Innovation and Continuity: Statute Law of the Saorstat Eireann / Irish Free State 1922-1948

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1. Introduction

Modern Irish legal history is a largely unstudied field. This paper discusses one element of this broader field of enquiry by considering aspects of the legislation of the Saorstat Eireann / Irish Free State ("IFS") from its creation in 1922 to its departure from the Commonwealth in 1948. The study is based on study of government files in the National Archives of Ireland, particularly the records of the Justice Department, Attorney-General's Office and Parliamentary Draftsman's Office, and from the reports of the debates in the Oireachtas / Irish legislature.

The paper looks at aspects of the legislation of the Irish Free State, and the patterns of Irish use of precedents from Britain and the other Dominions (especially Canada and Australia) in the initial period of the setting up of the IFS, in later legislation affecting appeals to the Privy Council and in the area of social legislation and law reform.

Although nationalist thinking, and political rivalry affected the pattern of legislation and law reform in the Irish Free State, there is nevertheless an underlying continuity in the drafting of legislation which reflected a very substantial, if frequently understated, use of English precedents.

2. An optional historical sketch

It may also help the reader not acquainted with Irish history to bear in mind that from 1922-1927 the "Treaty-ite" Cumann na nGaedheal party, under WT Cosgrove formed the Government, though its Sinn Fein opponents refused to attend the Oireachtas because they could only take their seats by swearing an oath which promised fidelity to the Crown.[1] In the absence of Sinn Fein TDs the Labour party led the opposition. After the 1927 election, won by the incumbent government, de Valera's Fianna Fail party, the successor to Sinn Fein, returned to the Oireachtas. The Cumann na nGaedheal party was defeated in 1932, and Fianna Fail ruled from then until 1948, though requiring minor party support for most of that period.

While the vituperative tone of much Irish political debate would suggest the policies of the major parties would be radically different, it may well be thought that as far as relations with Britain went – and that was THE dominant issue of IFS political life - they disagreed about the tactics for obtaining a truly independent and autonomous Ireland, not about that goal itself. Other political differences did exist – Fianna Fail were more committed to economic self-sufficiency and a more interventionist economic role for Government than were their main opponents, and also more directly influenced by Roman Catholic religious and social doctrine - but the overall tone of both parties was nationalist but ideologically and socially conservative.[2] Unfortunately space precludes discussion of other issues in Irish legislation

[1] An oath "…which the anti-Treatyites untruthfully labeled the 'Oath of Allegiance' in a marvellous lie of silence that has become institutionalized in Irish popular culture": Tom Garvin, *1922: The Birth of Irish Democracy* (Dublin, Gill and MacMillan, 1996), p17.

[2] Maurice Manning *The Blueshirts* (U Toronto Press 1971), pp 8-9. Eunan O'Halpin "Politics and the State", in J R Hill (ed) *A New History of Ireland* (OUP, 2003) vol 7, p116 points to the laying of foundations for later social welfare reforms by the Cumann na nGaedhael party in the 1920s, but equally to its "equanimity" in the face of

such as the fairly consistent pattern of deliberate sexual discrimination by officials and legislators over such matters as jury service and citizenship.[3]

3. The lawmaking process

The formal process of enacting legislation in the Oireachtas - the bicameral legislature composed of the Dail Eireann and the Seanad Eireann[4] - usually required a Bill to go through five stages in the Dail, then four in the Seanad. In the Dail, the five stages were the introduction, the second stage where the principle of the Bill could be debated, a third or committee stage, followed by a fourth stage where the report of the Committee was taken and further amendment was possible, and a final fifth stage where minor verbal amendment only could occur. In the Seanad the later four steps were reprised.[5]

Over the 26 years with which we are concerned, the Irish legislature passed 1057 statutes, or around 40 a year. The largest number in any one year was 62 in 1924, at a time when the machinery of the IFS was being created, and the smallest 22 in 1944. McCracken suggests that almost half of these were aimed at economic issues or public finances; and another third dealt with public and constitutional affairs. The remainder dealt with social issues or miscellanea.[6]

Most government legislation was drafted by the Parliamentary Draftsman, whose office came within the purview of the Attorney-General, in the light of departmental papers setting out what was wanted. In rare cases the Parliamentary Draftsman was given, or took, a freer hand. The Statutory Declarations Act 1938 resulted from a request from the Department of Industries and Commerce for new legislation, as false declarations in relation to unemployment assistance not covered by the previous legislation which dated from 1835. However its form was, as the Parliamentary Draftsman stated, "his personal conception" of the necessary Bill.[7]

However not all Bills came from the Parliamentary Draftsman. A number of important statutes dealing with the IFS's external relations –including those with Britain – were prepared by the Ministry of External Affairs. In 1933, a very atypical year, that Ministry was responsible not only for "constitutional" bills relating to appeals to the Privy Council and the reservation of Bills by the Governor-General, but for seven general bills, dealing with, amongst others, extradition, immunities for visiting members of foreign armed forces, the taking of evidence in the IFS for use in foreign courts, the enforcement of foreign arbitral awards and diplomatic immunities.[8] The later two were considered not to be urgent and could safely be delayed. However the Ministry also pointed to the need to legislate in compliance with international conventions, instancing the 1931 Dangerous Drugs Convention, which would require the current Dangerous Drugs Bill to be amended "along the lines of the Dangerous Drugs Act 1932 passed by the British Parliament", and the Merchant Shipping (International Labour Convention) Bill – in draft, and two Merchant Shipping conventions. Both the latter were enacted in 1933.[9]

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social problems it believed it had no resources to address. Compare Brian Girvin "The Republicanization of Irish Society 1932-1948", in J R Hill (ed), op cit, vol 7, pp137-38.

[3] For an overview see Mary Cullen, Women, emancipation and politics 1860-1984", in J R Hill (ed), *A New History of Ireland* (OUP, 2003), vol 7, pp868-877.

[4] Except for a brief period 1936-1937, between the abolition of the original Seanad and the creation of a somewhat different version under the 1937 Constitution. See also part 8 below.

[5] See J L McCracken *Representative government in Ireland:A study of Dail Eireann 1919-1948* (OUP 1958), p124

[6] See J L McCracken *Representative Government in Ireland: A study of Dail Eireann 1919-1948* (OUP, 1958), pp170-72.

[7] See documents in A-Gs Office files AGO/2000/10 1784 SR 032/38 Statutory Declarations Legislation, NAI.

[8] A-G's Office file SR4/128 17/33 Bills to be promoted by Dept of External Affairs, NAI.

[9] There were other cases where the government was required to legislate to ensure compliance with international obligations: A G Donaldson *Some Comparative Aspects of Irish Law* (Durham NC, Duke University Press, 1957) p 103.

4. On the use of overseas precedents for legislation

Under article 73 of the 1922 IFS constitution, all prior statute law which was not inconsistent with the Constitution continued in force. Thus the vast bulk of Irish law was, and for years continued to be, found in the British statute book. While most members of the Dail were undoubtedly eager to distinguish the new state from the predecessor regime by re-writing the statute book, pragmatism and circumstances dictated reliance on that inherited law.

These constraints affected the proponents, and the draftsmen, of legislation in the new state. To copy, with minor amendments, British legislation took little in the way of resources – to write laws afresh could be a major undertaking. The result was, perhaps inevitably, somewhat of a compromise, with a number of statutes being largely copied from British precedents, and others which were independently drafted. There was also a small number of important acts which showed evidence of copying from the legislation of other Dominions, and a smaller number where the drafting may have been influenced by the laws of other states.
It is with the interplay of these different elements that this paper is primarily concerned. It has, of course, long been known that the IFS government drew on English statutes for some of its legislation. As long ago J L McCracken could refer to the process thus:

> "But in many instances the Oireachtas has adopted in whole or in part enactments which the British parliament had already passed. In some cases the Irish acts follow quickly on the British, in others only after an interval of years. Examples of this legislative plagiarism occur all through the period 1922-1948."[10]

However no-one has yet considered either the full extent of the legislative borrowing from Britain, nor to any great extent the use of other overseas precedents. Nor, most importantly, has there been discussion of the frequently ambivalent or equivocal terms in which resort to the use of British precedents was described, justified or resisted. We may conveniently approach the issue by looking at IFS legislation which was based in whole or part on overseas precedents by looking in turn at the different sources.

