusual as has been pointed out previously. As Hardiman J. memorably said 'the unborn what?' Clearly, as Geoghegan J. said, it would appear to mean 'the as yet unborn' or is a reference to 'future existences'. It is difficult to disagree with that view.

Actually, it is difficult to imagine seven adult human beings sitting in a room composing such gibberish. To speak of 'future existences' in this manner would seem to decide the matter prejudicially, since it pre-emptively excludes the period of gestation — even the period between autonomous viability and

birth — from what is here tendentiously termed ‘existence’. There is clearly a difference between the term ‘existence’ and, for example, terms like ‘postnatal existence’ and ‘pre-natal existence’, but the word ‘existence’ can comfortably be used in all three contexts. Similarly, there is a difference between the concept ‘living’ and the concept ‘born’, but that difference implies neither that a living person requires to be born to be so defined, nor that an unborn person is *ipso facto* not alive.

In its judgment in *Jordan v. The Minister for Children and Youth Affairs* (2015), the Supreme Court refused in the absence, they claimed, of ‘compelling evidence’ to interpret what motivated the People to vote as they did in the Children Referendum of 2012. Yet here, the Supreme Court was able to know that, in affirming the rights of ‘all children’, the People expressly intended to exclude children not yet born, including, it would appear, children only days or hours from birth. In a society that had made the protection of unborn children a priority, it is difficult to see the basis upon which such an assertion might so confidently be made. Indeed, in addition to referring to ‘all children’, the text of Article 42A refers, in the context of the possibility of adopting children, to ‘any child’, which must undoubtedly include — in both the colloquial and legal senses — the unborn child. Moreover, a brief perusal of the 2012 Referendum Commission booklet, page 10, reveals that voters were advised that Article 42A ought to be read in conjunction with other relevant Articles. Among the articles listed in the booklet is Article 40.3, of which 40.3.3° is a sub clause. It is therefore reasonable and demonstrable that, in voting on that matter, the people had every reason to expect that the logic of 40.3.3° would be embraced by 42A.

In one utterly fatuous section of the judgment, the court seeks to play word-games to beef up its vacuous assertions in this regard, having recourse to the Irish language text of the Constitution, which has primacy in any dispute as to meanings.

The judges pointed out that the Irish text uses the word *leanbh* for ‘child’ in Article 42A and the term *leanai uile* for ‘all children’, which they asserted ‘contrasts with' the term used in Article 40.3.3° [*na mbeo gan breith* — literally *‘the living without birth’*]. Yet, the most commonly used online Irish dictionary *focloir.ie* lists the following words and terms as synonyms of the word ‘unborn’: ‘*neamhbheirthe’*; ‘*sa bhroinn’*; ‘*gan bhreith’*. The phrase “unborn child” is translated as *leanbh sa bhroinn* and *leanbh neamhbheirthe.* It is clear from this that the word *leanbh* has long been in legal as well as colloquial use to refer to the child in the womb and otherwise. It is also quite clear that the words and phrases used respectively in Articles 40.3.3° and 42A are interchangeable, and that the particular usage in 40.3.3° is intended to semantically distinguish the unborn child from the post-natal child and no more, and that this could have no implications *vis a vis* legal entitlements nor the intentions of the electorate in endorsing the respective provisions in 1983 and/or 2012.

The Supreme Court's claim that Mr Justice Humphreys misinterpreted Article 42A in asserting that children have a ‘legal personality’ is clearly a straw-man argument. That phrase does not even appear in Judge Humphreys’ judgement and it is self-evident that children, as minors, are almost never parties to proceedings even when they are the subjects of them. The ‘legal personality’ in such instances is exhibited by the child’s parents or guardians — occasionally representatives of the State — to whom the child’s interests are entrusted. To say that the unborn child does not have a ‘legal personality’ is not at all the same as saying that the child does not have enforceable legal rights. The idea that all children suffered a deficit of such rights was the precise purpose claimed in 2012 for the necessity to insert Article 42A in the Constitution, and that amendment purported to rectify this deficiency. In asserting that the unborn child is both devoid of legal personality and excluded from protection under

Article 42A, the court again engaged a tautological construction that, while superficially self-affirming, is actually both untenable and unjust. This aspect was dealt with by the court in a finding relating to Article 42A, of which it was argued that its subsection 4.2 confirmed that the Article did not encompass the unborn child because, the court insisted, 'clearly unborn children cannot form their own views'.

