Credit and Constitution-Making, Irish Style

An inquiry into the role of the credit system in the making of the 1937 Constitution's economic provisions

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Abstract

The economic and social provisions of the Irish constitution, as outlined in Articles 40-45, were formed following a series of debates concerning property rights, land redistribution and financial regulation, as well as education and general living standards. In the course of these debates, proposed 'economic rights' were transformed into non-legally binding 'directive principles'. How did this happen? And what was the relationship between the state and the banking system in the making of Bunreacht na hÉireann*? How did the Catholic clergy become the 'watchdogs of the private property classes'? In this paper Thomas Murray argues that the making of the 1937 constitution was shaped by class politics, which prevented both moderate regulatory proposals as well as more radical alternatives. This paper suggests that contemporary constitution-making processes merit consideration in terms of the issues of power, participation and legitimacy that this historical legacy raises.*

> Article IX. The Government will take measures...to secure that the issue of credit, which at the present day 'supplies as it were the life blood of the entire economic body' should not fall directly or indirectly under the control of foreign or international financiers, nor be abused in the interests of private individuals or syndicates to the injury of the common good.
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> *Proposed constitutional provision,*
> *Edward Cahill to Eamon de Valera, 04.09.1936.*[1]

BUNREACHT NA HÉIREANN'S fundamental rights provisions were far from an inevitable selection but rather the products of a lengthy process of drafting and deliberation. Suggestions such as Edward Cahill's concerning social and economic provisions were not unusual and the process whereby the constitution-makers accepted or rejected them requires careful consideration. In

[1] *De Valera Papers*, UCD Archives, P150/2393.

this paper, I want to concentrate on the document's economic and social provisions, outlined in Articles 40-45, which were formed following a whole series of debates concerning property rights, land redistribution and financial regulation as well as education and general living standards. A number of salient trends emerge from a careful exposition of these drafting materials, notably the transformation of proposed 'economic rights' into 'directive principles' (devoid of any legal traction). My argument, simply stated, is that we cannot understand this outcome in isolation from contemporary economic activities and interests or associated class politics. In making that argument, I want to draw particular attention to Ireland's 'state-finance nexus', described by David Harvey as the complex of relationships between the 'national' debt and the credit system, and the social forces at work in establishing or contesting those institutional arrangements.[2]

The paper runs as follows. Part one outlines the role of the Irish financial field in reproducing systemic grazier dependency long into the twentieth century. I want to highlight the emergence of both a powerful banking cartel as well as associated commitments from civil servants to 'Gladstonian fiscal doctrine': a combination of Victorian governmental thrift, balanced budgets and minimal social expenditure. Part two looks at how these economic processes and commitments played out politically, specifically how this state-finance nexus managed to reproduce its power, surviving the creation of the Irish Free State in the 1920s as well as the emergence of a populist Fianna Fáil party in the 1930s. Part three demonstrates how this mix of economic and political power shaped the parameters of the constitution-making process, specifically the stymieing of proposed regulatory or redistributive provisions. The precise wording of the constitution's property and credit provisions, I suggest, owed to three decisive influences: John Charles McQuaid, J.J. MacElligott and Eamon de Valera, representing the interests of the Catholic hierarchy, the Department of Finance and Fianna Fáil respectively. Their correspondence suggests all three were especially animated in their desire to retain centralised authority, to diminish land agitation and IRA activity and, in particular, to pre-empt radical left

[2] David Harvey, *The Enigma of Capital*, (London, 2010). See also http://davidharvey.org/

alternatives such as those proposed by workers' organisations and 'red' republicans.

Understanding the State-Finance Nexus of Independent Ireland

During the 1800s, Ireland was effectively incorporated into Britain's regional economic system.[3] Following customs and monetary union in 1825, the Irish pound was tied to sterling and almost free trade conditions followed. Unable to compete with a rapidly industrialising neighbour, Ireland's proto-industries collapsed and the economy shifted to the export of food and primary commodities such as wool and leather. During the period 1816-1920, rising urban demand in Britain raised beef prices by more than 300 per cent.[4] Agricultural production shifted from labour-intensive tillage to livestock rearing with a corresponding decrease in the numbers employed in both agriculture and manufacturing. During the period 1825-1870, cattle exports jumped from 76,000 to 451,000 per year whilst sheep exports rose from 50,000 to 681,000. Accordingly, the numbers of people employed in agriculture and manufacturing declined, prompting a further export dynamic: labour-power. By the 1920s, agriculture accounted for some 53 per cent of the population's gainful employment and no less than 97 per cent of Irish exports went to Britain. Of the existing native industries, mostly involved in brewing, distilling and agricultural processing, only 130 companies employed more than one hundred employees.[5] Most were either stagnant or in decline.