5. Drawing on British legislation

A number of early IFS statutes were quite avowedly copied from comparable British legislation. In many cases it is evident this was done so that the Bills could be prepared quickly. Thus when the Trade Loans (Guarantee) Bill 1924 was largely copied from the Trade Facilities Act 1921(Imp), the Parliamentary Draftsman prepared the Bill in less than 24 hours11 and the Bill was before the Dail only a day later.12

A similar departmental recommendation for use of aBritish precedent can be found with the Oil in Navigable Waters Act 1925. In April 1924 the Department of Industries and Commerce instructed the Parliamentary Draftsman that the Ministry of Fisheries, the Dublin Port and Docks Board and the Cork Harbour Commissioners wanted a statute to prohibit ships discharging oil in navigable waters. The Ministry requested the Draftsman prepare a Bill on the lines of the Oil in Navigable Waters Act 1922 (Imp), which was considered to be working well.13 That request was apparently never received by the Draftsman, but a repetition of the request on 8 November 1924 saw a Bill prepared by 23 December, though not entirely following the British precedent. It wad rapidly passed by the Oireachtas.

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[10] J L McCracken *Representative Government in Ireland: A study of Dail Eireann 1919-1948* (OUP, 1958), p176.
[11] Matheson to John O'Byrne (A-G), 19 June 1924 in File 2000/22/0094 - 41/1924 Trade Loans, NAI.
[12] It was introduced on 20 June 1924; for its antecedents see *Dail* Debates, volume 7, column 3006, 25 June 1924.
[13] See correspondence in File 2000/22/00217-5/1926 Oil in Navigable Waters, NAI. The Parliamentary Draftsman's official diary for 1924 records that he "Received instructions to draft British Oil in Navigable Waters" on 8 November 1924, and worked on that bill for parts of six days over the next six weeks. See Parliamentary Draftsman's Office Diary 1924, File 2001/49/69, NAI.

We can contrast this with the extraordinarily sluggish pace of proceedings in some cases where the use of derivative legislation was rejected, as with proposals for merchant shipping legislation.14 In 1924 it was thought that probably the relevant British Acts remained in force, which might provide time for preparation of new legislation. Questions of legislative competence were discussed for some years, and resolved by 1930. Still no Bill eventuated – though the Department of Industries and Commerce sought funds to appoint a new legal adviser to prepare a Bill since the Parliamentary Draftsman was overcommitted. In 1939 leave was given to introduce a comprehensive Merchant Shipping Bill,15 but none was forthcoming. As late as 1947 the Minister could argue that there had not yet been time to prepare a comprehensive measure. 16

From the earliest years however political imperatives cold affect the use, or proposed use, of British precedents. The Interpretation Bill 1923 was promoted by the Parliamentary Draftsman (even though Hugh Kennedy, the then Attorney-General, would have preferred delay) on the twin bases that, the Interpretation Act 1889 (Imp) which the IFS had inherited was not up to date, and that many officials and members of the Oireachtas were not content with definitions which depended on a British statute. The form of the Bill reflects in one important respect the political controversy, since the Parliamentary Draftsman's draft included a definition of "Dominion" which included the IFS.17 This was later deleted, though it is not clear at what point.
The Interpretation Act may also serve as an example of IFS legislation which took the simplest form – that of simply re-defining terms in British statutes to fit the structure of the new state. Such legislation is not common, something which may well have been due to the influence of Hugh Kennedy, in his brief term as Attorney-General, since it appears he was "always very averse to adoption of Acts, and insisted on complete re-enactment in every case".18:

The utility argument was still being made in the 1930s, though not always successfully. When the issue of reciprocal enforcement of maintenance orders was raised in 1937 the Secretary of the Ministry for Justice suggested that legislation copying the British statute be prepared:

> "I wonder whether it would be possible to arrange to have the Maintenance Orders (Facilities for Enforcement Act) 1920 rewritten in the P.D.s office, for re-enactment as one of our own Acts. It would not take very long to do that, and it would be a much neater job that trying to adapt it by means of orders. I imagine the Executive Council and the Dail would pass it without any comment as a routine "reconstruction" measure.[19]

Such a solution was not adopted:

> "I am rather inclined to think that it would be better either to fit these Maintenance Orders into a comprehensive scheme of legislation for the reciprocal enforcement of judgments, or, if it is decided to treat it separately, to follow the scheme of the Extradition Bill rather than the form of the 1920 Act".[20]

However nothing was done, as far as I can discover, during the IFS's existence.

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[14] This account is principally based on the documents in file 2001/49/05 1931 Merchant Shipping Bill, NAI.
[15] *Dail* Debates volume 75, 26 April 1939.
[16] *Dail* Debates, Volume 108, column2192, 20 November, 1947.
[17] See documents in NAI file 2002/22/0050/46 Interpretation Bill 1923
[18] Matheson to John O'Byrne (Attorney-General) 17 July 1924 in file 2001/49/05 1931 Merchant Shipping Bill, NAI.
[19] S A Roche to P P O'Donoghue, 20 July 1937, in file AGO/2000/10 0119 SR 193/25 (193/25A) Maintenance Orders (Facilities for Enforcement) Act 1920, NAI.
[20] O'Donoghue to Roche, 21 August 1937, in file AGO/2000/10 0119 SR 193/25 (193/25A) Maintenance Orders (Facilities for Enforcement) Act 1920, NAI.

(a) Northern Ireland

There is little indication of direct copying from Northern Ireland legislation – not even when this might have been appropriate.21 However there is archival evidence that a provision of the Juries Act 1927 preventing a potential juror from escaping liability to serve by placing property in the name of his wife was drawn from Northern Irish law22. The Juries Bill in draft stage also proposed to modify the civil jury provisions, providing for civil juries of seven, with a 5-2 verdict sufficing. This was seen as a compromise between the earlier IFS law (which had 12 jurors, with a 9-3 majority verdict) and "the recommendation on page 46 of the Northern Report [for a civil jury of six] …The object of the change is simply to relieve the public as far as possible."23 However this proposal was apparently later dropped from the Bill, for reasons unknown.

It is also possible that in at least one instance the influence of Northern Ireland legislation has been overstated. Norma Dawson has noted the similarities of the National Monuments Act 1926 (NI) and the National Monuments Act 1930, and the fact each protected objects of archaeological interest, and implies the 1930 IFS statute was largely modelled on that of Northern Ireland.24 It is true there was some borrowing of provisions from the 1926 Northern Ireland Act – and from earlier British law, but there was also a limitation on the export of artworks (apparently taken from Italian law).25 More importantly, the Irish Bill, which began as a draft Bill prepared in the Department of Finance based on existing legislation in Great Britain and in Northern Ireland, was substantially re-written by the Parliamentary Draftsman because he considered the Ancient Monuments Protection Act 1882 (Imp), on which the Northern Ireland Act had been modelled, had been very poorly drafted.26

(b) Scotland

I have found only one case where IFS law adopted or followed Scots law. The statute is the Juries Protection Act 1929, passed after prolonged and bitter debate. It was designed in large part to limit the opportunities for republican sympathisers to put pressure on jurors, by reducing the extent of disclosure of jury panels and of juror's names, and to reduce the likelihood of jury disagreements by bringing in 9-3 majority verdicts.27 The bill's promoters within the Ministry of Justice advanced a range of precedents as part of the case for majority verdicts:

> "It is perhaps of interest here to note that under the Scotch system – and it will be remembered that Scots law has been greatly admired – the jury consists of fifteen persons. The prosecutor and the accused have each five peremptory challenges. The verdict is by their majority returned viva voce by the foreman. It is understood that in France the jury consists of twelve. A majority carries the verdict. In American states the practice varies: in some a unanimous verdict is required and not in others".[28]

[21] See the discussion of the Legitimacy Act below, part 11(a) and fn 122 below.
[22] "Memorandum to accompany Departmental Rough Draft of the Juries Bill 1925", in File AGO/2000/10 0477 SR 001/31 1927 Juries Act, NAI; compare s14(2) Juries Act 1927.
[23] "Memorandum to accompany Departmental Rough Draft of the Juries Bill 1925", in File AGO/2000/10 0477 SR 001/31 1927 Juries Act, NAI.
[24] Norma Dawson "The Giant's Causeway case: property law in Ireland 1845-1995" in Norma Dawson, Desmond Greer and Peter Ingram (eds) *"One Hundred and Fifty Years of Irish Law* (SLS Legal Publications (NI) and Round Hall Sweet & Maxwell, Dublin, 1996), p255.
[25] See *Dail Debates*, volume 32, column 247 (24 October 1929).
[26] See Matheson to Costello 22 November 1928, in File 2000/22/0350-2/1930 National Monuments Bill, NAI.
[27] A majority of a 15-juror panel (in line with Scots practice in criminal cases) had been suggested earlier, but the proposal for 15-juror panels was dropped because they could not be accommodated in the existing courthouses: see correspondence in file AGO/2000/10-0477-0475 SR001/31 Juries Protection Bill, NAI.
[28] See memorandum for Executive Council, 23 April 1929, in file AGO/2000/10-0477-0475 SR001/31 Juries Protection Bill, NAI.

