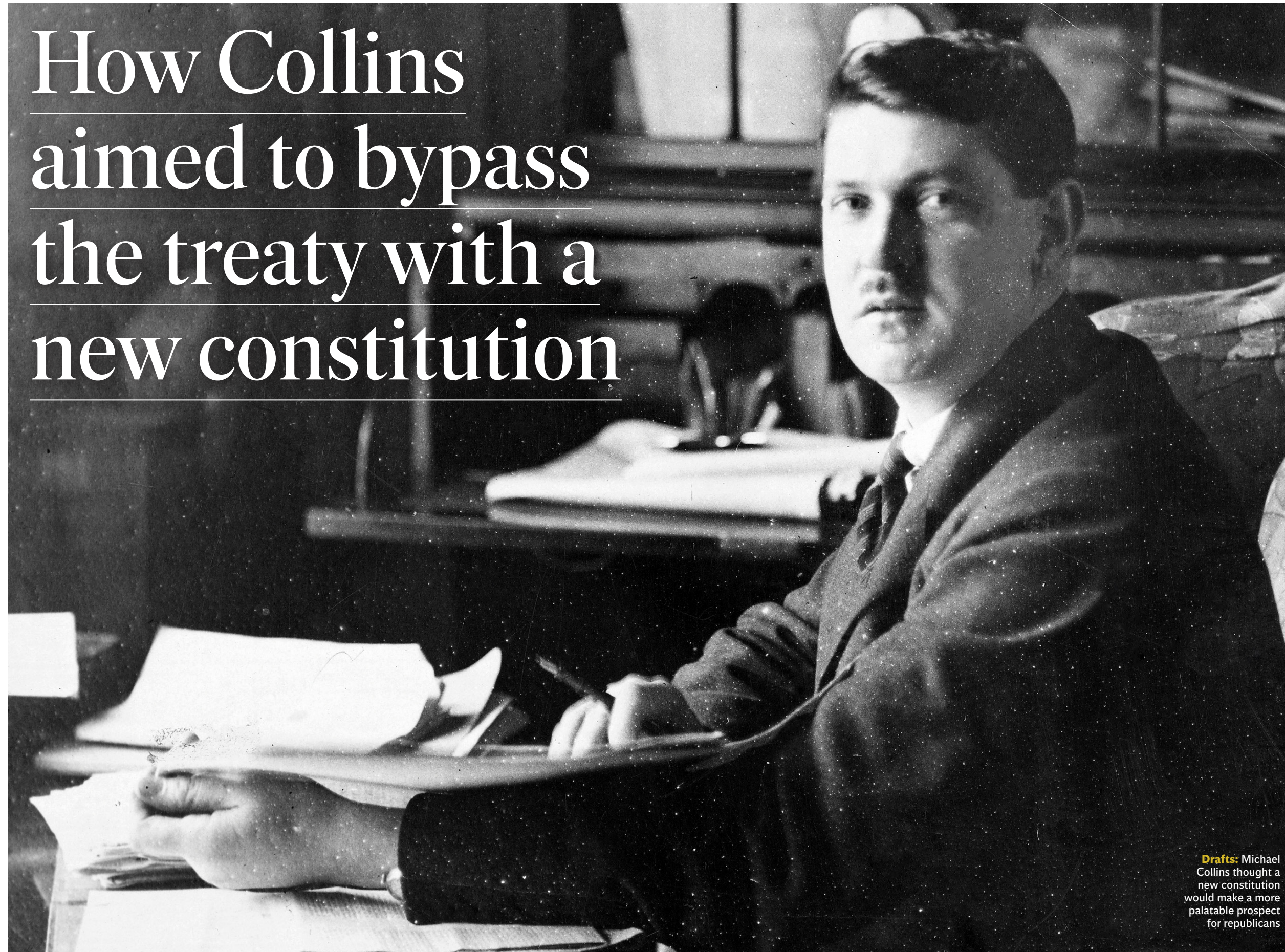


# How Collins aimed to bypass the treaty with a new constitution



**Drafts:** Michael Collins thought a new constitution would make a more palatable prospect for republicans

## Benjamin Hazard

One of the first major tasks of the Irish Free State government was to draft a new charter that would avert the prospect of civil war