The financial field was central to these processes. Generally, the stability of both trading conditions and credit relations was assured by Ireland's membership of the sterling area, based on a reformed British currency on the gold standard. Particularly, the gold standard facilitated cattle exports as well as the Irish banks' investing grazier/merchant proceeds in the City of London.[6] Savings were typically held abroad in the form of short-term balances with financial

[3] Conor McCabe, *Sins of the Father: Tracing the decisions that shaped the Irish economy* (Dublin, 2011). See also Raymond Crotty, *Ireland in Crisis: A study in capitalist colonial underdevelopment* (Dingle, 1986).
[4] Denis O'Hearn, *The Atlantic Economy* (Manchester, 2001), pp. xi, 104.
[5] O'Hearn, *The Atlantic Economy*, p. 114.
[6] Cormac Ó Gráda, *A Rocky Road: the Irish economy since the 1920s* (Manchester, 1997), p. 175.

institutions, marketable British government securities or equities quoted on the London Stock Exchange.[7] London's flourishing international money market simultaneously curtailed the development of a domestic financial market and transformed the Bank of England into the ultimate reservoir of credit (the lender of last resort) for the entire Irish banking system. Politically, across the Empire's financial system, an identity of interests evolved between Whitehall, Westminster and their 'men on the ground' in maintaining the integrity of the gold standard through 'Gladstonian fiscal doctrine'.[8]

The Irish financial field centred on the Bank of Ireland. Founded in the late eighteenth century on the basis of a government charter and the recipient of something very like monopoly status in the City of Dublin, it emerged as 'the lender of (second to) last resort' to smaller banking entities. These included the joint-stock newcomers of the 1820s and 1830s: Northern Bank (1824), Belfast Bank (1827), Ulster Bank (1836) and Royal Bank of Ireland (1836), based predominantly in Ulster, as well as Provincial (1825), Hibernian (1825) and the National Bank of Ireland (1834), based largely in Munster and Leinster.[9] Geographically, bank branches centred on the country's principal ports and commercial towns and further expansion occurred during periods of grazier prosperity.[10] In the closing years of the nineteenth century, however, following a series of financial crises, a growing contradiction emerged between the Bank of Ireland's role as a 'lender of (second to) last resort' and its role as a competitor for funds with the joint-stock banks at branch level. This contradiction was eventually resolved though 'institutionalised coordination'.

[7] Pádraig McGowan, *Money and Banking in Ireland: Origins, Development and Future* (Dublin, 1990), pp. 22, 45.

[8] 'For Gladstone the cost of a policy was the main element in determining its desirability...As applied to colonial policy, orthodox liberal standards were generally associated with rigid economizing of detailed expenditure, general belief in 'colonial self-sufficiency', and a consistent opposition to the creation of new imperial responsibilities. Adherence to the Gladstonian rubric of 'saving candle ends' permeated the thinking not only of Treasury officials but of a generation of civil servants in virtually all departments of administration'. Raymond Dumett, 'Joseph Chamberlain, Imperial Finance and Railway Policy in British West Africa in the Late Nineteenth century' in *The English Historical Review*, Vol. 90, No. 355 (Apr., 1975), pp. 287-321, p. 292.

[9] F.G. Hall, *The Bank of Ireland, 1783-1946* (Dublin, 1949), pp. 138-152.

[10] McGowan, *Money and Banking in Ireland*, p.41.

