

Eoin Carolan (ed.), *The Constitution of Ireland: Perspectives and Prospects*. Bloomsbury Professional, Dublin, 2012. xiii+511pp., €175.00 (paperback). ISBN: 978-1-78043-138-3

This book was produced following a conference held in King's Inns in June 2012 in celebration of the 75th anniversary of Bunreacht na hÉireann. The aim of the conference was to reflect on the past, present and future of the Irish Constitution. As expected, many of the papers consider aspects of political and ***250** constitutional reform as well as other social and political issues which form part of contemporary Irish thought. One area, which editor Eoin Carolan points out is conspicuous by its absence, is that of substantive constitutional rights. Having been the focus of so much constitutional scholarship in the last number of decades, it may seem strange that issues around constitutional rights are not examined in such a volume of essays. However, as Carolan suggests: "[I]t may be that other less charted areas of constitutional doctrine offer more appealing prospects for new scholarship."

Chief Justice Susan Denham gave the keynote address at the event in 2012. Her paper also introduces the volume by acknowledging the original drafting team of the Constitution and also pointing out areas in need of reform, in particular the structure and organisation of the courts—a suggestion which, it seems, has been taken on board by the Minister for Justice, who has since proposed constitutional amendments in this area. An amendment intended to create a new Court of Appeal was approved in a referendum held on October 4, 2013. Many of the other contributions also focus on aspects of reform. Jim O'Callaghan deals with the topical issue of Seanad abolition and makes suggestions for reforming the institution rather than simply removing it. This is particularly interesting, as a referendum to abolish the Seanad was narrowly defeated on October 4, 2013. Fergus Ryan points out that the wording of the Constitution does not preclude same-sex marriage and so it would not be necessary to amend the document in order to provide for such unions in Ireland. John O'Dowd considers the Constitutional Convention and the criticisms levelled at the remit of that body. He concludes that despite the limits placed on it, the Convention "still has the opportunity to recommend significant constitutional changes that will address not just the immediate concerns of the present but also the process of future constitutional amendment on a better footing".

Paul Gallagher makes an interesting suggestion for reform at the end of his contribution on the limits of constitutionalism. He refers to the "crude remedy of declaring a legislative provision unconstitutional" and suggests that the consequences of such a declaration need to be urgently addressed. Remedies for unconstitutional legislation are also considered by David Kenny, who argues that a restrictive interpretation of the separation of powers has led to a very conservative attitude by the courts in relation to alternative remedies for unconstitutional legislation. As Kenny points out, the standard remedy for an unconstitutional law in Ireland is to strike it down entirely. While other jurisdictions, such as the UK and Canada, are far more liberal in their approach, it seems Irish courts feel that they are bound by the separation of powers and cannot be seen to interfere with legislation. However, Kenny makes the argument that invalidation is, in fact, far more invasive than the other potential remedies and that, by engaging in more constructive interpretation along UK lines, the Irish courts could actually aid the legislature and show more respect for the legislative power.

Conor O'Mahony considers a similar question in his essay on constitutional amendment and judicial restraint. He questions Gerry ***251** Whyte's argument that because the Irish Constitution can be easily amended, Irish courts can adopt a less restrained position than their US counterparts. O'Mahony tentatively concludes that Whyte is correct, although Alexander Bickel's advice is also commended: "[C]ourts should aim to make decisions that are capable of gaining the assent of the people in the 'rather immediate foreseeable future'." While issues around constitutional rights may have been a surprising omission in this collection, a surprisingly popular theme which emerged was that of republicanism. First, Philip Petit considers the influence of republican thought on Irish history and, consequently, on the Irish Constitution. He also makes suggestions on how to reform the Constitution on the basis of the republican tradition. Eoin Daly continues this theme, pointing out that while, for years, natural law was the dominant tool for constitutional interpretation, this approach has now been rejected. Daly suggests that republicanism might present a suitable alternative as a

philosophy in constitutional interpretation. Ronan McCrea also picks up on this theme, arguing that the Irish State's commitment to republicanism was really based on a desire to break with the British monarchy rather than a commitment to a specific interpretation of republican values and this "failure to articulate a contemporary and relevant idea of our constitutional whole has impoverished our democracy".

The idea of republican values permeates quite a few further essays, including Gaetano Marzulli's consideration of direct democracy and the referendum and the contribution of Marie-Luce Paris on popular sovereignty and the use of the referendum. It also appears in Jane Suiter's consideration of a constitutional moment, where she suggests a return to "the civic republican instincts underlying the Constitution of 1922", which would involve "a more democratic, more accountable executive, a more powerful legislature, and direct citizen participation".

There are many more fascinating contributions in this collection, such as Fergal Davis and Christopher Thornhill's discussion of the emergency powers provision and the fact that Ireland existed in a state of emergency for over 60 years. Aileen Kavanagh considers the subject of unconstitutional amendments and the question of whether there are any constitutional values which are so fundamental that they cannot be abrogated, even by the people in a referendum. All of these contributions demonstrate the richness of constitutional study in Ireland today.

Given the recommendations of the Constitutional Convention and the various proposed referendums, we are possibly entering the greatest era of constitutional change in Ireland since the enactment of Bunreacht na hÉireann. There have even been some calls for a complete overhaul of that document. Nevertheless, it is clear that, although there is certainly a need for certain reforms, the lesson to be learned from this collection is that the document has successfully stood the test of time and continues to provide a solid foundation and to play a vital role in the development of modern Ireland.

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