One of the first actions of Michael Collins and Arthur Griffith in 1922 was to appoint a committee to draw up a constitution for the Irish Free State. Collins, chairman of the Provisional Government, described their deliberations as “more important than the [Anglo-Irish] Treaty itself”. It was their intention, he said, “definitely to define and produce a free democratic constitution”. The committee included Hugh Kennedy, Clemens France, James Murnahan, John O’Byrne and Kevin O’Sheil as legal counsel. The four political nominees were Darrell Figgis, James MacNeill, Alfred O’Rahilly and James G Douglas. Three civil servants were seconded to serve as joint secretaries:

Ronald Mortished, Edward M Stephens and PA O’Toole. The latter two were also lawyers. Their meetings were held the Mansion House, then in the Shelbourne Hotel. The opening stage of their preparations took place until March and consisted of compiling research and writing drafts on a daily basis. This was followed by analysis, internal discussions by the Dublin administration and political debate. Collins’ objective was to bypass the treaty with a constitution more palatable to republicans than the terms he had agreed with David Lloyd George the previous year. Figgis, an Irish Protestant republican and Griffith’s nominee, was vice-chairman. Collins appointed himself to lead the work of the committee but, in his absence, Figgis served as acting chair. The committee provided Dáil Éireann with three different drafts: A, B and

C. O’Rahilly prepared his own but this was not forwarded for consideration. None of these early versions acknowledged the king; the question of allegiance to the Crown was the main bone of contention for and against the treaty in Ireland. The British administration insisted on amendments to the first drafts and called Collins to London. According to the historian Joseph Lee, he went in the hope that Britain would accept a constitution with no oath in it and that the final draft would prevent civil war. Accompanied by Griffith, he met Winston Churchill and the Northern Ireland premier Sir James Craig and found himself constrained to keep in line with the treaty. In Ireland and Britain, sovereignty became the core issue. Figgis argued that throughout

the world, a written constitution “is itself evidence that the people are sovereign”. For Collins and Griffith, it was essential that the constitution established the sovereignty of the Irish people in the Free State. Following Anglo-Irish negotiations in June, the Dáil revised the constitution and adopted it on October 25. The Irish Free State Constitution Act was passed by Westminster on December 5 and came into effect the next day, exactly a year after the signing of the treaty. It consists of 83 articles. The drafting of the 1922 constitution echoed the four founding documents of the first Dáil three years earlier but also developed and expressed these ideals in more specific terms. The king and his role were recognised in Article 1. As was the case in dominions such as Canada, the monarch was to be represented by a governor-general. There was an attempt at give and take between London and Dublin. Compared with British concerns about “empire” in the treaty, the 1922 constitution described the status of autonomous states within the “Commonwealth”. This stipulated that the relationship between Britain and Ireland was “co-equal”. TDs would swear an oath of allegiance to the constitution of the Free State and faithfulness to the king within “the British Commonwealth of nations”. At the time, this was condemned by republicans but it also met disapproval

in British establishment circles more comfortable with the view that the colonies were children of the empire. Griffith and Collins intended the 1922 constitution to “provide for a free and democratic state”. Figgis emphasised that there should be “democratic control” of the executive through parliamentary processes. In 1918, the Representation of the People Act had extended the franchise to women over 30 and to all men over 21. This contributed to a landslide for Sinn Féin that year. Article 14 of the Free State Constitution went further by giving women and men over 21 full voting rights. As shown by the presence of Darrell Figgis on the committee, Griffith and Collins sought to safeguard the interests of Protestants. With this in mind, Article 8 promised freedom of conscience and religion, freedom of assembly and association. A further example is provided by another committee member, James G Douglas, an Irish Quaker businessman and friend of Collins. Figgis explained that the committee meticulously

## ‘The strong democratic tone of the draft is obvious’

# Irish Independent

From the *Irish Independent*, October 16, 1922

The Provisional Government are now submitting to the people the constitution drafted for the purpose or giving effect to the Treaty so entered into between the two countries and securing for Ireland in fullest measure the liberties won and recognised by the Treaty. It is limited only by the agreed terms set out in the Treaty and the further assurances which have been given in respect of the security and representation of minorities.