The resulting Irish Banks' Standing Committee supervised an informal cartel such that the joint-stock banks agreed to avoid competition for deposits or branches and to follow the Bank of Ireland's lead in setting interest rates. The IBSC soon coordinated other activities for the benefit of their institutions' directors and shareholders such as ensuring wage repression amongst their workforce as well as making direct political interventions. Hence, the IBSC supported the Belfast Bank's (successful) petition to Sir James Craig that the regulation of banking be placed outside the Government of Ireland Act 1920.[11] Under the Treaty of 1921, however, the parliament of the Irish Free State was free to introduce legislation affecting currency, credit and banking in its area: on paper, it was free to adopt any monetary policy it wished. And if the possibility of an independent Irish state was a matter of some concern in financial circles, the period of Irish popular militancy between 1912 and 1922 was terrifying.[12] The banks' fears, however, proved unfounded. During a period when challenges to the financial system were common internationally - social credit movements in Europe and Canada, the New Dealers in the US - the IBSC successfully negotiated the political transition to the Free State in the 1920s as well as the rise of the populist Fianna Fáil party in the 1930s.

The Politics of Property-Credit System-State Relations: 1922-38

Throughout the 1920s, Cumman na nGaedheal's economic policy broadly reproduced the established cycle of path dependency.[13] With the Free State's trade and tax revenue centred on live exports to the UK, the question of whether the state would adopt an independent monetary policy was answered before it was ever raised. Over the course of 1926-7, the Department of Finance convened a banking commission, comprised mainly of members of the IBSC, to introduce a new currency, the Saorstát punt, which would be immediately convertible into sterling, thereby securing Ireland's cattle trade with Britain. Adhering to membership of the sterling area, the Department of Finance effectively continued Gladstonian fiscal doctrine, maintaining the integrity of the 'new' Irish

[11] Davy, Kelleher & McCarthy, *The Control of Banking in the Republic of Ireland*, p. 140.
[12] See Diarmaid Ferriter, *The Transformation of Ireland, 1900-2000* (Dublin, 2004), p. 253. Conor Kostick, *Revolution in Ireland: Popular Militancy, 1917-1923* (Cork, 2009).
[13] O'Hearn, *The Atlantic Economy*, p. 113.

currency through balanced budgets and at the expense of public spending. Meanwhile, notwithstanding the introduction of the Agricultural Credit Corporation (1927) and the Industrial Credit Corporation (1933), the IBSC members continued to operate much the same as before. The banking commission rejected League of Nations' recommendations to establish a Central Bank, claiming that Ireland already had a sound administration and a stable currency. In any event, the state's lack of a domestic capital or money market weakened its capacity to impose penalties so as to achieve regulatory compliance.[14]

The Great Depression of the 1930s created widespread uncertainty in international money markets, compelling sterling's departure from the gold standard in September 1931 and frustrating the Department of Finance's efforts to secure long-term funding.[15] The Department's first concern was for the Irish export trade and advocated the Saorstát punt following the same course as sterling. Insofar as remedies could be offered, the Department simply urged 'greater production, and increase in the number of creameries, more and better stock and improved marketing methods – no other policy can result in anything but disaster'. In short, what the department advocated was 'to do nothing and to say nothing'.[16] During the international drift to autarky that followed, Britain's introduction of protectionist measures left Ireland as virtually the only free trade economy in Western Europe, prompting similar emergency legislation.[17] European and American politics centred on resolving mass unemployment amidst emerging state-oriented alternatives to crisis resolution, fascist and communist in design, both of which were popularly contested during the Spanish Civil War (1933-1936). The Catholic Church, looking to maintain the support of Europe's working class, tacked left and issued *Quadrageismo Anno* (1931), an encyclical calling for palliative redistribution and social harmony.

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[14] Davy, Kelleher & McCarthy, *The Control of Banking in the Republic of Ireland*, p. 144. An associated implication was that a Central Bank with so little to do might compete with the established banks for customers, perhaps especially insofar as the role of government banker was concerned, a role which the Bank of Ireland continued to perform until 1971.
[15] Mary Daly, *The Buffer State: The Historical Roots of the Department of the Environment* (Dublin, 1997), p. 212.
[16] Ronan Fanning, *The Irish Department of Finance, 1922-58* (Dublin, 1978), p. 210.
[17] Ó Gráda, *A Rocky Road*, p. 143.