The judgement asserted also that 'reference is made [in Article 42A] to the requirement to take into consideration the voice of the child. It will, therefore, be readily apparent from the provisions of Article 42A.2°, Article 42A.3° and Article 42A.4° that the reference to a child or children in those sub-Articles can only be a reference to a child or children born alive.'

This logic is deeply flawed in a manner that excites grave disquiet. The provision in Article 42A in respect of 'the voice of the child' had from the outset been understood to refer, by definition, only to older children. It clearly could not refer to a child of one or two years old any more than to a child of 12 weeks gestation. In fact, Article 42A actually states: 'Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child *who is capable of forming his or her own views,* the views of the child shall be ascertained and given due weight *having regard to the age and maturity of the child*.' (My italics.)

Thus, the majority of children to whom Article 42A is applied — born or unborn — would not be capable of making their voices heard in court, and would accordingly rely on a parent or the State to represent their legal and welfare interests. It is, to be frank, incomprehensible that such a spectacular and critical error should creep into a judgment of the highest court in the land.

Of course it is not necessary that a human person should be capable of exercising her rights in order to retain them. Many of

the categories of rights at issue in this appeal were of the most fundamental kind, which is to say that they are not rights extended by any government, electorate or court, but derive from the intrinsic dignity and uniqueness of each human person. These rights do not require for their continued existence any positive action by the child in the womb, the State, the parents, or any court. Even in the wake of this absurd judgment, it remained axiomatic that a person, by falling into a coma, does not *ipso facto* lose any fundamental rights. That is why many articles in the Fundamental Rights section of the Irish Constitution contain words like ‘inalienable’ and ‘imprescriptible’ (a word that, incidentally, occurs again in Article 42A, added to the Constitution as late as 2015). These words indicate the existence of rights that do not require to be enumerated or specified in statute or constitution — rights that cannot be given up or taken away — for the very good reason that there will always be human agencies or actors who seek to curtail the rights of other human beings. This is why the rights in Article 40.3.3° are simply ‘acknowledged’, giving expression to an idea that is at the core of our civilisation. The unborn child does not need to justify his or her fundamental rights, and owes no debt of justice to anyone. All debts of justice in this matter flow towards the child, and none in the opposite direction. Mr Justice Humphreys said no more than this, which tells us that the entire enterprise of the State’s appeal against his judgement was unjust and immoral.

It was difficult, reading the court’s lengthy judgment, to suppress the thought that, throughout its deliberations and findings, the court was seeking conformity with the Government’s interests in this matter by finding in the State’s favour in every single matter of consequence to the rights of the unborn child and going against the State only when the issue was inconsequential. It is hard, in retrospect, to avoid the sense that the obvious hurry to conform with the Government’s schedule in moving its

Referendum Bill through the Houses of the Oireachtas had contributed to an accumulation of glaring illogicalities in the Supreme Court judgment. In the event, the court wiped the board of all rights of the unborn child other than those set down or implied in Article 40.3.3°, essentially leaving it to the electorate to finish off its handiwork of destruction.

This, incidentally, was the first time in the history of the Irish State that a court had issued any form of judgement or directive stating or implying that a human life begins at any point other than conception, and it did so on the basis of no proof or evidence — nothing other than its own convoluted reasoning.

Nothing of the could have been effected had the centrality and power of natural law not been fatally undermined and, in effect, deleted in advance by a judicial vanguard with a clear view of what it was about. Both the vehemence of the language of absoluteness, and its persistent repetition throughout what is in effect the Irish ‘Bill of Rights’ — Articles 40-44 of *Bunreacht na hÉireann* — and the antecedent pedigree of this code, implicit and explicit, would have presented an insurmountable obstacle to the opaque mission of the various judges involved in these assaults upon freedom and justice in Irish society.