When the Bill was introduced in the Dail, James Fitzgerald-Kenney, the Minister for Justice, claimed that the limitation on publication of jury panels simply returned to the position of the 17th century and brought Irish law back into line with existing English practice.29 He went on to argue that, except in the countries with an English-style jury system, majority verdicts were standard.30

The Bill was then vehemently attacked by Eamonn de Valera, on the grounds both that it was in effect coercive legislation of a kind regularly passed by the British parliament for Ireland, and on the basis that the unanimity of jury verdicts was an essential element of the liberty of the subject. He did not, however, point to the English origins of that practice,31 though Government speakers did not hesitate to call attention to the reliance of opposition arguments on "British tradition".32 The Act was passed, though only as a temporary measure for two years, but was extended for a further period in 1931.

6. IFS legislation and a Dominions influence.

The basic, if much resented, constitutional reality of the IFS was the acceptance in the Treaty of that the IFS was to be a Dominion, on the same basis as Canada. Given that, it was inevitable that drafters of the constitution and of legislation to create the structure of the new state should have studied, and drawn from, Dominion models – as did their critics.

(a) the 1922 constitution

Much of the time of the Third Dail was taken up with the lengthy, and at times bitter, debates on the Constitution for the IFS. The development of that Constitution has been recounted at length by other authors33 but it is interesting to look at the diversity of sources of information drawn on by the framers of the Constitution and, to a much lesser extent, by their critics. Canadian law and practice was inevitably most commonly discussed, though references to South African and Australian precedents and history were frequent.34

Although the Constitution adopted did have a number of novel features which clearly marked it out from the other dominions,35 it must be remembered that there was, overall, an underlying continuation of much English constitutional practice, a continuity which was the more marked because of the lack of use of the novel elements such as extern ministers.36 The Government had frequently to defend itself against allegations it had undertaken too great a degree of continuing subjection to Britain, and could on occasion challenge that on the basis the Canadian equivalence would give, in practice, a high degree of autonomy to mould institutions as it might wish.37 However this did not mean the Government was ready to concede it should be bound by the views of the other Dominions. When Gavan Duffy opposed fixity of constitutional provisions relating to Dominion status on the grounds that a

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[29] *Dail Debates*, vol 29, column 1553, 8 May 1929.
[30] *Dail Debates*, vol 29, column 1557, 8 May 1929.
[31] *Dail Debates*, vol 29, columns 1562-63, 8 May 1929.
[32] *Dail Debates*, vol 30, column 1018, 6 June 1929.
[33] See for example JGS MacNeill "Thoughts on the Constitution of the IFS" (1923) 5 JCL&IL (3rd series) 52; Brian Farrell "The Drafting of the IFS Constitution" (1970) 5 Irish Jurist (NS) 115, 343 and (1971) 6 Irish Jurist (NS) 111, 345; Brian Farrell "The Drafting of the IFS Constitution"; Thomas Towey "Hugh Kennedy and the Constitutional Development of the Irish Free State" (1977) 12 Irish Jurist (NS) 355.
[34] For example, Mr R Wilson, *Dail* Debates, volume 1, column 563, 21 September 1922; Professor Magennis *Dail* Debates, volume 1, column 767, 26 September 1922 and George Gavan Duffy, *Dail* Debates volume 1 columns 1417-1418, 10 October 1922.
[35] A G Donaldson *Some Comparative Aspects of Irish Law* (Durham NC, Duke University Press, 1957), p138.
[36] Basil Chubb *The Politics of the Irish Constitution* (Institute of Public Administration , Dublin, 1991), p12.
[37] This was clearly the view of a leading figure, Hugh Kennedy, see Thomas Towey "Hugh Kennedy and the Constitutional Development of the Irish Free State" (1977) 12 Irish Jurist (NS) 355. This analysis is, I suggest, more convincing than the suggestion by John M Regan *The Irish Counter-revolution 1922-1936* (Gill & McMillan, Dublin 1999), p311 that "…overt co-operation with Britain and the other Commonwealth dominions, though electorally unremunerative and even on occasion damaging, was for them [Cosgrove's government] part of the process of establishing national respectability after the fall from grace in 1922."

future Imperial Conference would bring to an end any possibility of a British veto of Dominion legislation, President Cosgrave rejoined tartly:38

> "Now, I do not want any Dominion Statesman to tell me what this Nation requires. And I think the majority of this Dáil do not require any education from Dominion Ministers as to what their duties and responsibilities are in this Dáil."

The Labour members of the Dail sought the inclusion of articles stating socialist economic principles, but did not press these in the light of reluctance by the Government to include any unnecessary matters which might be divisive.39

One feature of the new Constitution was the inclusion of provision for binding referenda on Bills passed by the Oireachtas. This was explained as derived from overseas use and particularly suited to IFS conditions:

> "The referendum is a feature of the Constitutions of Australia, America and Switzerland. It is, we consider, particularly suited to this country, in the circumstances of the time. It will impress on the people more forcibly perhaps than would otherwise be the case that henceforth the law of this country is their law, is the creature of their will, is something which they can make, alter, or repeal, as it seems best to them".[40]

Although the debates on the Constitution Bill only rarely ranged outside Dominions and American practice, the drafters of the Constitution had investigated the law of a much wider range of nations, and indeed collected 18 constitutions which were later printed for the use of the Dail.41 However that document appears to have been rarely used in the debates on the draft Constitution, since references to specific overseas provisions were generally to those appearing in a shorter document containing copies of the Canadian, South African and Australian constitutions.42

(b) electoral law for the new state

The settling of the constitution left the method of voting to be determined by a separate Electoral Act, which was passed in 1923. That Act adopted a form of so-called proportional representation – in fact the use of the single transferable vote and multi-member constituencies – which had earlier been proposed in the 1914 Home Rule Bill (in the belief it would lessen Sinn Fein's electoral success)43 and then included in the Government of Ireland Act 1920(Imp).44

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[38] *Dail* Debates, volume 1, column 545, 21 September 1922.
[39] See *Dail* Debates volume 1, columns 753-755, 26 September 1922.
[40] Kevin O'Higgins, *Dail* Debates, vol 1 columns 1210-1211, 5 October 1922. This view of the sources of the referendum provisions is adopted by Alfred Donaldson *Some Comparative Aspects of Irish Law* (Durham NC, Duke University Press, 1957), p145 and, with acknowledgment of it having been advocated by a Sinn Fein newspaper in being Sin but other writers have suggested that that the IFS model drew more on European models J L McCracken *Representative Government in Ireland: A study of Dail Eireann 1919-1948* (London, OUP, 1958) p 9 (noting that referenda had been advocated by a Sinn Fein newspaper in 1919) and Leo Kohn, *The Constitution of the Irish Free State* (London, George Allen & Unwin, 1932), p238.
[41] Leo Kohn *The Constitution of the Irish Free State* (London, George Allen & Unwin, 1932), p 78.
[42] For example, Kevin O'Higgins, *Dail* Debates, volume 1, column 759, 26 September 1922. John M Regan *The Irish Counter-revolution 1922-1936* (Gill & McMillan, Dublin 1999) suggests at p139 that this was originally prepared by pro-Treaty politicians in anticipation of the Dail being convoked.
[43] Michael Laffan *The Resurrection of Ireland: The Sinn Fein Party 1916-1923* (Cambridge UP, 1999), 323.
[44] J L McCracken *Representative Government in Ireland: A study of Dail Eireann 1919-1948* (OUP, 1958) p67. It is however probably inaccurate to suggest that the choice of this model was without real debate, as is alleged by Nicholas Mansergh *The Irish Free State: its Government and Politic*" (London, George Allen & Unwin, 1934), p62

The lack of originality was commented on by Edward Darrel Figgis who suggested that the Government should have enquired into practices overseas and selected the best precedents:

> "This Bill… is practically neglectful of very considerable advances that have been made in many parts of the world, and it is practically a gathering together, a mere codification of the existing English law, with some slight changes, none of which are of a very material kind.[45]

We may characterise Figgis's comment as disingenous, because it is clear that considerable attention had been paid to possible overseas models – including some European precedents. Indeed the overseas examples had been canvassed by Figgis himself in a seven page memorandum which set out the franchise rules (under headings of age, sex, citizenship, education, residence and property) for Britain, Canada and Australia (including their constituent states or provinces) and New Zealand, as well as the USA, a wide range of European countries and some Latin American states, as well as Turkey and Japan.46 It is curious that despite the relatively frequent references in constitutional debates to South African experience, neither Figgis nor any other would-be draftsman mentioned the law of South Africa or its constituent elements.

(c) courts

Figgis's electoral memorandum was not the only document indicating possible overseas models. The Judiciary Committee which considered the new Court system was presented with a document on the courts systems of Australasia,47 which set out in summary fashion the position in New South Wales with accompanying notes on the other Australasian jurisdictions, which had been prepared by a local barrister A F Blood at the request of the Bar Council. Blood appended a briefer and very general statement of the American system. It does not appear any use was made of this material.