Given slum-living conditions in the towns, meagre subsistence on the land and, equally pertinently, the unavailability of emigration options during a global depression, popular discontent was rife and, not atypically, centred on the politics of land ownership and tenancy. In Dublin's inner city, the Irish Women Workers' Union organised a campaign against slum landlordism. A surge in low-level violence, directed primarily against land-owners and law enforcement, occurred throughout the southern and western countryside.[18] In Donegal, a campaign against the payment of land annuities attracted the involvement of left-leaning members of the Irish Republican Army (IRA), notably Peadar O'Donnell. Prominent articulations of this 'red' republicanism occurred with the formation of *Saor Éire* (1931) and the Republican Congress (1934). Nor was extra-parliamentary agitation confined to the left. Fianna Fáil's economic policies, particularly the effects of the 'Anglo-Irish Economic War' and the Irish Land Commission's increasing rate of redistribution, prompted the Blueshirt movement, a militant faction whose understanding of 'social harmony' coincided with grazier and employer interests.[19] Such campaigns and movements, suggestive of a clear left-right cleavage in Irish civil society, were nevertheless somewhat exceptional to the rule of party politics in the 1930s, which alternated between populism and pious conservatism.

Politically, the international drift to autarky aided an emergent, populist Fianna Fáil party promising to end unemployment and emigration through national self-sufficiency: switching agricultural output from livestock to tillage and building an indigenous manufacturing base behind tariff walls. Radical in rhetoric, Fianna Fáil attracted a diverse coalition of small farmers and landless labourers as well as business owners and workers. In contrast with Cumman na nGaedheal's hair-shirt budgets, Fianna Fáil increased social spending, provoking on ongoing battle between the Department of Finance and, in particular, the Department of Local Government. The practical though palliative benefits of increased welfare spending cannot be underestimated in understanding Fianna Fáil's broad appeal.

[18] Patrick Murray, *Oracles of God: The Roman Catholic Church and Irish Politics, 1922-37* (Dublin, 2000), p. 317.
[19] Kieran Allen, *Fianna Fáil and Irish Labour: 1926 to the present* (London, 1997), p. 57.

Furthermore, faced with the Blueshirts in Ireland and the growing threat of fascism in Europe, trade union leaders sought and received the support of Fianna Fáil, a telling indictment of the Labour party's failure to move beyond its established role as a group of welfare-oriented, if not altogether clientelist, parliamentarians.

All manner of political agents attempted to justify their respective positions on the basis of papal encyclicals to protect themselves from accusations of 'godless communism'. Monitoring all political programmes, the Catholic hierarchy effectively colonised the discourse of economics, property and redistribution in such a way as to defend the property interests of the middle class from whom it drew the majority of its clergy, to protect its own property interests and to retain its control over the Irish state's (minimalist) provision of welfare, health and education. Ideologically, Catholicism, albeit with important 'national' characteristics, approximated what Antonio Gramsci identified as cultural hegemony, a widely shared 'common sense' obscuring, legitimating and thereby reproducing the *status quo*.[20]

The rhetoric of populism and consensus concealed the reality, however, that Fianna Fáil's new economic departure was significantly limited and soon exhausted. Verbal hostility towards the graziers concealed the continuation of economic dependence on the cattle trade. Live animals remained the mainstay of agricultural exports – at 50 per cent in 1938 – and Britain continued to import in excess of 90 per cent of these.[21] In particular, the holdings created through the Land Commission were too small to be economically viable; those farmers who did not sell and emigrate were still dependent on incorporation into the graziers' assembly-line.[22] The haphazard implementation of protectionist policies, land distribution and social spending raised legitimate suspicions that Fianna Fáil was engaged in populist clientelism, creating a role for its politicians as brokers both

[20] Quentin Hoare and Geoffrey Smith (eds), *Selections from the Prison Notebooks of Antonio Gramsci* (London, 1971).
[21] Joseph Lee, *Ireland, 1912-1985*, p. 187.
[22] Terence Dooley, *The Land for the People: The Land Question in Independent Ireland* (Dublin, 2004), p. 91.

in terms of business and welfare entitlements and securing a cross-class base of dependent supporters. By the mid-1930s, the more immediate of these shortcomings had become apparent: by 1936, England had recovered sufficiently to provide employment prospects and Irish emigration returned to 1920s levels. Within the civil service, the Department of Finance's austerity hawks returned to prominence.

