

Introduction

The modern Irish state was born in 1922 with the promulgation of the Irish Free State Constitution. It was at this moment that many aspects of our legal and political system were created. This momentous but relatively unexplored moment of Ireland's constitutional history has been overshadowed in popular memory by the 1916 Rising, the convocation of the first Dáil in 1919 and specifically by the present Irish Constitution of 1937. These topics have been written about extensively, and recent scholarship has shed light on the circumstances in which the 1937 Constitution came about. However, the circumstances leading to the creation of the 1922 Constitution remain somewhat obscure. This Constitution also gained a bad reputation as a working entity; it was the subject of controversy, misinformation, myth and half-truth. These in turn have each promoted a certain air of contempt or even derision towards what was no less than one of independent Ireland's basic democratic foundations.

This book addresses these issues; it examines the 1922 Constitution, with the benefit of hindsight, and provides a picture of both the document itself and the circumstances surrounding its creation and ultimate demise. It examines the manner in which the Constitution was drafted and, in doing so, elucidates the original intentions of those who drafted the document and examines the reasons why the results did not turn out as anticipated.

Many accounts of the Irish Free State Constitution are quite negative, and the dominant portrayal of the Constitution is that it was a failure; this book explores whether this portrayal perhaps fails to give sufficient credit to the vision of the drafters and the contribution that the Constitution has made to our current legal and political system.

Although many readers will already be familiar with this period in Irish history, for those who may be unaware of the events which led to the drafting of the

Drafting the Irish Free State Constitution

1922 Irish Free State Constitution, the following contextual information may be useful.¹

The creation of the Irish Free State Constitution was made possible only following the signing of the Anglo-Irish Treaty on 6 December 1921 by Irish and British representatives.² This Treaty was the outcome of a truce which brought an end to centuries of revolutionary struggle in Ireland. The agreement provided for the creation of a new Irish state, which would remain within the British Commonwealth but would have internal autonomy. Previous to this, Ireland had been part of the United Kingdom, a position violently resisted by many Irish. In 1916, a revolutionary group within the state had initiated a rising,³ which eventually led to a war of independence which lasted from 1919 until the truce in 1921.

However, the Treaty agreement was a controversial one and was not universally accepted in Ireland. Many of those who had fought in the War of Independence believed that a free Irish republic could have been achieved and so they were unwilling to accept anything less than that position. In particular, they refused to take an oath to the British King, something which had been specified in the Treaty. The Treaty agreement eventually led to a split amongst Irish nationalists; Eamon de Valera, then President of Dáil Éireann,⁴ and his supporters disapproved of the agreement and refused to recognise the authority of the new Irish state which had been created.⁵ However, the Treaty was approved by a majority of the Dáil, and those who were prepared to accept its terms then undertook the task of creating the Irish Free State and writing its first constitution. This task was undertaken by Michael Collins, who became Chairman of the Provisional Government, and Arthur Griffith, who became President of the Dáil.

¹ This is intended as general background information only for those who may be unfamiliar with the context.

² For an account of the circumstances surrounding the signing of the Treaty and the discussions which led to that point, see Frank Pakenham, *Peace by Ordeal: An Account from First-Hand Sources of the Negotiation and Signature of the Anglo-Irish Treaty 1921* (3rd edn, London, 1962).

³ The 1916 Easter Rising. This was a small and unsuccessful rising organised by the Irish Republican Brotherhood. It was an event which had little support and inspired little sympathy or respect, until the brutal actions of the British gave it a retrospective grandeur: leaders were shot following trials by field general court martial, in clandestine circumstances, and buried in a mass grave at Arbour Hill. For more, see Adrian Hardiman, 'Shot in Cold Blood: Military Law and Irish Perceptions in the Suppression of the 1916 Rebellion' in Doherty, Gabriel, and Keogh, Dermot (eds), *1916: The Long Revolution* (Cork, 2007), 225

⁴ The Irish Parliament which had been created in 1919.

⁵ De Valera had not been involved in negotiating the terms of the agreement.