Equally unsuccessful, if more persistent, were calls for the creation of "courts of arbitration and conciliation", with a motion in favour of them being passed by the Seanad in 1924. The debates on that motion indicate that most Senators had some idea of the nature and operation of the courts in Australia and New Zealand,48 and indeed Senator O'Farrell cited at great length from a piece by Sir John Findlay, former Attorney-General of New Zealand, on the operation of the Court of Arbitration in that country.49 However the government did not create any such permanent courts, although it did at times create an ad hoc court to deal with particular disputes. Renewed calls for such a system were made in the war years, when trade unions were significantly more active, but the government firmly rejected them, on the less than convincing ground that such an institution could work only when submission to arbitration was compulsory, and that system had been tried and found a failure in Australia and New Zealand.50 The Government did give ground some years later, with promises of a Labour Court with arbitration and conciliation functions.51

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[45] *Dail* Debates, volume 2, column 436, 3 January 1923.

[46] See documents in file 2002/22/0016 - 12 Electoral Bill 1923, NAI. These include a letter from F McCarthy to the Minister of Local Government, 13 September 1922 to which a memorandum from Figgis was stated to be attached. The attachment has not survived, but another archival collection, file 2002/14/1022 The Electoral Bill 1923 contains an unsigned and unattributed carbon copy of a "Memorandum on matters affecting the preparation of the present Franchise Bill" which would appear to be Figgis's 1922 memorandum. See also Department of Taioseach Constitution Committee 1922 file S7 Correspondence and memorandum concerning the Franchise in other countries, NAI. Various correspondents supplied a very eclectic range of material for consideration by the Constitution Committee, see Department of Taioseach Constitution Committee 1922, file S4 NAI.

[47] Blood, "Memorandum on the Constitution of the Courts and Judiciary etc of the Australian Commonwealth and of New Zealand" 7 December 1922, in File SR4/128 11/28 Judiciary Committee, NAI.

[48] See *Seanad* Debates volume 2 column 355ff , 20 December 1923, and volume 2, column 341ff, 15 January 1924.

[49] *Seanad* Debates volume 2, columns 347-49, 15 January 1924.

[50] See Sean MacEntee, *Seanad* Debates, volume 25, column 2286-92, 7 August 1941.

[51] *Dail* Debates, volume 101, columns 2292-3, 25 June 1946.

(d) Privy Council

One issue which was hotly debated in the 1922 Constitution debate was that of possible appeals from the IFS courts to the Judicial Committee of the Privy Council – a matter not expressly provided for in the Treaty, with the Government taking the position, challenged by a range of deputies, that Article 66 of the Constitution, which purported to make the decisions of the Supreme Court final and conclusive was still consistent with a proviso allowing appeals by special leave to the Privy Council on the basis this was effectively the Canadian position.52 This was a pragmatic approach, which at least in part appears to have been influenced by a lengthy memorandum prepared for the Constitution Committee by one of its secretaries, Ronald Mortished, on appeals to the Privy Council, and Dominion concerns about the quality of Judicial Committee decisions, in which Mortished emphasised the fact that South Africa had "practically abolished" appeals to the Privy Council and urged that the IFS insist from the outset that the Irish Supreme Court's decisions be final.53 It was later said that the IFS representatives had accepted the proviso on the basis that they would have the ability to do as South Africa had done and effectively choke off appeals.54

This is not the occasion to traverse in full events leading to the ending of appeals final abolition of Privy Council, but it is worth noting a curious diversity in the arguments for their abolition. Both in the Oireachtas and in the Department of External Affairs the advocates of termination of appeals paid considerable attention to the examples of Canada and South Africa. The Irish archives contain various materials from the 1920s, including press cuttings from Canadian papers, though only extreme partisans could have concluded that the Manitoba Free Press (a proponent of Dominion self-determination) was "the most influential paper in Canada".55

Yet when legislation to formally abolish the proviso and terminate appeals completely was first mooted in 1930, the draft Bill prepared, and the memoranda on which it was based, have not a single reference to the Dominion equivalents.56 Unfortunately we do not, have such full materials for the Constitution (Amendment No 22) Act 1933 which was prepared by the Parliamentary Draftsman for the Department of External Affairs.57

(e) government structure

One of the debates which produced the most frequent, and most informed, references to Dominion law and practice was that on the Ministers and Secretaries Bill 1923 which, in the words of the President, set forth the Departments of Government and allocated the various services under the control of each Minister, placed those Departments on a statutory basis and indicated the distribution of State services.58

An opposition member, Major Cooper, was quick to suggest that the new IFS government was more elaborate, and expensive, than its Dominion counterparts. In a lengthy speech he argued the IFS executive was unduly large and expensive, illustrating his argument with data as to the size of Cabinets in Canada, Australia, New Zealand, South Africa and – in

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[52] *Dail* Debates, volume 1, columns 1401-1416, 10 October 1922.
[53] See Department of Taioseach Constitution Committee 1922, file S6 Appeals to Privy Council, NAI.
[54] Kevin Higgins, *Seanad* Debates, volume 6, column 399, 24 February 1926.
[55] Secretary Dept of External Affairs to A-G, 29 March 1926, in file SR4/128 214/25 Canadian Courts and Appeals to PC, NAI
[56] Matheson to McDumphy, 12 November 1930, in file 2000/22/0542 45/1933 Constitution Amendment (PC) Bill 1933, NAI.
[57] See memoranda Matheson to A-G, 6 July 1932 and Matheson to A-G 26 October 1933 and draft Bill in file 2000/22/0542 45/1933 Constitution Amendment (PC) Bill 1933, NAI.
[58] *Dail* Debates, volume 5, column 916, 16 November 1923. It has been described as the "…most important piece of public service legislation passed in independent Ireland" Eunan O'Halpin "Politics and the State", in J R Hill (ed) *A New History of Ireland* (OUP, 2003) vol 7, p111.

comparisons not often made in the Dail - Germany, Denmark, Sweden and Norway and Switzerland.59
Cooper's references to the Dominions and their number of Ministers drew a vigorous response from Hugh Kennedy, the Attorney-General, who quite correctly pointed out that in Australia and Canada a proper comparison of the scale of executive government would require the state or provincial governments to be taken into account.60 The Minister of External Affairs was also quick to suggest the IFS was spending proportionately far less than the other Dominions.61

7. Mixed British Dominions and others

There were some Deputies who looked to Dominion precedents for administrative or governmental models, as with a suggestion that the Commonwealth Bank in Australia might be copied in the IFS,62 and that the IFS should extend its territorial limit for fisheries, following extensions by the United States of America and Sweden.63 More serious references to overseas law come in the debates over the Agricultural Credit Bill 1927, where two Senators referred to the existence of chattel mortgages in Australia, New Zealand and America, while suggesting the differences in farming practice were such that they would not necessarily be effective in Irish conditions.64

One of the relatively few pieces of legislation attracting widespread reference to the law and practice of a number of overseas jurisdictions was the Children's Allowances Act 1944, where both in the Dail and the Seanad there were frequent references to the way similar schemes operated in New Zealand, Australia and various European states.65 Senator O'Sullivan even drew on his personal experiences of New Zealand in 1938, though his claim to personal friendship with the Prime Minister of New Zealand may be suspect given his identification of him as "Martin" (rather than Michael) Savage.66

An even broader range of comparators featured in the debate on the Electricity Supply Bill 1927. As Minister McGilligan informed the Dail, he had toured USA and Canada recently and had there had the opportunity to learn about different models of organising large-scale schemes of supply of electricity to large areas. That had focussed attention on the need to look at the best models to use for control and supervision of large state-owned services, with the Government looking at models used in Germany, Sweden and South Africa.67 The Swedish comparison was examined, not entirely cogently, by other speakers.68 In addition