Fianna Fáil's half-decade retreat from redistribution was perhaps most apparent in the reproduction of the state-finance nexus. Capitalising on popular discontent in the late 1920s, the party had condemned the Irish banks as satellites of the Bank of England, 'bleeding the Irish farmer' and 'crushing Irish industry'.[23] Once in power, however, its response differed little to that of Cumman na nGaedheal. Once again, the government-appointed Commission on Banking, Currency and Credit, while providing a platform to proponents of a Catholic 'social credit' scheme, was staffed primarily with partisans of the existing order.[24] The commission's majority report recommended the further institutionalisation of existing arrangements in a Central Bank and took up the cudgels to maintain parity with sterling, arguing for the strict policing of banks' lending to government.[25] In particular, the IBSC attacked land division policies which had, apparently, resulted in the destruction of the 'free market' in land, producing 'shock to credit and loss of land as an acceptable security for credit to the farming community'.[26] Once again, the only apparent solution was to curb public spending.[27] Significantly, the failure to make credit more freely available severely undermined land redistribution, as small farmers or landless labourers, unable to access the money necessary to demonstrate their application's viability, were

[23] Seán MacEntee quoted in Kieran Allen, *Fianna Fáil and Irish Labour*, p. 22.
[24] Finín O'Driscoll, 'Social Catholicism in Independent Ireland: The Challenge to the Fiscal System' in Mike Cronin and John Regan (eds), *Ireland: The Politics of Independence, 1922-49*, (Basingstoke, 2000), p. 134.
[25] Davy, Kelleher & McCarthy, *The Control of Banking in the Republic of Ireland*, p. 144. Its proposed Central Bank would act as monetary adviser to the government, maintain contact with the other international financial institutions (such as the Bank of England) but would not have any statutory powers in setting an official discount rate or supplying funds against domestic assets: the IBSC's cartel, particularly concerning interest rates, would remain in place.
[26] Fanning, *The Irish Department of Finance, 1922-58*, p. 270.
[27] Daly, *The Buffer State*, p. 245.

overlooked in favour of shopkeepers, teachers and clergy.[28] Tendencies towards larger farms, land speculation and rural population decline persisted.

Economic Rights in the Making of the 1937 Constitution

Understanding the generalities of economics and class politics, we might re-consider the particularities of the 1937 constitution-making process.[29] Contributors adopted a number of distinct positions in relation to economic and social provisions. The Catholic 'neutralist' position, articulated in the Jesuits' 'Suggestions for a Catholic Constitution', simultaneously advocated a right to private property whilst emphasising the social aspect of ownership, specifically the individual's responsibilities towards 'social justice' and 'the common good' . The Jesuit committee extended this formulation and suggested that the State work 'to promote a wide distribution of private property, especially in land' or, as Edward Cahill put it, 'to enable and induce as many as possible to become owners'.[30] Private ownership, John Charles McQuaid similarly stated, was 'absolutely necessary': no law was to be passed to abolish it. At the same time, the State was to use its 'best endeavour' to provide that the nation's material resources would be so distributed 'among private individuals and the various classes of the population' as to best serve the common good. Proposed land redistribution measures would necessitate challenging the dominant credit system. Whereas McQuaid recommended curtailing monopolies over credit, Cahill further suggested a strong role for state regulation and referred to proposals for a Catholic 'social credit' model advocated in the course of the Banking Commission.[31]

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[28] Dooley, *The Land for the People*, pp. 73, 81.

[29] In outline form, the document was created over a period of three years, formally beginning with the meeting of a civil service committee to review the 1922 Constitution in May, 1934. Subsequently, in September, 1936, de Valera requested and received 'Suggestions for a Catholic Constitution' from the Jesuit Order (Patrick Bartley, John McErlean, Joseph Canavan and Edward Coyne) at Milltown Park, in addition to Edward Cahill's 'Supplementary Suggestions'. From this point through to the constitution's adoption, de Valera corresponded with John Charles McQuaid, the Holy Ghost Father whose influence on many aspects of the document was pronounced. In October, the Executive Council, civil service and national executive of Fianna Fáil received drafts of the constitution, prior to its being debated and finalised in the Dáil chamber in the spring and summer of 1937.

[30] UCDA P150/2393. *Correspondence from Edward Cahill to de Valera*, 4 September, 1936.

[31] UCDA P150/2393.

