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THE CURIOUS CASE OF SOCIO-ECONOMIC RIGHTS

Thomas P Murray
THE CURIOUS CASE OF SOCIO-ECONOMIC RIGHTS
(PREVENTING THE RATIONAL? SOCIO-ECONOMIC RIGHTS AND THE
PHENOMENON OF BLAMING THE VICTIM, IRISH-STYLE)

Thomas P Murray

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THE CURIOUS CASE OF SOCIO-ECONOMIC RIGHTS

This paper examines the influence of political culture upon constitutional reasoning and deliberation, specifically with regard to answering the question: why have socio-economic rights not received a more effective protection in the Irish Constitution? Beyond the flotsam and jetsam of crusades and campaigns, I suggest, the politics of the Irish Constitution were and remain, intellectual, moral and ontological. What follows therefore represents a considered defence of this position, primarily with a view to demonstrating the need for a politico-sociological examination of the constitution’s development. Drawing on the classic account of constitutional change, namely Basil Chubb’s The Politics of the Irish Constitution (1991), I question the conventionally static depiction of the constitution’s relationship to social justice concerns. Subsequently, I present an alternative way of approaching this relationship provided by Steven Lukes and HLA Hart, an approach that calls our attention to the underlying battle of ideas concerning justice, morality and the source of human rights. Finally, in light of this approach, I re-evaluate just one of the contributions to the debate on constitutional reform, namely Vincent Grogan’s “The Constitution and the Natural Law”. In demonstrating the implicit assumptions of Grogan’s thesis, this paper aims to make clear the potential of this ideational perspective for opening conventional analysis to significant reconsideration.

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Subsequent presentations include those made to the International Society of Political Psychology (Trinity College Dublin, 17 July 2009) and the European Consortium on Political Research (University of Potsdam, 12 September 2009).
Thomas Patrick Murray is a Ph.D. candidate in the School of Politics and International Relations. The working title of his doctoral thesis is: “A Genealogy of Socio-Economic Rights in Ireland, 1912-2002”. His research interests include Irish history and politics; legal, normative and political theory; and the possibilities for social justice given the distribution of power in postmodern society.

Acknowledgement

I am grateful to my supervisor, Graham Finlay, in addition to John Coakley and John O'Dowd for their helpful comments and insights. I should also like to thank Bryan Fanning for generously sharing his time and advice. Michael Laffan introduced my paper with such enthusiasm that I feel he too deserves a special mention here. I owe thanks to Jennifer Todd for her astute comments on a rather long-winded first draft. Though I hope to have improved the paper since then, all errors and omissions remain my own.

Finally, this paper has been written in honour of Professor Garvin, in admiration of his work and in appreciation of many happy hours spent taking notes in his lectures, probably inaccurately.
“So we beat on, boats against the current, borne back ceaselessly into the past”¹

INTRODUCTION

This paper carries with it some metaphysical baggage so I should like to clarify two important terms from the outset. The first is “ontology”. By ontology, I simply mean the set of beliefs that one has about the nature of reality, one’s general understanding of what exists and why. Past and present metaphysics are often central to present day debates about moral community, justice, human rights and the relationship between the individual and the collective good (Fanning, 2007: 2). Consider the conference theme, “Irish Developmentalism”, for example. Broadly speaking, it makes sense for two individuals to speak of development only where particular ends or goals have been agreed upon and their achievement or partial attainment demonstrated to the satisfaction of both parties. Questions of what ends ought to be pursued however tend to be debated from different ontological vantage points: development is an “essentially contested concept” (see Gallie, 1955-6). Not altogether unrelated, the second term is “socio-economic right”. In a broad sense, the “socio-economic” element typically refers to health, housing, education and an adequate standard of living; the notion of “right” speaks of entitlement to these things. However, ontological discrepancies soon surface. For example, what constitutes an “adequate” standard of living? More contentiously, who is entitled to these things? Who pays and who decides? In the Irish experience, a partial answer to a great number of ontological questions of this sort was formalised in our constitution in 1937. By and large, socio-economic “rights” were given the status of “Directive Principles”; that is, things the State should simply aspire to provide (rather than things it is obliged to protect). In recent years however, Irish citizens and legal practitioners have attempted to invoke the Constitution in an effort to hold the State responsible for what they claim to be “rights” to housing and education. In response, the courts have simply restated the initial constitutional position.²