[59] Major Cooper, *Dail* Debates, volume 5, column 943-45, 16 November 1923
[60] *Dail* Debates, volume 5, column 1399, 5 December 1923.
[61] *Dail* Debates, volume 5, column 916, 16 November 1923.
[62] E Blythe, *Dail* Debates, volume 2, column 486, 4 January 1923.
[63] *Dail* Debates, volume 36 columns 857-858(Mr Wolfe TD) 3 December 1930; other speakers pointed out that international law did not then recognise such unilateral extensions.
[64] *Senate Debates*, vol 8, column 1478 and column 1495, 18 May 1927.
[65] See for example in the introductory speech at the second stage by Sean Lemass (curiously since he was Minister of Industry and Commerce, the Minister in charge of the Bill) *Dail Debates*, vol 92, columns 24-27 (23 November 1943); James Larkin, junior, *Dail Debates*, vol 92, columns 123-124 (23 November 1943); John McCann *Dail Debates*, vol 92, columns 172-173 (24 November 1943); Roderick Connolly *Dail Debates*, vol 92, columns 184-186 (24 November 1943).
[66] Seanad Debates, Vol 25, columns 505-506 (14 January 1944). Curiously, a modern author attributes the legislation solely to European models, without acknowledging the Australasian precedent: M Cousins *The Birth of Social Welfare in Ireland 1922-1952* (Dublin, Four Courts Press, 2003), pp6-7. There were other occasions, though not many, where legislators referred to their own experience of other jurisdictions. We find, for example, in the debates on the Betting Bill 1926 Senator Parkinson and Senator Sir Bryan Mahon drawing on their personal experience of the organisation and regulation (or otherwise) of gambling in New York and in India, respectively. *Seanad Debates*, volume 7 column 897 (9 July 1926) and volume 7 column 937 (7 July 1926), respectively. Mahon went on to refer to information he had received second hand about the position in New Zealand (see column 938).
[67] *Dail* Debates, volume 18, columns 1894-1908, 15 March 1927.
[68] See for example Mr Hewat, *Dail* Debates, volume 18, column 1992, 16 March 1927.

the Minister indicated in the Committee stage of provisions for auditing of the new Board's accounts that he had contemplated using a Canadian statute as a precedent.69
A feature of the Bill not emphasised by the Minister in the legislative debates was that an important provision of the Bill, the composition of the governing Board, was deliberately copied from a British precedent.70 Oddly enough an opposition Deputy urged the Minister to look more closely at the British provision as a model,71 apparently unaware how close in nature were the two provisions.

8 Other external influences

In many ways the most interesting feature of the 1937 Constitution was the extent to which de Valera had attempted to marry the republican and nationalist elements of his ideology with elements of Roman Catholic doctrine. The Constitution contained elaborate provisions concerning personal and family rights and duties, education, private property and social policy which were derived from a series of papal encyclicals of 1929 to 1931 and followed:

> "…closely, in form and content, a synthesis of Catholic social principles known as The Social Code, prepared by the International Union of Social Studies, Malines, Belgium"[72].

The Seanad constituted under that Constitution was also intended to provide for "vocational" representation, another idea derived substantially from Catholic thinking. As critics of the draft Constitution had prophesied, the concept of vocational representation proved a failure, with the Seanad becoming largely the preserve of less successful members of the principal political parties.[73]

It has been said, misleadingly, that the Censorship of Publications Act 1929 was inspired by the Catholic church,[74] but in fact the statute reflected a wide religious and social consensus.[75] It appears that the same is true of the earlier Censorship of Films Act 1923, as that statute was prompted by a joint delegation of representatives from the Irish Vigilance Association, the Catholic Church in Ireland, the Episcopalian Church in Ireland and Presbyterian Church in Ireland.[76] It is notable that proponents of censorship of films had looked widely for precedents, as in the second stage debate Gavan Duffy referred to a Bavarian law barring children under 18 from all but approved films.[77]

9. Some legislative examples

As some of the examples above would indicate, IFS legislation could have a rather syncretistic character, drawing on a range of sources. We are fortunate to have a remarkably

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[69] Gilligan, *Dail* Debates, volume 19, column 643, 31 March 1927.
[70] See memorandum of drafting instructions by Minister of Industries and Commerce in file 2000/22/0240 27/1927 Electricity (Supply) Bill 1927, NAI. The British model was Electricity (Supply) Act 1926 (Imp), s1.
[71] Hewat, *Dail* Debates, volume 18, columns 1994-95, 16 March 1927.
[72] Vincent Grogan "Toward the New Constitution", in Francis McManus (ed) *The Years of the Great Test 1926-1939* (Dublin, Mercier Press, 1967), p171. For the nationalist and republican ideology, see Ronan Fanning "Mr De Valera drafts a constitution" in B Farrell (ed) *De Valera's Constitution and Ours* (Dublin, Gill and MacMillan 1988). The opposition parties were also influenced by Catholic thinking, see David Thornley "The Blue Shirts" in Francis McManus, op cit, p49.
[73] For the extent to which the new Seanad was dominated by traditional politics, see J L McCracken *Representative Government in Ireland: A study of Dail Eireann 1919-1948* (OUP, 1958), pp149-151.
[74] See J L McCracken *Representative Government in Ireland: A study of Dail Eireann 1919-1948* (OUP, 1958), p177.
[75] Eunan O'Halpin "Politics and the State", in J R Hill (ed) *A New History of Ireland* (OUP, 2003) vol 7, p119.
[76] See Memorandum "E O'F" to "The Law Officer", 13 February 1923 in File 2000/22/0027-23 Censorship of Films Act, NAI.
[77] *Dail Debates*, volume 3 column 587, 3 May 1923

complete archival record for the drafting of one statute - the Industrial and Commercial Property (Protection) Bill 1923 - which demonstrates this process in detail.
While discussion on legislation to protect intellectual property had apparently begun in 1922, the drafting of a bill began only in late 1923. The Attorney-General, Hugh Kennedy asked the Parliamentary Draftsman, Arthur Matheson, to prepare a Bill to cover patents, trade marks and designs, with instructions to prepare legislation drawn on the lines of existing British and Canadian law:

> "I send you also herewith a copy of the Canadian Consolidation Act passed this year which contains some useful suggestions. I have already handed you two copies of the British Consolidation Acts 1907 and 1919."[78]

He then went on to ask Matheson to consider a more ambitious project - a single statute covering "the whole subject of the protection of Industrial and Commercial Property, including Patents, Copyright, Trade Marks and Designs (each dealt with in a separate chapter)" with a single Registrar or Controller of Industrial and Commercial Property.
The trade marks provisions were to be prepared by adapting the British Trade Mark Acts 1905 and 1919, with the addition of stringent rules to prevent the registration or use of marks of an Irish character for use on goods not produced in Ireland.

Matheson responded four weeks later by sending a draft Bill covering, as suggested, all areas of intellectual property. He drew particular attention to certain clauses, saying that "section 43 relating to inventions affecting instruments of war… is copied from the corresponding British section" while the designs section "contains all the provisions of the Patents and Designs Acts 1905 and 1919 which relate exclusively to designs" . Similarly, the trade marks section replicated the British Acts 1905 and 1919 with amendments such as "section" 116 which related to the misuse of trade marks indicative of Irish origin. The British provisions for state use of patents or designs, and those relating to "Colonial and International arrangements" had also been copied. The Copyright sections were largely the British Act of 1911, with some amendments to fit the new IFS governmental structure. It is significant that Matheson concluded his commentary by noting that Part VIII of the draft Bill :

> "…is a re-enactment of two sections of the Fine Arts Copyright Act 1862, the Musical (Summary Proceedings) Act 1902, and the Musical Copyright Act 1906…; "…the only object of including those provisions in this Bill is to get the whole law of copyright into the one act and not to have bits of it lying around in old British statutes".[79]

The following year the Bill, though still evidently largely derived from the British statutes, underwent some drafting changes, notably to define 'self-governing dominions" rather than British dominions:

> "I have however thought it well to insert a statement that the last mentioned expression includes Great Britain. I should add that Saorstat Eireann is necessarily not included in the expression 'British Dominions', because the application of the Bill to Saorstat Eireann is quite distinct from its application to any other country whether British or foreign".[80]

It was in this form that the Bill was introduced, under the title Industrial and Commercial Property (Protection) Bill 1925, with Patrick McGilligan, the Minister for Industries and

[78] This and succeeding quotations are from a letter, Kennedy to Matheson 8 October 1923, in File 2000/22/0068-16/1924 Industrial and Commercial Property Bill 1923, NAI.
[79] This account, and all quotations, are derived from memoranda in file 2000/22/0068-16/1924 Industrial and Commercial Property Bill 1923, NAI.
[80] See Matheson to John O'Byrne (A-G) 28 October 1924, in file 2000/22/0068-16/1924 Industrial and Commercial Property Bill 1923, NAI. It is notable that much of the 1924 draft Bill accompanying this letter was, quite literally, a "cut and paste" compilation of sections from the British Acts with at most minor hand-written amendments

Commerce downplaying the extent of the repetition of British law somewhat by describing the new systems as "leaning on" the British law or practice but making much of the new matters such as the protection of "Irish" trade marks.81 The Bill was not extensively debated at the conclusion of the second stage three days later, when it was referred to a select committee of the Dail, a motion later reversed in favour of the Bill being referred to a joint committee of both chambers in the Oireachtas.82 That Joint Committee proposed a large number of amendments – many apparently of limited impact – but the Minister made the tactical decision to withdraw the Bill so that a fresh bill incorporating most of these proposals could be introduced later in the year.83

The Minister incorporated these into a draft which was sent to the Parliamentary Draftsman with the optimistic suggestion that the matter had now been so simplified that a Bill could be prepared in a few days. The Draftsman produced a Bill in three weeks,84 and it is this version, still in substance essentially the 1923 Bill, which was enacted a few months later, after some debate, in both Dail and Seanad of both the proposed 16 year term of patent protection, and of unsuccessful moves to modify the Bill to promote printing of works in Ireland, amendments which were rejected because the Bill would not then comply with the Berne Convention.85 This mixture of British and Dominion precedent and Kennedy's own vision of an single statute thus created an unusual and distinctive statute.