Conversely, a classic liberal market position, articulated by the Department of Finance, derided land redistribution proposals and other similar socio-economic provisions at considerable length, claiming they were 'not of a kind usually enshrined in a Constitution' and 'mostly unnecessary'.[32] The introduction of pensions for the old, the blind, the army as well as widows and orphans, J.J. MacElligott claimed, had already 'given effect to the ideals underlying the provisions of this subsection, and there was nothing to stop further legislative progress in the same direction'. Those declaratory provisions concerning land actually ran contrary to government policy:

> [W]e do not settle "as many families as practicable" on the land. "Five acres and a cow" would suffice if that were the policy. We create economic holdings of twenty-five acres.[33]

Following these criticisms, the civil servants circulated a 'Suggested Method of Dealing with Certain Directive Principles'[34] which basically introduced the principle of judicial non-cognisance to the constitution. Simply stated, articles carrying with them legal redress were to be segregated from those which enunciated 'guiding principles' only. The term 'personal rights' was to be avoided in the latter instance so as 'to prevent confusion, as a 'right' implies legal redress'. Sketching out a probable result of the segregation between rights and principles, the document denoted every property provision as a guiding principle only.[35] Only now were provisions for land redistribution and for ensuring the control of credit 'in the interest of the people of as a whole' downgraded to the status of Directive Principles.

Catholic 'neutralist' proposals on property rights, however, particularly McQuaid's formulations, coincided with de Valera's immediate concerns at the time. The stalling of the Irish Land Commission's rate of redistribution throughout the 1930s owed partly to property owners mounting legal challenges

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[32] D/TS9715B in Dermot Keogh and Andrew McCarthy, *The Making of the Irish Constitution 1937* (Cork, 2007), p. 126.
[33] Ibid, p. 126.
[34] UCDA P150/2416. *Correspondence from Department of Finance to de Valera*, 2 April, 1937.
[35] UCDA P150/2416.

to prevent or delay expropriation.[36] Drafts dating from late 1936 strongly suggest that the government was seeking to circumvent such challenges in future, balancing the right to private ownership with the Land Commission's powers of redistribution:

> The ownership and cultivation of the land being one of the principal features of the national life, the exercise by the State of its right to the compulsory purchase of rural property for general utility purposes shall be subordinated to the principle that the agrarian structure of E[ire]... ought to be based on agricultural holdings capable of normal productivity and privately owned.[37]

A 'balanced' right of ownership was thus deemed necessary. Arthur Matheson, the parliamentary draftsman, redrafted the de Valera-McQuaid provision into its finished form. In the first half of the article, the State was deemed to acknowledge the existence of a 'natural right, antecedent to positive law, to the private ownership of external goods' and to guarantee to pass no law 'to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property'. In the second half, the State was deemed to recognise the necessity of regulating property rights by 'the principles of social justice' and, accordingly, asserted its authority to reconcile their exercise with 'the exigencies of the common good'.[38]

In subsequent parliamentary debates, neither the property nor credit provisions featured prominently. Fine Gael did not challenge Articles 40 to 45. The Labour Party's William Norton contributed most to what was a brief discussion. Norton returned to the possibility, considered in the 1922 constitution-making process, of providing a constitutional remedy for the 'unearned increment', resulting from a rapid rise in land values:

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[36] Brendan Edgeworth, 'Rural Radicalism Restrained: The Irish Land Commission and the Courts (1933-1939)' in *Irish Jurist*, 2007, Vol. XLII, 1.
[37] UCDA P150/2373. *Draft Heads*, 14 October, 1936.
[38] UCDA P150/2411. 'Private Property', *Correspondence from Charles McQuaid*, c. March-April, 1937.

> Article 43...'Laws shall be enacted to provide that increase in the value of land arising though community effort without expenditure by the owner of labour or capital shall accrue to the community'.[39]

McQuaid, however, was dismissive:

> 'Community effort'. This is Karl Marx terminology. The doctrine on which the proposal is based seems to be Henry George's. That all the interest should accrue to the community seems scarcely just, for it takes no account of the foresight and initiative of the owner. That such revenues should be very heavily taxed seems quite just.[40]

De Valera also downplayed the role of these constitutional rights provisions as a whole, making clear that the bill of rights was to be primarily a set of 'headlines to the legislature' and that, likewise, the Directive Principles were merely to act as a 'constant reminder to the legislature of the direction in which it should work'.[41]