It is in this context that my research seeks to demonstrate the contingency of present certainties about socio-economic rights, not least by outlining the histories of such understandings. This paper has a more modest set of aims however. I simply

¹ Fitzgerald, F Scott The Great Gatsby
² The judges have largely adhered to a case that arose in 1989, O’Reilly v. Limerick Corporation, in which Justice Costello rejected a claim that he believed would the courts into the realm of redistributive justice. See also, for example, TD versus the Minister for Education [2001] 4 IR 259 and Sinnott versus the Minister for Education [2001] 2 IR 545 (Whyte, 2002).
want to show why this critical genealogical work is necessary. Part one revisits the classic account of constitutional change, Basil Chubb’s *The Politics of the Irish Constitution* (1991), calling into question Chubb’s handling of the constitution’s relationship to social justice concerns. Part two outlines an alternative approach to analysis, namely identifying the ontological politics of constitution-making. Whilst appreciating the complexity of constitutional debates, I am concerned here only with the *sense* in which rights are employed and more specifically, with questioning the rationality of constitutional reasoning and deliberation. HLA Hart’s *Law, Liberty and Morality* and Steven Lukes’s *Power: A Radical View* provide hooks upon which to hang this discussion. Part three deals with methodological considerations, suggesting a principled basis for the identification of distorted reasoning. In this regard, whilst Jon Elster’s *Political Psychology* helpfully catalogues a number of mechanisms that serve to distort reasoning, this paper focuses on one only: the drive to reduce cognitive dissonance. Occasionally, this drive manifests itself in the disproportionate attachment of blame to the poor for their poverty, a phenomenon social psychologists have called “blaming the victim”. By way of illustration, part four examines the dissonant psychological processes at play in the writings of Vincent Grogan, a public commentator on constitutional matters during the 1960s. Viewed through the lens of dissonance theory, Grogan’s commitments to Catholic social theory may be seen to exist in tension with his real-world experiences of material inequality. Pressures to reduce cognitive dissonance, I argue, account for his “blaming the victim”, Irish-style.

**THE ONTOLOGICAL POLITICS OF CONSTITUTION-MAKING**

### 1.1 The Politics of the Irish Constitution Revisited

Basil Chubb’s *The Politics of the Irish Constitution* remains the classic analysis of constitutional change. Chubb argues that the Constitution’s relationship to social justice was distinctly informed by Catholic social thought, citing in particular the Directive Principles of Social Policy in Article 45 as well as the specific recognition of two socio-economic rights—Article 42.4, necessitating free primary education and Article 42.5, necessitating care for neglected children *in extremis*. The very inclusion of the Directive Principles aroused hostility however. In the Dáil debates on the draft Constitution, de Valera had to make the point abundantly clear: “it is the legislature that must determine how…to secure these ideals” (Dáil Debates, 1937: vol. 67, col. 69). Thus, the Directive Principles were to be even more tightly circumscribed than the civil and political rights provisions, placed beyond the cognisance of the courts and present simply to serve, in de Valera’s words, as a “constant reminder to the legislature of the direction in which it should work” (Dáil Debates, vols. 67-8, col. 71). Generational conservatism on the bench ensured that declarations of fundamental rights were the objects of deep suspicion (Chubb, 1991: 42). Moreover, “social justice” was viewed in an even dimmer light; as Mr Justice Hanna so eloquently claimed, this was nothing more than “a nebulous phrase involving no question of law for the Courts” (Quoted in Chubb, 1991: 64). Once enacted, *Bunreacht na hÉireann* was considered a finished piece of work, a constitution fast developing “the rock-like qualities of Moses’ tablets” (Chubb, 1991: 83). Even over the course of the
coming decades, when the judiciary began to take a more “creative” approach to constitutional interpretation, the standing of the State’s socio-economic “principles” changed little. The agenda for constitutional reform was instead dominated by the question of Northern Ireland, framing as it did the public debate concerning the “social” issues: contraception, abortion, homosexuality and illegitimacy. Questions of constitutional change in the Republic, Chubb concludes, were discussed in that context almost exclusively (1991: 85).