**FUNDAMENTAL RIGHTS**  
The Irish Free State is declared to be a co-equal member of that “Community of Nations forming the British Commonwealth.” All legislative, executive, judicial and governmental powers are declared to be derived from the people. This clause practically amounts to a declaration of the sovereign authority of the Irish people. It is, of course, in no other Dominion Constitution, but is in

the constitution of nearly every sovereign State in existence. Another remarkable article, which of course is also not in the Constitution of the Dominions, provides for citizenship in the Free State. Irish is declared to be the national language, and all public acts, proclamations and pronouncements must be published in the Irish language. They may also be published in English.

**DEMOCRATIC TONE**  
The strong democratic tone of the draft is obvious from such provisions as those abolishing titles of honour, making inviolable the personal liberty and the dwelling-houses of citizens, freedom of conscience and the free profession and practice of religion; establishing the right of all citizens to assemble peacefully and without arms, and to form associations and unions; the prohibition, except under State supervision, of the exploitation by private individuals of the natural resources of the country, the abolition of sex distinctions

and what amounts to virtual adult suffrage etc etc. The Legislature shall consist of two houses. The House will be called Dáil Éireann or the Chamber of Deputies, and the Upper House Seanad Éireann or the Senate, and both together will be known as the Oireachtas. Every citizen who has reached the age of 21 years, and who is not otherwise incapacitated, shall be eligible to become a member of the Dáil. There are the usual provisions as to safeguarding members from arrest, making parliamentary reports and utterances privileged etc. An article enables the Oireachtas, if it so decides, to pay its members and provide them with free travelling facilities “in any part of Ireland”. The Oireachtas must hold at least one session a year, and the sittings of each House are to be public, save in of special emergency, when, with the assent of two-thirds of the members present they can be held in private.



**Influence:** Darrell Figgis was on the new committee. Left: A cartoon in the *Saturday Herald* questioning the idea of giving women equal voting rights

studied legal history from around the world. Their broad base of sources included Irish laws from the Middle Ages. The regular references to the Irish language, political thinking and terminology point to the committee’s desire for acceptance among those who condemned perceived deference towards the vestiges of British rule.

**POWER OF THE PEOPLE**  
Early Irish history was within the committee’s fields of interest. According to Article 2: “All powers of government and all authority legislative, executive and judicial in Ireland are derived from the people of Ireland.” At first sight, this idea of sovereignty obtained in a contract between ruler and people may seem to have been inspired by republicanism. It was, however, a medieval Irish concept preserved in *Tecosca Cormaic* – the Instructions of Cormac Mac Airt, high king of Ireland. *Tecosca Cormaic* was edited and translated in Dublin in 1909 and thus within the committee’s knowledge base. Article 4 established Irish as the national language with English “equally recognised as an official language” and special provisions were promised for Gaeltacht areas. This set a precedent for government policy. As was the case with the treaty, in the 1922 constitution the Free State was termed Saorstát Éireann. Article 12 provided for the Oireachtas, the term used throughout to refer to the bicameral parliament of Dáil Éireann and Seanad Éireann. Figgis noted that two chambers are the rule in most countries. Neither Collins nor Griffith lived to see the Irish Free State Constitution enacted. Nevertheless, their work and that of the 1922 Constitution Committee copperfastened the terms of the Anglo-Irish Treaty and influenced Bunreacht na hÉireann, completed under the aegis of Éamon de Valera in 1937.

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