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The Origins of the Irish Constitution 1928-1941. GERARD HOGAN. Dublin. Royal Irish Academy. 2012. ix+865 (including Index). Hardback. €50. ISBN 978-1904890751

The self-governing Irish state has had two Constitutions since its secession from the United Kingdom. Both of these Constitutions suffer from difficulties of image and identity. The circumstances that surrounded the adoption of the Constitution of the Irish Free State in 1922 resulted in claims that this document was actually a British imposition. The Constitution that succeeded it in 1937 has suffered from perceptions that it was heavily influenced by members of the clergy and so reflects the doctrine and ideology of the Catholic church. One of the great tasks of Irish constitutional scholarship in recent decades is the examination of the accuracy of such popular images. *The Origins of the Irish Constitution 1928-1941* published by the Royal Irish Academy is the latest contribution to this field.

This volume was inspired by the *Documents on Irish Foreign Policy* series that is also produced by the Royal Irish Academy. It is, however, difficult to compare the two endeavours. The volumes on Irish foreign policy provide a selection of key documents with a minimum of commentary. Readers are assumed to have some familiarity with the general scheme of Irish and international history during the period covered by the relevant volume. Assumptions of this nature cannot safely be made with respect to Irish constitutional history. For this reason the author, Mr Justice Gerard Hogan, has provided extensive and invaluable commentary in conjunction with the reproduction of key documents. The author is well placed to produce a work of this nature having approached the Irish Constitution from the perspectives of academic, author, barrister and, most recently, judge of the Irish high court.

The author and his documents editor, Eoin Kinsella, faced unenviable choices in deciding which documents should be reproduced and which, with great regret, had to be set aside. A reluctance to omit a number of key documents of substantial size was overcome by their inclusion on a dedicated website that acts as a companion to the book (www.irishconstitution.ie). Nevertheless, the project had to be kept within reasonable limits and the temptation to follow many constitutional “roads not taken” has been avoided. The book does, however, make extensive reference to unfulfilled plans to create a special constitutional court (first identified in Donal K. Coffey, *Irish Constitutional History 1936-1937*, unpublished thesis, UCD, 2010). This abandoned initiative does, however, have contemporary relevance as the Irish supreme court appears to be evolving into the position of a dedicated constitutional court, a process that will be further advanced if recent proposals to create a court of civil appeal are adopted.

The choice of a title for any work is always a delicate task. An indication to casual browsers that this work is a collection of key documents with accompanying commentary might have been a useful addition in this context. It should also be noted that the book devotes substantial attention to the death throes of the 1922 Constitution in addition to the drafting of the current Irish Constitution. The adoption of a broadly chronological approach ensures that chapters on the former subject tend to alternate with the latter.

Some critics are likely to argue that a different range of dates would have been preferable for a work of this nature. It must be admitted that the choice of 1928 as the beginning of the undermining of the Irish Free State Constitution is open to challenge. The removal of a number of interesting provisions related to popular sovereignty in that year did rob the 1922 Constitution of some of its most innovative and distinctive aspects. Yet, it is difficult to see this as marking the beginning of the end for the 1922 Constitution. Alternative starting points for this process include 1929, when the Irish parliament extended the time limit in which it could amend the Constitution at will and without any need for a referendum. Another candidate is 1927 when a Public Safety Act declared that any of its provisions that contravened those of the 1922 Constitution would operate and have effect as an amendment of that Constitution as long as the Act was in force. Indeed, it could be argued the fatal undermining of the Free State Constitution really occurred in 1922 when extensive leaks in the drafting process ensured that it was widely known that the document had been substantially amended at the insistence of the British government of the time. However, it cannot be denied that the choice of such an early commencement date would have radically altered the nature of the project undertaken by the author and expanded an already large volume into one of unwieldy length. The range of candidates as potential starting points ensures that no choice could possibly have pleased everyone.

Even the most determined critic would have few quibbles with the choice of closing date. The inclusion of material up to the end of 1941 allows for analysis of the role of the Irish supreme court in dealing with the fallout from the decision in *State (Burke) v. Lennon* [1940] I.R. 136, a case that provided a clear indication of the potential of the new Constitution in the sphere of judicial review. The year 1941 also marks the end of a transitional period under which constitutional amendments could be made without holding a referendum. This allows the book to conclude with the fulfillment of principles of popular sovereignty that never reached fruition under the 1922 Constitution. In this way the theme of popular sovereignty marks the beginning and end of the period under review and provides the book with a pleasing sense of symmetry.

The deep respect of the author for the talents of the drafters, such as John J. Hearne, Stephen Roche and Michael McDunphy, shines through the pages of commentary. The reader is invited to look over the shoulders of these men by means of lavish reproductions of their handwritten notes. A group of Jesuit priests, most notably Father Edward Cahill, also contributed to the drafting process. Yet, as the author demonstrates, the reference to the special position of the Catholic church (removed in 1973) and the final wording of other provisions that concerned or invoked religion were more restrained than those desired by influential clerical figures. Even Eamon de Valera, head of government and driving force behind the drafting process, did not get everything his own way in the equally controversial provisions concerning women. In particular, he was obliged to revise a provision that made reference to the “inadequate strength of women”.

The author deserves high praise for the production of this important work and also for the myriad of future works that will undoubtedly make use of the raw and processed materials provided by this publication. It should be noted that this volume has been published at a *fortuitous* moment as a Constitutional

Convention will soon be appointed to examine key aspects of the 1937 Constitution. This book will provide the Convention with an indispensable guide to the origins and context of the provisions under review. The current Taoiseach promised, while launching this book in September 2012, that the recommendations of this Constitutional Convention would not be left to gather dust, as was the fate of the work of the Constitution Review Group of the 1990s. It is sincerely hoped that future readers of *The Journal of Legal History* will not find cause to shake their heads while perusing the preceding sentence of this review.

One of the most noteworthy aspects of this book is its comparative theme. The influence of contemporary European constitutions, in particular the 1919 Constitution of Weimar Germany, on the Irish Constitution of 1937 is thoroughly explored throughout the commentary. This includes the controversial provisions concerning religion and women which are shown to have parallels in contemporary European constitutions such as the 1921 Constitution of Poland and, once again, the Constitution of Weimar Germany.

The comparative theme that runs throughout this publication reflects a general approach within recent Irish constitutional scholarship that attempts to position the Irish 1937 Constitution within a European context rather than an exclusively Catholic or Irish Catholic tradition. This development prompts two closing observations that should not be seen as criticism of this fine publication but as analysis of this wider theme in Irish constitutional scholarship. First, it should be remembered that the desire to promote a European identity for an Irish constitution is not without precedent in the overall context of Irish legal and historical scholarship. The same approach was used in the 1920s and 1930s with respect to the 1922 Constitution of the Irish Free State in order to deny its competing identity as the constitution of a Dominion of the British Commonwealth. Secondly, although this emphasis on European identity is now firmly entrenched in Irish constitutional scholarship it tends to exclude the influence of one particular European constitution that had more influence on the 1922 and 1937 Irish Constitutions than any other. The historical reasons for marginalising the influence of the British Constitution on the two Constitutions of modern Ireland do not require detailed explanation. The British Constitution occupies much the same position in Irish constitutional historiography as vanilla ice cream in a shop freezer. It fades into the background when compared to the more exotic flavours and its merits are seldom celebrated. Yet any shopkeeper will tell you that sales of vanilla always outstrip those of the other varieties on offer.

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