Before highlighting what I believe to be shortcomings in this analysis, I should emphasise that The Politics of the Irish Constitution is, by and large, a most insightful study. Given its sometimes monolithic appearance, it is all too easy to forget that a constitution is the product of the interaction of individuals and their ideas. Particularly praiseworthy therefore is the central role the book ascribes to political culture. For Chubb, beyond the mere contents of a document, constitutions are involved in an on-going process of evolution or as Carl Friedrich put it: “too few people realise that every constitution is continually changing, even without formal amendment” (Chubb, 1991: 3). The task of developing the basic constitutional laws is thus closely bound up with the political system’s need to keep in tune with contemporary life and values. In the judicial system, the courts in Ireland are not self-starting: the most important reason underpinning judicial activism was that citizens took the cases to them (See Justice Walsh in Sturgess and Chubb, 1988: 420). Constitutional development, Chubb explains, is largely the result of changes in people’s values and standards, changes they wish to see reflected in the basic law of the State. Whilst this perspective illuminates constitutional change in the context of controversial issues such as divorce and contraception, Chubb does not deal with socio-economic rights similarly. On the one hand, he accepts that popular, political and judicial opinion on the “social” issues may change over time; on the other, he does not seem to question whether values and standards concerning issues such as poverty and social justice are similarly evolving and transforming. Moreover, by dealing only with those “key” proposals that generated considerable public debate and political action, Chubb fails (or rather does not attempt) to explain why other issues, socio-economic rights included, did not achieve the same critical mass of publicity or translate into effective action. If we follow Chubb’s analysis for example, the case of O’Reilly versus Limerick Corporation [1989], mentioned at the outset, appears from nowhere, rather like a bolt from the blue. On the contrary, instead of taking the emergence of this socio-economic rights discourse for granted, it is necessary to chart its genesis and evolution. Indeed, in addition to the question of why did this discourse emerge is the rather more curious one—why did it take so long? What is proposed therefore is a politico-sociological account of change and the constitution, specifically with regard to highly consequential decision-making concerning socio-economic rights. In the following sections, I hope to outline this alternative approach to analysis a little more clearly.

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3 A notable exception to this trend, documented by Chubb, occurred with Murtagh Properties v. Cleary [1972] in which Justice Kenny found that the courts may indeed have regard to the Directive Principles of Article 45 when deciding whether a claimed constitutional right exists. Nonetheless, the Courts were to proceed no further in this regard.
1.2 Power in Three Dimensions

Steven Lukes’s *Power: A Radical View* (henceforth *PRV*) is a seminal analysis. I want to use the book simply as a starting point for discussing how important decisions, including those affecting a constitution, come to be made in society. Briefly stated, the central thesis of *PRV* challenges the behaviourist emphasis of previous accounts of power (See Dahl, 1961; Bachrach and Baratz, 1970). Rather than focus on observable conflict over decisions or agenda-control, Lukes questioned instead the extent to which people were complicit in their own subjection to the powerful. People’s interests, he suggested, may not be consciously articulated at all times. If challenges to the powerful cannot be thought of by those subject to them, then there is no need to defeat them in political debate or even to organise them out of the debate itself:

To put the matter sharply, A may exercise power over B by getting him to do what he does not want to do, but he also exercises power over him by influencing, shaping or determining his very wants. Indeed, is it not the supreme exercise of power to get another or others to have the desires you want them to have—that is, to secure their compliance by controlling their thoughts and desires? (Lukes, 1974: 23).

Drawing on Antonio Gramsci’s understanding of hegemony, Lukes elaborated a third dimension of power based on how the willing compliance of those subject to power was to be secured. On this view, power is most effective when it is least observable:

Power can be deployed to block or impair its subjects’ capacity to reason well, not least by instilling misleading or illusory ideas of what is ‘natural’ and what sort of life their distinctive ‘nature’ dictates, and, in general, by stunting or blunting their capacity for rational judgement. Power can induce or encourage failures of rationality (Lukes, 2005: 115).

Two important caveats follow. Firstly, whilst we may accept power as defined by A acting contrary to B’s interests, the question of what action is to count as significant rests ultimately on how we conceive of B’s interests. The answer to that question is inherently value-dependent: any view of power rests on a normatively specific conception of interests. Without wishing to define people’s “real” interests for them however, we might instead view three dimensional power as acting on a continuum, ranging from the control of information and the production of “false consciousness” to processes of socialisation and the naturalisation of subjects to existing circumstances (Lukes, 1974: 23). Secondly, much hinges on what is meant here by a failure of “rationality”, a term that does not lend itself to easy description. On a point of methodological principle however,

the belief—often implicit—that a satisfactory criterion must be a ‘complete’ one has done... a good deal of harm in the social sciences by forcing us to choose between groundless defeatism and arbitrary completion (Sen, 2003: 230).
Rather “if an underlying idea has an essential ambiguity, a precise formulation of that idea must try to capture that ambiguity rather than hide or eliminate it”. In this manner, by admitting the very incompleteness of rationality judgements, we might move to separating out clear-cut cases of irrationality from others. For present purposes, by a failure of rationality, I refer simply to a distortion of reasoning, defined here as those processes of belief and desire whose operation would be unacceptable to the subject were he aware of it (Elster, 1993: 12). Having outlined PRV’s theory of power, I should now trace its importance for my own work concerning change and the law, specifically with regard to the dynamics of human “rights” discourse.