We may note that the drafting was not entirely successful, as the Oireachtas was required to pass the Copyright Preservation Act 1929 in haste to preserve the interests of authors after the Privy Council ruled that once the IFS became a dominion, the Copyright Act 1911(Imp) no longer applied.86

10 Continuity of nationalist legislation

While in many cases the advent of the Fianna Fail government in 1932 marked an increase in nationalist symbolism – such as the increased use of Irish in official documents – and much more overt governmental attacks on "British" law and institutions, this was certainly far from universal.

In some minor matters IFS legislators continued to copy British laws when convenient. In others, the Fianna Fail government did no more than bring to fruition legislative projects which had been under lengthy consideration and development in official circles for many years.87 The prime example of this is with a trilogy of 1935 statutes affecting nationality and citizenship issues, the Aliens Act 1935, the Citizenship Act 1935 and the Nationality Act.88

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[81] *Dail Debates*, volume 11, column 2307 ff (26 May 1925). For "leans on" see columns 2308 and 2310; for the Irish trade marks see columns 2314-2315.
[82] *Dail Debates*, volume 12, column 847 (12 June 1925).
[83] *Dail Debates*, vol 16, column 1909 (1 July 1926).
[84] See memorandum Matheson to John Costello (A-G) 21 September 1926, File 2000/22/0068-16/1924 Industrial and Commercial Property Bill 1923, NAI
[85]. See *Dail Debates*, vol 17, columns514 ff (7 December 1926) and volume 17 column 589 ff (8 December 1926). For the Berne convention discussions see especially columns 554-568. For the Seanad debates *Senate Debates*, volume 8, columns 540ff (11 March 1927). For the patent term discussion see columns 557-562; for the trade mark issue see column 575 ff; for the copyright point see column 590ff and also *Senate Debates*, volume 8, columns 1107 ff (23 March 1927).
[86] Alfred Gaston Donaldson *Some Comparative Aspects of Irish Law* (Durham NC, Duke University Press, 1957), p86. The Privy Council decision was *Performing Rights Society Ltd v Bray UDC* [1930] AC 377.
[87] I differ here from the views of See J L McCracken *Representative Government in Ireland: A study of Dail Eireann 1919-1948* (OUP, 1958), pp197, who sees the 1935 legislation as a specifically Fianna fail measure.
[88] As noted earlier, proposals to abolish appeals to the Privy Council furnish a second example. See part 6(d) above.

It would appear that official consideration of the need for, and possible shape of, citizenship legislation began at the latest in November 1924, as the Secretary for Justice then noted in a Minute to the Secretary for External Affairs that a Citizenship Bill would be needed, and it was expected that information would be required as to the law and practice of the other Dominions, especially New Zealand and South Africa which had not then adopted Part II of the British Citizenship and Status of Alien Act 1914. The Secretary also requested a copy of the Canadian House of Commons debates of 19 January 1913 on the Canadian law.89 Copies of Australian and other Dominion legislation was acquired from the respective High Commissioners in London over the next few months – including a copy of a proposed South African Bill on the status of Aliens.90

The issue then apparently was placed in the "too hard" basket for some years, with enquiries from the Department of Finance (which was concerned to be able to determine entitlements to old age pensions) drawing the response that "the citizenship business bristles with difficulties and it is not particularly urgent" and no progress could be expected for some time.91

Paralleling this issue was the related question of control of immigration and "aliens". For some years the only basis for governmental control of inward migration was the Aliens Restriction Act 1914 (Imp), a very early wartime measure, and the Aliens Order 1925 made pursuant to it. Under that order an alien could not enter IFS for employment purposes unless the prospective employer had a licence from Department of Industry and Commerce.92 By 1930, officials had determined there was a need for a brief statute to complement the intended legislation on nationality and citizenship.93

A Bill was finally prepared in 1934, and enacted the following year. This was a more elaborate Bill than had been proposed in 1930, but in at least one respect it appears resort had been had, with limited success, to the British law. The Parliamentary Draftsman noted that the provisions relating:

> "to change of names by aliens will require further consideration. The British enactments on which the instructions for those provisions were based appear to me to be quite unworkable".

He had drafted his own version of the desired clauses – essentially concerned with aliens trading under assumed names without permission to do so – but was not sure the result was satisfactory.94 However, perhaps predictably, the focus of the debate in the Dail was on the very pointed definition of "alien" as being someone other than a citizen of the IFS – and thus according British or Dominion citizens the same legal status as those from outside the Commonwealth. This was strongly criticised by a range of opposition deputies, but the Fianna Fail majority ensured the Bill's passage.95

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[89] Minute 10 November 1924, in Department for Justice file H171/32 Citizenship Bill, NAI. Copies of some Canadian legislation had been procured the previous year, see Secretary External Affairs to Secretary Home Affairs 2 May 1923 in the same file, but the reasons for, and process of, the acquisition is not clear.

[90] Secretary External Affairs to Secretary of Justice 24 November 1924, in Department for Justice file H171/32 Citizenship Bill, NAI. New Zealand and Newfoundland legislation was also forwarded later in 1925.

[91] Roche to Codling, 17 December 1926, in Department for Justice file H171/32 Citizenship Bill, NAI.

[92] See Memorandum by Secretary for Justice 24 June 1931, in file H266/93 Department of Justice Immigration Act 1931, NAI.

[93] James Roche, Secretary for Justice, to JJ Hearne (External Affairs), 11 September 1930, in File H266/93 Department of Justice Immigration Act 1931, NAI. It must be said the problem was not pressing. In 1937 it was said in the Dail that there were 7,990 registered aliens in the IFS, of whom 6,342 were American citizens. However many of these, and many of the aliens from other countries had been in Ireland prior to 1922, and thus had a claim to citizenship under the 1935 legislation or under s3 of the Constitution. See statement by Patrick Ruttledge, Minister for Justice, *Dail* Debates, volume 66, columns 719-720, 14 April 1937.

[94] Memo by Matheson 24 January 1935, in file 2000/22/0644 14/1935 Aliens Bill 1934.

[95] See *Dail* Debates, volume 54, column 2520 ff, 14 February 1935.

As indicated above, the Aliens Act was seen as a complement to the Citizenship Act 1935. The critical problem for the Fianna Fail government was that it wished to use a very restrictive definition of citizenship which would, in effect, distinguish between the citizens of the IFS and other British subjects, but the preceding Government had at the 1930 Imperial Conference effectively conceded, after strongly arguing the contrary, that it would abide by the Conference decision that citizenship laws should be broadly similar throughout the Commonwealth, and that no Dominion had the right to legislate separately as it saw fit.96 The Dail had then accepted the Conference report.

It would appear that eventually the IFS government accepted that it could not argue that the 1934 Bill was consistent with the decisions of the 1930 conference, and that it would be impossible to maintain that the IFS had indicated a reservation to those conclusions given the absence of any documentary record of such reservations.97 However, it then switched to the argument that the upshot of the 1930 conference was a general recognition that Dominions were free to legislate as they pleased without regard to the law of other parts of the Commonwealth.98 Certainly the Citizenship Bill 1934 drew concerned comment from the British Government on the basis of its inconsistency with the decisions of the 1930 conference.99

Although there was considerable political discussion of the apparent change of stance by the Government in 1934-1935, some of the criticism was more than a little disingenuous. The archival record makes it clear that prior to the 1930 Conference the Government was planning a citizenship bill which would later make it possible to discriminate against British subjects in the same way as it might discriminate against the nationals of a non-Commonwealth country, although at least in part the aim was to be able to discriminate against businesses not controlled by Irish citizens.100 The Secretary for Justice took the view that an overt provision allowing discrimination might backfire, given the number of Irish men and women who lived and worked in Britain, but was confident a similar result could be achieved less openly by use of suitable residence requirements.101

It is clear that at some point in the drafting of the Citizenship Bill there was some research into the legislation of other states. There was, for instance, consideration of the British, Canadian and American naturalization laws, with the view being taken that the IFS should follow the British system where there remained a discretion to refuse citizenship.102

After the 1930 Conference, the officials returned to preparation of a draft Bill, which was prepared (as were other Bills with implications for the IFS's international standing), by the Department of External Affairs.103

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[96] For the IFS role in the 1930 Imperial Conference and the 1929 Committee on the Operation of Dominion Legislation see D W Harkness *The Restless Dominion : The Irish Free State and the British Commonwealth of Nations 1921-1931* (Macmillan, London, 1969) at pp146-148 and 135 respectivley.