McQuaid's concern about 'Karl Marx terminology' hints at one of the most striking features of the constitution-making process as a whole: class consciousness. Edward Cahill described the introduction of socio-economic provisions as necessary 'to keep in check the activities of agitators who would sow disunion or discontent with the object of fermenting a destructive and unchristian class war'.[42] Similarly, McQuaid cautioned de Valera that the most potent form of social agitation was the unsettled strike and proposed that by managing strikes through an Arbitration Board (not unlike the Labour Relations Court founded soon after) a 'great deal of the venom of Communism could be neutralised'.[43] The clericalists' concern for social cohesion was equalled only by MacElligott's who identified a number of economic provisions as 'highly dangerous': 'Sections of the community might claim that the Government were

[39] UCDA P150/2441. See O'Rahilly's Draft Constitution C, Economic Life, Article 64 (3). UCDA P4/333.
[40] McQuaid on Private Property. UCDA P150/2411. Henry George was a late nineteenth century American politician, economist and influential proponent of land value taxation.
[41] Dáil Debates. Vol. 67. Col 1747 |1784-6. Vol. 68. Col. 216-7.
[42] UCDA P150/2393.
[43] UCDA P150/2395. *Correspondence from McQuaid to de Valera*, 8 March, 1937.

not living up to the Constitution'.[44] Such articles constituted 'an unnecessarily powerful instrument of agitation which it is feared might be freely used in support of all sorts of unreasonable and impracticable proposals'.[45] Tellingly, MacElligott identified provisions relating to land and finance as likely to provide 'a breeding ground for discontent', specifically the 'compulsory subdivision of the holdings already distributed [by the Irish Land Commission]' and 'the economic domination of the few in what pertains to credit'.[46]

Conclusion

Peadar O'Donnell would later deplore the Catholic complexion of the 1937 constitution which seemed to him to have given 'the Roman Catholic Bishops of the South' a privileged position as 'the watchdogs of the private property classes'.[47] The description, as summaries go, accords fairly well with the preceding analysis. A careful reconstruction of the process whereby elites decided the constitution's economic provisions reveals the importance to the politics of the 1930s of the control of land and credit. Tied to the sterling area's free trade conditions and anchored in the gold standard, Ireland's political independence in 1922 clearly did not extend to economic freedom: the established state-finance nexus, a combination of the IBSC and the Department of Finance, institutionalised existing arrangements, maintained the Irish pound's parity with sterling to support the cattle export trade and simultaneously pursued parsimony in public expenditure. The banks remained aloof from state intervention or regulation and processes of agricultural dependency largely persisted. Constitution-making in the 1930s did not alter these circumstances.

If there is a 'lesson' here then, it is perhaps that the process of constitution-making will greatly determine what sort of constitution emerges. Moreover, those subject to a decision-making process from which they are substantially excluded are likely to question its legitimacy or to challenge its outcomes. Insofar

[44] D/TS9715B: reprinted in Keogh and McCarthy, *The Making of the Irish Constitution 1937*, p. 126.
[45] Ibid, p. 126.
[46] Ibid, p. 126.
[47] *An Phoblacht*, 22.5.37 in Patrick Murray, *Oracles of God*, p. 329.

as shaping the basic laws of Irish society now appears to be the preserve of professionals or technocrats, these rather elementary observations apply pointedly, as much to the fiscal compact treaty referendum as to the minimalist agenda and participatory architecture of the recently announced constitutional convention.[48] But the purpose of this analysis is not to provide aspirant constitution-makers with a series of edifying lessons to be applied straightforwardly in modern circumstances. Arguably, the study of history is valuable not because the past provides us with rough parallels to the present but because it reveals societies, events and ideas sharply *different* from those we encounter from day to day. People who know nothing but the present, and who are not aware that life has been, and could be, different from what it is, bear tyranny easily; for they have nothing with which to compare it.[49]

[48] See Peadar Kirby and Mary Murphy, 'Vital role for the people in rewriting the Constitution' in *The Irish Times*, 24.01.2012; Donncha O'Connell, 'Constitution could benefit from radical reappraisal' in *The Irish Times*, 10.05.2012; John O'Brennan, 'Treaty threatens to widen democratic deficit in EU' in *The Irish Times*, 21.05.2012

[49] Trevor Saunders, 'Reviser's Introduction' in Thomas Sinclair (ed.), *Aristotle's The Politics*, (London, 1981), p.39.