1.3 Change and the Law (through 3-D glasses)

In a series of lectures, entitled “Law, Liberty and Morality”, the pre-eminent legal theorist HLA Hart established an empirical account of how law is made and evolves, emphasising a key role for those normative ideas of justice prevalent in society (1963). On this view, the law is contingent not just on an established system of rules but also on shared normative premises, premises that profoundly influence the interpretation and development of those rules:

The law of every modern state shows at a thousand points the influence of both the accepted social morality and wider moral ideals. These influences enter the law either abruptly and avowedly through legislation, or silently and piecemeal through the judicial process...No ‘positivist’ could deny these facts, or that the stability of legal systems depends in part upon such types of correspondence with morals. If this is meant by the necessary connection of law and morals, its existence should be conceded (Hart, 1994: 188).

When examining the consequences of the “accepted social morality and wider moral ideals” upon the creation of rights in the legal system proper, threedimensional power is, I suggest, a particularly relevant consideration. This is particularly true of socio-economic rights where conflicts about their validity and about the use of judicial activism to secure them are often ontological conflicts (Fanning, 2007: 144). Put another way, prior to their becoming legal claims, these rights exist as moral demands among people, demands that ostensibly concern the location of responsibility for the material conditions of social living. If PRV’s central thesis holds true however, the powerful are particularly capable of divesting themselves of responsibility, not by having to deny it, but through the promulgation of ideas whereby their potential for irresponsibility is never open to question. Analysis of society’s normative landscape in this manner heightens our sensitivity to how people’s interests have been defined in constitutional debates, particularly those that prize certain interests as “natural” and promulgate “rights” accordingly. Having outlined the three-dimensional theory of power, its relevance for analysing the evolution of law should be clear, specifically with regard to the ontological discourse concerning “rights”. With a view to questioning the rationality of the constitution-making process, it is to the closer disaggregation of this ontological discourse that we now turn.
QUESTIONING THE RATIONAL

2.1 Political Psychology

In addition to tracing the origins of present-day beliefs about socio-economic rights, I am also interested in whether they have been subject to what might be described as distortions of reasoning. If my attempts to identify such distortions in constitutional discourse are to avoid the pitfalls of folk psychology, then methodological considerations must be placed to the fore. In this regard, Jon Elster’s Political Psychology provides a useful introduction to its previously neglected subject-matter. Briefly put, the book attempts to chart something of a Third Way for the social sciences, a path between general theory and mere description, however “thick”:

Between these two extremes there is a place and need for the study of mechanisms. I do not propose a formal definition, but shall provide an informal pointer: A mechanism is a specific causal pattern that can be recognised after the event but rarely foreseen (Elster, 1993: 3).

By way of example, consider the mechanism of sour grapes (or forbidden fruit) (Elster, 1999: 7). On the one hand, desires are often adjusted in accordance with the means of achieving them—like the fox who considered the unreachable grapes to be sour. On the other, the opposite mechanism is sometimes seen whereby people want what they cannot have, precisely because they cannot have it. Whilst we cannot claim both (a) that people prefer what they have to what they cannot have and (b) that they prefer what they cannot have, we can maintain, without fear of contradiction, the existence of two contrary mechanisms:

The distinctive feature of a mechanism is not that it can be universally applied to predict and control social events, but that it embodies a causal chain that is sufficiently general and precise to enable us to locate it in widely different settings. It is less than a theory, but a great deal more than a description, since it can serve as a model for understanding other cases not yet encountered (1993: 5).

Whilst it might appear that mechanisms are essentially psychological, Elster argues that “we can use psychological mechanisms as building blocks in the construction of sociological ones” (1993: 7). Drawing on the work of Alexis de Tocqueville, he goes on to show how some of the psychological mechanisms identified can interact so as to account for large scale social phenomena (1993: 7). For present purposes however, I am mainly concerned with mechanisms that distort desires and beliefs, defined earlier, as those whose operation would be unacceptable to the subject were he aware of it.