[97] Conor Maguire, Attorney-General to Minister for External Affairs 18 August 1934, in file AGO/2000/10 1721 SR 025/37 Citizenship Bill 1934

[98] Fore example, de Valera, *Dail* Debates, volume 54, column 410, 28 November 1934.

[99] J H Thomas, Secretary of State for the Dominions 9 July 1934 IFS no 22; copy in file AGO/2000/10 1721 SR 025/37 Citizenship Bill 1934, NAI.

[100] Hearne (External Affairs) to Roche (Secretary for Justice), 9 September 1930, in Department for Justice file H266/91 Irish Nationality Act, NAI. It would appear that Germany, at least, was concerned about the possibility of such discrimination. See the debates on the Aliens Restriction (Amendment) Bill 1931, *Dail* Debates, volume 14, column 509, 12 March 1931.

[101] Roche (Secretary for Justice) to Hearne (External Affairs) 11 September 1930, in Department for Justice file H266/91 Irish Nationality Act, NAI

[102] See the (unfortunately not dated) memorandum on Irish Citizenship and amendments in Department for Justice file H171/32 Citizenship Bill, NAI.

[103] S A Roche to Secretary Civil Service Commission 4 January 1933, in Department for Justice file H266/91 Irish Nationality Act

11 Law reform

Consideration of law reform proposals may give us a better understanding of IFS legislation, particularly of the extent to which proponents of legislation looked to overseas precedents – usually but not always British – for guidance. It is striking that the vast bulk of suggestions for law reform – by officials and legislators alike - were for legislation based on overseas initiatives and almost none for locally developed innovations.

It is also significant that law reform in the IFS was very much dependent on gaining Governmental backing – something which was particularly hard to come by after 1932, since the Fianna Fail government resisted most proposals for a range of reasons, ideological, political and practical.

Even where official support was strong, reform could take decades. Few areas of law reform seem to have generated such universal support as the need for modification of the criminal law in relation to infanticide. Britain had acted in 1922 to provide a limited defence to murder, and reform had been suggested by officials as early as 1928 and again in 1932.104. To these calls was added that of the Chief State Solicitor who in 1944, 1945 and 1947, following cases where women had been charged with murder for killing recently-born children, asked whether, and when, adoption of the British Act would occur. He was informed in 1944 that a Bill was being prepared, and indeed three years later one was prepared, but delayed briefly pending proposed broader legislation on mental health.105 Legislation was passed in 1949.

Ministerial disinterest, fear of political disadvantage or reluctance to offend the Catholic church blocked other changes. Perhaps the outstanding example of the latter ground is with the stonewalling of repeated calls for a statute dealing with adoption of children.106 On at least five occasions between 1939 and 1948 members of the legislature asked whether the Minister for Justice would bring in an Adoption Act, with the English Act of 1926 twice being suggested as a suitable model, and North American precedents suggested on another occasion.107 An Adoption Act was finally passed in 1952.

Even those delays seem acceptable compared to the glacial pace of action on proposals to create a Public Trustee Office which could deal with wills and estates.108 Proposals for such an a reform had been made at least as early as 1913 when the Dublin Chamber of Commerce passed a Resolution in favour of the creation of a Public Trustee on the English model, after hearing an address by the Public Trustee for England. Further calls for such an institution were made in the 1920s and 1930s, invoking the success of the institution in New Zealand, Australia and England but it was not until 1944 that it gained the formal backing of the Ministry for Justice, and in 1945 there was Government decision that the Minister for Justice examine the case for the establishment of a Public Trustee on the "English or Dominion model". Opponents in the banking community, and within the Government, managed to

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[104] S A Roche to (Secretary for Justice, 31 July 1928; in S A Roche to Minister for Justice 13 December 1932, in Department for Justice file H266/61 Infanticide Bill. In addition, John Costello advocated change in the Dail in 1941, *Dail Debates* vol 85, column 1148, 3 December 1941, and see n130 below.

[105] See documents in Department for Justice file H266/61 Infanticide Bill, NAI.

[106] See J L McCracken *Representative Government in Ireland: A study of Dail Eireann 1919-1948* (OUP, 1958), pp177.

[107] See *Dail Debates*, volume 75, column 329 (30 March 1939) and *Dail Debates*, volume 98, column 529 (2 December 1943) (both referring to the British Act of 1926); *Dail Debates*, volume 100, column 2029 (30 April 1946); *Dail Debates*, volume 101, column 2584 (27 June 1946) (referring to the law of Quebec and California) and *Dail Debates*, volume 110, columns 640-641 (14 April 1948).

[108] This account is based on the documents in A-Gs Office files AGO/2000/10 3018 SR 011/44 Public Trustee, NAI. For the establishment of the Public Trustee in England see Polden 'The Public Trustee in England 1906-1986' 10 *Journal of Legal History* (1988) 228. There was in the IFS a Public Trustee who dealt with certain forms of government property only. Its operation was apparently controlled by the Public Trustee Rules 1927, SI No 14/1927.

prevent any legislation at that time, and indeed the issue appears to have receded until the 1960s.109

Adoption and the Public Trustee were not the only occasions in which Dominions models influenced the debate. John Costello had in1938 suggested the creation of an Arbitration Board for determining issues as to salaries and conditions for the civil service, based on the position in England. As might be thought politically necessary for an opposition MP, Costello was quick to say that he did not "advocate a slavish imitation of the British model", but he argued that given the closely analogous positions of the British and the Irish civil services it was only sensible to look to the British model.110 The Minister of Finance, Sean MacEntee, was predictably hostile to the proposal, but he founded much of his criticism on a study by the International Labour Organisation which had considered arbitration systems in Europe and in Britain and the Dominions. He then noted that since the ILO study New Zealand had abandoned the system of compulsory arbitration;111 he may well have been unaware that it had in fact been reinstated in 1936. While it is unusual to see Fianna Fail ministers looking to Dominion examples, the fact that the information they had was not first hand, and not up to date, seems quite typical.

(a) Private member's bills and law reform

It is suggested above that governmental backing was essential for law reform proposals o succeed, unlike other jurisdiction where private member's bills could be an effective source of law reform.112 The IFS position may be due in part to he limited amount of legislative time for private members' bills.113 It may also have been that there was no culture of striving for law reform (as opposed to the more common political manoeuvring) by such means in a Dail where many TDs rarely spoke.114 One of the few significant private members Bills to reach the statute book was the Moneylenders Act 1933, a bill unusual as having been supported by the Dail under both the Cosgrove government and its Fianna Fail successor.115

However one other area in which a private member's bill was important is the Legitimacy Act 1931, a success the more significant perhaps because of the odd relationship of its passage and that of the Illegitimate Children (Affiliation Orders) Act 1930. Both statutes largely followed English legislation. Yet the affiliation orders measure was introduced and passed as a Government measure, having as its principal feature the institution of a process whereby the father of an illegitimate child could be made liable to pay money for the support of the child.116. The Legitimacy Act, by contrast, was introduced as a private deputy's bill, and had as its principal feature the legitimation of children whose parents married subsequent to its

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[109] An acerbic anonymous memorandum prepared in the Ministry for Justice in 1947 (in A-Gs Office files AGO/2000/10 3018 SR 011/44 Public Trustee, NAI) stated that "…the arguments against the proposal have been well summarized in the Memorandum that was circulated by the Minister of Finance dated 26 March 1945. They include, with one omission, every argument that was used to obstruct the passage of the Public Trustee Act through the British Parliament. It is worth recording that the argument that has been omitted is the appeal that was made to the Irish members by the Hon. Member for the Look Division of Staffordshire, who seconded the motion for the rejection of the Second reading of the Bill in the House of Commons: 'How could they expect the Irish language to be revived' he said 'if money was to be frittered away in the appointment of Public Trustees.' ".

[110] *Dail* Debates, volume 70, columns 1199, 30 March 1938.

[111] *Dail* Debates, volume 70, columns 1831-33, 8 April 1938.

[112] See Jeremy Finn "'Should we not profit from such experiments when we could?': appeals to and use of Australasian legislative precedents in debates in the British Parliament 1858-1940" (2007) 28 JLH 31, 32.

[113] J L McCracken *Representative Government in Ireland: A study of Dail Eireann 1919-1948* (OUP, 1958), pp 124-5.

[114] J L McCracken, *Representative Government in Ireland: A study of Dail Eireann 1919-1948* (OUP, 1958), p135.

[115] *Dail* Debates, volume 33, columns 679ff, 20 Februiary 1930 and *Dail* Debates, volume 44, columns 335ff, 21 October 1932.