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4 In a more recent publication, Elster clarifies this definition somewhat: “mechanisms are frequently occurring and easily recognisable causal patterns that are triggered under generally unknown conditions or with indeterminate consequences” (2007: 36).
2.2 Mechanisms of Cognitive Dissonance

Elster helpfully catalogues a number of mechanisms that serve to distort reasoning. Given the applied political psychology analysis to be undertaken in the following section however, I should like to focus on one only: the drive to reduce cognitive dissonance. Leon Festinger’s *A Theory of Cognitive Dissonance* provides us with a useful starting point for discussing the phenomenon (1957). He famously claimed that when the beliefs or behaviour of an individual come into conflict with what she knows about her environment, the resulting tension is psychologically discomforting, a state known as cognitive dissonance. Individuals are driven to reduce this discomfort through a variety of strategies. One might change behaviour or alter the surrounding environment. Failing that, one might attempt to introduce new cognitive elements. If that does not reduce dissonance directly then at least it might reduce the magnitude of the discomforting balance of cognitions. Despite the term, Elster reminds us, the reduction of cognitive dissonance is motivational rather than cognitive: “The organism seems to have a need for interior tranquillity, which makes it adjust its desires to its beliefs (or vice versa) until they are relatively consonant with each other” (1993: 12). Typically, the adjustment will choose the path of least resistance (2007: 19). To illustrate the point, the phenomenon of “blaming the victim” is a recurring example of dissonance reduction. Melvin J Lerner has noted that assuming that an injury or inequality was deserved or inevitable...permits non-victims or members of advantaged groups to reduce dissonance by enabling them to maintain that the world is just—a pervasively, insistently, and sometimes irrationally held belief (1980).

Here, the recognition of inequality challenges the reality of a just world. If individuals wish to preserve their initial belief—and often a great many other cognitions are bound up with believing in it—then they are motivated to load responsibility for inequality on to victims. Deciding that persons are “guilty”—of something like laziness, idleness or incompetence—helps restore belief in the “reality” of a just world. In the analysis that follows, it is hoped that the ontological belief-systems or world views which have informed reasoning and deliberation about the constitution might be usefully explored with this kind of phenomenon in mind. Before doing so however, it remains necessary to outline a principled method of identifying such distortions in discourse

2.3 Disaggregating Beliefs: A Decoding Principle

In this regard, *Political Psychology* provides some insight. Having drawn on Alexis de Tocqueville to develop his account of mechanisms, Elster goes a step further in trying to identify the psychological mechanisms at play in the work of the author himself. His aim is “to discuss Tocqueville’s own psychology—his emotional and intellectual makeup...to paint a picture of the writer rather than of the politician or private man” (1993: 102). The details necessary for this portrait of Tocqueville’s “mental universe” emerge from a disaggregated reading of his writings, a task in which he is aided by a “principle of charity that should, as a rule, govern textual interpretation” (1993: 134). With that in mind, the classifications necessary for a typology in the present instance (concerning the identification of cognitive dissonance) are sug-
gested by Leon Festinger (1957: 279; Table 1). To determine whether or not dissonance exists, he claims, one must first specify the cognitive elements which are under consideration. Second, one examines whether, considering either element alone, the obverse of the one follows; that is, X and Y are dissonant if not-X follows from Y. Third, if it seems plausible to assert that the relation is dissonant, it is usually also helpful to specify on what grounds—logical, experiential, cultural, or otherwise. Fourth, it is also necessary to specify what specific changes in cognition, or what new cognitive elements, would reduce the magnitude of the dissonance determined.

Table 1: “Blaming the Victim”: an example of cognitive dissonance

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<th>X</th>
<th>World is just</th>
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<tr>
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<td>World is not just</td>
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| Y       | ‘Innocent’ victims of inequality suggest world is not just BUT
          | ‘Guilty’ victims restore belief in a just world. |

On the basis of this decoding principle, I shall proceed with a close reading of the constitutional discourse with a view to singling out instances of distorted reasoning, specifically instances of cognitive dissonance.

APPLIED POLITICAL PSYCHOLOGY

3.1 Background to Vincent Grogan’s contributions

During the late 1950s and early 1960s, according to Basil Chubb, Ireland witnessed the gradual coming to power of a new generation in both political and judicial circles. A new Taoiseach, Seán Lemass, not only charged an All-Party Oireachtas Committee with the task of compiling the first major review of the Constitution but also secretly encouraged the judiciary to take a more “creative” approach to constitutional interpretation. Whilst the former initiative floundered, the latter culminated most famously in an assertion of judicial authority and the discovery of unenumerated rights. Between 1958 and 1989, the courts developed several approaches to elaborating values and identifying rights. In *Ryan v. Attorney General* [1965], Kenny J relied on the “Christian and Democratic nature” of the state. Later, in *McGee v. Attorney General* [1974], Henchy J relied upon the Constitution’s recognition of those rights inherent in the citizen by virtue of his human personality, in the context of the social order envisaged by the Constitution. In the same case, Walsh J relied upon a distinctly Thomist conceptualisation of Natural Law, drawing no distinction between natural and human rights. Whether one considers this ontological conflict or simply muddled theorising, these changes took place against a
backdrop of intense public debate. A variety of claims were made about those “rights” said to be present in (or to be interpreted into) the constitution.

Although the 1960s brought prosperity and increasing acceptance of welfare state reforms, certain factors made socio-economic “rights” unlikely outsiders in this debate. Firstly, the Cold War supported the ideological division of civil and political liberties from social and economic ones. Secondly, in the midst of generational change, the Catholic Church was engaged in mounting a defence of its position in Irish society. The primary fault-line was clear enough: no State institution was to usurp the traditional relationship between the Church and the family, where responsibility for welfare was to remain. The widespread belief in this world-view resulted in a preponderance of Church influence over schools, hospitals and other welfare agencies. The conservative Catholic journal, Christus Rex, busily engaged in the intellectual defence of the Church on these issues. One of its main contributors was the parliamentary draftsman and public commentator, Vincent Grogan. Between 1954 and 1970, Grogan published a series of articles concerning the constitution, “rights” and poverty, among them “The Constitution and the Natural Law” (1954), “Problems of the New African States” (1962), “Nationalism and Supra-nationalism: The Paradox for the Modern Citizen” (1963), “Disparities: A World View” (1963), “Human Freedoms in Ireland Today” (1966) and “Schools under the Constitution” (1970). Without suggesting that Grogan’s contributions were in anyway especially significant to the specific decisions adopted by the courts, I think they come at an important moment in the constitution’s evolution and reflect a distinct current of ontological thought prevalent amongst the generation in high-office at the time. For these reasons, they are worth a closer look. In what remains of this paper, I want to show how Grogan’s ontological commitments to Catholic social theory—specifically, his belief in a consensual model of social order—may be seen to exist in tension with real-world circumstances of material inequality. Pressures to reduce cognitive dissonance, I argue, account for Grogan’s “victim-blaming” approach to poverty.

3.2 X-Cognitions: Grogan’s Scholastic World-View

Vincent Grogan elaborates his metaphysics in some detail whilst arguing for the greater recognition of the Natural Law in constitutional interpretation, a decidedly unpopular view amongst the positivist judges of the time. Significantly, all the articles under examination, although written over the course of a decade and with alternative subject-matter in mind, present the same, remarkably coherent world-view. Within Grogan’s mental universe, “rights” are seen as “natural”; that is, they are God-given, possessed by man in virtue of his rational being.

The Divine Will is the Eternal Law, the metaphysical source of all rights and duties in short, of the Natural Law. The Constitution adopts the Thomistic conception of the Natural Law as the expression of the Eternal Law in the free rational creature. As St. Thomas himself points out, we can have no clear concept of the Eternal Law, in relation to the Natural Law, or any other law, unless we humbly believe in Christ as Supreme Legislator, as the Redeemer of Mankind, and in the Holy Trinity as the source of all Divine Life and Law (Grogan, 1954: 202).
It can with confidence be asserted that, in recognising the Most Holy Trinity as man’s final end and the source of all his rights, the Constitution adheres to the philosophy of St. Thomas Aquinas and all that Scholasticism continues to teach. Just as certainly as it rejects all positivist and utilitarian philosophy does it reject Kant’s doctrine of the categorical imperative—that moral obligation is founded only upon obedience to the dictates of man’s own nature and hence that human nature is its own end (Ibid: 207).

Following the twelfth-century Scholastic philosopher, Thomas Aquinas, in his *Summa Theologica*, Grogan sees this Natural—“organic”—Law as prior to the State; the State and all its institutions are seen to exist merely to serve the Natural Law and thereby ensure that man is capable of living “the good life” (Grogan, 1966: 101). In essence, this good life concerns unity with the Holy Trinity as man’s “final end”, an aim that is said to animate man with proper morality (Grogan, 1954: 207).

### 3.3 Y Cognitions: The Challenge of Poverty

Whilst Grogan elaborated his views on any number of subjects, I am interested here only in his handling of material poverty in the world. On this point, he documents the widespread underdevelopment, even starvation, faced by “the poor nations of the earth”, in particular postcolonial African states such as Ghana, Swaziland and Botswana where he had some experience as a constitutional and legislative draftsman.

Just as the political pattern of the African continent today has been drawn by the powers of Europe according to the dictates of self-interest, so, too, the economic development of its several territories has depended upon the needs of Europe and not of the indigenous inhabitants...The vast majority of the population of ex-colonial Africa is still desperately poor; disease and malnutrition are rife almost everywhere; only a tiny percentage of the vast wealth drawn out of Africa has ever found its way back to help the people themselves (Grogan, 1962: 139).

Closer to home, he catalogues a number of (what he calls) “defects” in the Irish social system (Grogan, 1966: 107).

The great majority of us can count our blessings, and there is no need to dwell upon them. What we need to be more concerned about are the blind spots in our notions of social justice. There is a grave danger that, in our increasingly affluent society, we may have a permanently depressed ten per cent, as in the United States. Despite all our measures of social welfare it remains true that the people who are most in need are the most shabbily treated...Our social assistance has not kept pace with the rise in the cost of living...(Grogan, 1966: 105).

Grogan further criticises the old Victorian system of Poor Relief still used by some thirty thousand individuals, a system that “retains all the humiliation and depravity of its origins...the last refuge of the indigent and the pauper” (Grogan, 1966: 105). There are further “blind spots” such as the neglect of those in reformatories and industrial schools or the neglect of children, sixty per cent of whom leave education...
after primary school whilst forty per cent are “destined to emigrate” (Grogan, 1966: 106). In sum, “(t)he people who are most in need are the most shabbily treated” (Ibid: 105).

3.4 The Drive to Reduce Cognitive Dissonance

Now, as we’ve seen, Leon Festinger tells us that two cognitive elements are dissonant if, considering these two alone, the obverse of one element would follow from the other; that is, X and Y are dissonant if not-X follows from Y. Consider Grogan’s belief that people are animated by proper morality, resulting in social order. The obverse of this cognition would entail that people are not animated by proper morality, resulting in social disorder. Grogan’s recognition of material inequality however would tend to suggest something very like disorder in society (Table 2).

Table 2: Cognitive dissonance in Grogan’s writings

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<td>people are not animated by right morality resulting in social disorder</td>
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<td>material inequalities suggest social disorder BUT ‘unenlightened’ victims restore belief in social order</td>
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One might expect the lack of “fit” between Grogan’s ontological schema and his real-world observations to give rise to pressures to reduce the gap. Since world-views are generally resistant to change in the short-term, the pressure to reduce the magnitude of dissonance would be expected to fall upon the empirical cognitions.5

3.5 Blaming the victim, Irish-style

Grogan however does not quite downplay material inequality. In fact, his account is quite forthright, even if he tends to rely more on emotive description than hard evi-

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5 Apart from the drive to reduce cognitive dissonance, it should be noted that other types of “irrationality” or forms of the distortion of reasoning that Elster catalogues may be at play here. Beliefs can also be formed—or distorted—by colder mechanisms, “that is, cognitive processes so rigid that they systematically lead people into error...important aspects of ideology fall in the doubly cognitive character” (Elster, 1993: p.15). Moreover, it is important to note that “Belief in a Just World” is more than a simple extension of cognitive dissonance theory. Whilst we can rely on the theory for helping us to understand how people react when their experiences do not conform to their expectation, it cannot explain why people are strongly committed to cognitions like belief in a just world. Lerner claims this strong attachment concerns the integrity of their conception of themselves and their world (1980: p.36). In any event, the need for human beings to find meaning in the world would appear to be “a largely ignored but very significant phenomenon for the study of political life” (Elster, 1993: p.14).
There exist definite signs of “victim-blaming” in his analysis of the causes of poverty. Victim-blaming, as I use the term here, implies a shifting of responsibility from those actually responsible for an outcome to those suffering the effects. This is evident in the causal narrative that Grogan creates concerning poverty and his resulting recommendations. Poor nations find themselves poor, he maintains, partly because of geography and demographics but primarily because of national psychology.

But the main reason for this enduring poverty in so many lands, in contrast with the expanding wealth of the North Atlantic communities, is I believe to be found in the world of ideas: in the religion of its peoples, in their attitude towards life and death, towards their fellowmen, towards the things of this world as opposed to things of the spirit (Grogan, 1963: 119).

The poor are therefore engaged on the basis of their perceived lack of understanding. Material inequality is viewed as surmountable only if the relevant participants seek “enlightenment”; that is, if they come round to Grogan’s world-view. In Ireland, the defects in the social system similarly need to be addressed through “the education and leading of public opinion”.

Human freedoms can only be fully and truly realised in a society of educated, really adult, Christians, with a true hierarchy of values, each aware of his personal commitment in this world, developing and perfecting himself, and hence society as a whole, in his daily work (Grogan, 1966: 107).

It is a question of the Church “instructing the world in its own high destiny” (Grogan, 1966: 108). This recommendation towards enlightening the poor is given an added bite in the case of postcolonial African societies. In the face of Communist economic aid, “the danger is that a people may rapidly acquire all the technical training and mechanical resources of a materialist civilisation without the ethical equipment or code of public morality needed if they are to become its masters and not its slaves” (Grogan, 1962: 141).

What is still needed and, if I may say so with the greatest respect, urgently needed, is a re-evaluation of the social teaching of the Church from the standpoint of these new States themselves, in the light of their present social structures...Most of these countries—or rather their leaders—claim to be socialist. One must grant their sincerity in seeking to resolve the dilemmas that confront them. They may be alienated and they will certainly be puzzled and pained, unless the teaching of the Church in regard to socialism is carefully restated in terms they can understand. Socialism as a term has many meanings. What they mean by it needs to be analysed and clarified for themselves and valued in the light of the fundamental principles of the Church...May we humbly hope for a new encyclical addressed to them? (Grogan, 1963: 122).

In sum, Grogan “blames the victims” for their poverty, circuitously invoking spiritual deficiency as the reason for material destitution. Within the limits of Catholic Scholastic thought, he is blinded to potential weaknesses in his world-view’s most basic
assumptions, weaknesses suggested by the existence of material inequalities and economic disorder. Grogan does not trace these real-world effects to real-world causes, causes such as political decision-making or market institutions. Instead, he simply reproduces his initial ontological premises almost verbatim in his causal narrative and recommendations. Significantly, this dissonant psychological process appears to play out quite consistently in his writings over time.

**BY WAY OF CONCLUSION**

Rather than attempt a lengthy conclusion here, I should simply like to emphasise a few basic themes. First and foremost, this paper may be seen as a running argument for the centrality of past and present metaphysics to present day constitution-making, particularly with regard to debates about socio-economic rights. Seemingly benign ontological premises tend to have very real world effects. Secondly, I have suggested that three-dimensional power is a very real consideration in these ontological debates. If Steven Lukes is correct, the powerful are particularly capable of divesting themselves of responsibility, not by having to deny it, but through the promulgation of ideas whereby their potential for irresponsibility is never open to question. Thirdly, I have tried to show how one might identify distortions of constitutional reasoning brought about by three-dimensional power. Employing Jon Elster’s account of mechanisms, this method ostensibly concerns the principled disaggregation of ontological discourse. Finally, in support of these arguments, I have tried to open a political psychological perspective on Irish constitutional development. By way of illustration, I have tried to demonstrate how Vincent Grogan’s ontological commitments to social order existed in considerable tension with his account of real-world economic disorder. Within the boundaries presented by Catholic social thought, pressures to reduce cognitive dissonance resulted in his invoking spiritual deficiency as the reason for material destitution; what I have called the phenomenon of blaming the victim, Irish-style. Ultimately however, much work remains to be done and so I do not claim to have reached anything like a definitive conclusion about the broader state of constitutional reasoning over some three generations of political life. However, it is indeed striking to note the longevity of the division between civil-political and socio-economic rights in the discourse surrounding constitutional reform. With that in mind, I leave you with the intriguing possibility, to paraphrase Keynes, that practical lawyers, believing themselves to be quite exempt from any intellectual influences, might well prove to be the slaves of some defunct political theorist.

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