[116] Previous to this, a father was of an illegitimate child could only be required to contribute to its support where the child was supported by the poor rate of a local body, and an action for support was the appropriate officials, see Fitzgerald-Kenney, *Dail* Debates, volume 32, column 520, 30 October 1929.

birth. The divergence of parliamentary history is curious, since it is clear that for several years proponents of reform and officials alike saw the two measures as largely complementary ways to reduce the incidence of neglected children and, at one remove, diminish the apparent social evil of prostitution.117

Thus in 1924 the Rev Richard Devane SJ, of Rathfarnham Castle, had sent to the Ministry for Justice a memorandum on law "dealing with social moral problems", in which he advocated the raising of the age of consent, the introduction of affiliation orders for mothers of illegitimate children and the adoption in the IFS of the Legitimacy Bill then before the British parliament. Contemporary official documents indicate that both affiliation orders and the copying of the Legitimacy Bill were desirable and planned changes,118 and by later in 1924 the Secretary for Justice could assure a senator that measures to deal with prostitution would be introduced including, along with raising the age of consent for sexual activity and increasing the penalties for brothel keeping, both an Affiliation Orders Bill and legislation for legitimation of children by the subsequent marriage of the parents.119
For the next two years reformers continued to pressure the Minister for Justice on the issue, with enquiries about the likely date on which an Affiliation Orders Bill and a "Legitimacy" Bill would be introduced being followed, once a commitment to the former (if not the latter) had been made by the Minister in 1925, by reproachful reminders about the failure to act on the earlier statement.120

However, for reasons unknown any progress on the Bills stalled, and nothing of significance occurred until 1929. In that year the the Affiliation Orders Bill 1929 (enacted as the Illegitimate Children (Maintenance Orders) Act 1930) was introduced as a Government measure and received broad support from all parties, although opposition members readily indicated they thought it long overdue.121

By contrast the government showed no signs of action on the Legitimacy Bill, and in December an opposition Deputy, Patrick Little sought leave to introduce a Bill on the subject.122 The second stage was not reached until March 1930, and the Minister for Justice, James FitzGerald-Kenney gave the Bill a hostile reception, focussing on a number of drafting errors which derived from it largely replicating the British Act of 1926 without regard to the somewhat different Irish statutory setting.123 However the principle of legitimation by subsequent marriage (founded as it was on canon law) was widely supported by speakers in the Dail, and even the Minister was forced to accept that the Bill should proceed, although he maintained that Little had forestalled a better-drafted Government Bill. The Bill then proceeded slowly through the Dail and the Seanad, although a number of amendments which had been prepared by the Parliamentary Draftsman's office were made at Committee stage.124

A further curiosity is the Trustee Act 1931, which allowed the replacement of trustees where the nominated trustee was the office-holder of an office not persisting in the IFS. This appears on the surface to have been an example of back-bench law reform, as the Bill was

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[117] See correspondence in Ministry for Justice file H266/40 legislation Department of Justice File H213/2 Legitimacy Act for social moral problems, NAI (reformers) and Department of Justice File H213/2 Legitimacy Act (officials), NAI. A further indication is perhaps that the latter file was apparently listed in the departmental index under the heading "Immorality".
[118] See memoranda and correspondence in Department of Justice File H213/2 Legitimacy Act, NAI.
[119] Secretary for Justice to Senator (Mrs) Wyse Power 15 October 1924, in Ministry for Justice file H266/40 legislation Department of Justice File H213/2 Legitimacy Act for social moral problems, NAI.
[120] See correspondence in file MoJ H266/40 Legislation for social moral problems, NAI.
[121] See *Dail* Debates volume 32, columns 520ff, 30 October 1929.
[122] *Dail* Debates volume 32, column 2279, 6 December 1929.
[123] *Dail* Debates volume 34, column 244, 27 March 1931.
[124] See Memorandum Matheson to Costello, 27 November 1930, file 2002/22/0397 13/1931 Legitimacy Bill 1929, NAI.

introduced into the Seanad by Senator Brown, and apparently adopted in the Dail as a Government Bill.125 However the text of the 1931 Bill is very close indeed, though in re-ordered form, to that of a draft Bill prepared for the Attorney-General by the Parliamentary Draftsman in January 1931, a fact which suggests the Senator may have had some degree of official assistance in the preparation of his Bill.126

(b) Fianna Fail and law reform

The slow pace of law reform slowed drastically under the Fianna Fail government. There is an interesting, if self-serving comment on the lack of success of law reform in the IFS, and some of its causes, in a letter written in 1940 by the then Minister for Justice to the Attorney-General[127], which was prompted by a speech advocating law reform by Justice Meredith.[128] The Minister indicated that a committee of four judges had been asked a year earlier to prepare an informal report on murder trials, but no report had been received. Similarly a Committee on rent restriction had been set up several years earlier, with a request it report as a matter of urgency. Mr Justice Black, appointed when a barrister as chair of the Committee, had admitted he was the cause of the delay since he had not found the time to do the work.

More generally, the Minister was of the view that bills which should have enjoyed wide support could get caught up in unrelated controversies, and he was therefore reluctant to introduce any technical law reform bills unless he was certain the opposition would support them. This may explain lack of action on proposals for reform of both bankruptcy law and the law governing care in public institutions of the mental defective which had been made by governmental Commissions.[129]

The timing of the Minister's letter is also significant, as the advent of the Second World War was seen as justifying inaction on all but the most politically neutral matters. A rare exception was the Registration of Title Bill 1941, based on the report of a committee comprising the President of the High Court, a barrister, a solicitor and the Registrar of Titles. The Minister for Justice suggested to the Dail that :

> "… Deputies will not, in the circumstances, complain that consideration of the reforms proposed by the committee has not been postponed until the end of the present emergency".[130]

However there was also, very clearly, a partisan aspect to the lack of progress with law reform. The arguments as to lack of resources could be, and were, countered by pointing to the ready availability of bills drafted by the English law Reform Committee which could be readily adapted for Ireland. Use of these models was advocated both by John Costello, the leading opposition spokesman on legal matters during Fianna Fail's period in office, and later himself Taoiseach.

(c) Costello and the 1941 Bill

An interesting light is shone on the politics of law reform, and the mindsets of those involved, by the protracted debates and discussions on John Costello's Law of Torts (Miscellaneous Reforms) Bill 1941, introduced into the Dail as a private member's Bill. The Bill was very

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[125] The second reading in the Dail was moved by Fitzgerald-Kenney, the Minister for Justice, see *Dail* Debates, volume 39, 18 June 1931.See also memorandum by S A Roche, in Department of Justice file H266/99 Trustee Act 1931, NAI

[126] A copy of the January 1931 Bill is in Department of Justice file H266/99 Trustee Act 1931, NAI

[127] H Boland to Kevin Haugh, nd but April 1940, in A-Gs Office file AGO2000/10/1167 7/35 Justice Meredith "Desirable Amelioration of the Law", NAI.

[128] The speech, delivered on 18 April 1940 to the Statistical and Social Inquiry Society of Ireland was published later, see (1940) 74 ILT 108-09. A copy of the speech is in A-Gs Office file AGO2000/10/1167 7/35 Justice Meredith "Desirable Amelioration of the Law".

[129] (1940) 6 Irish Jurist 17.

[130] *Dail* Debates, volume 85, columns 1340, 10 December 1941

much modelled on the Law Reform (Married Women and Tortfeasors) Act 1935 (Imp), which allowed apportionment of damages between tortfeasors – a change which Costello wished to extend to defamation cases - and also exempted a husband from liability for both pre-marriage debts and post-marriage torts of his wife. The Bill passed its second stage in the Dail and was later reported back without amendment by a Select Committee.

Costello's speech at the second stage was in significant part devoted not to this Bill alone but to encouraging the creation of a permanent law reform committee – a matter which I hope to discuss in a separate paper - and to other desirable amendments included the English legislation but not in his Bill. He also referred to other areas where law reform was overdue, including infanticide, adoption, the law of arbitration, testator's family maintenance, modernisation of both bankruptcy law and the governing Companies Act, making provision for the estate of a person dying from the negligence of another to recover funeral expenses,[131] amendments to the Workmen's Compensation Act to increase the amounts recoverable by infant dependants of the deceased, and the need to address the unsatisfactory position of a childless widow whose husband had died intestate. [132]

Costello then came to the politically vital question of the degree to which law reform in the IFS might draw on British proposals for reform as outlined in the Reports of the Law Reform Committee – something he saw as both necessary and efficient:

> I do not advocate here or elsewhere that we should slavishly follow British legislation in everything they pass—far from it—but I do say that where there are matters which are common to this country and England, it is desirable that our procedure in law should, so far as our own requirements permit, be much the same and that even the very wording of the statutes which deal with situations common to this country and England should be as closely similar as possible."[133]

To this he added the classic "textbook" argument that it was to the advantage of Irish litigants and lawyers alike that the legislation of the IFS be kept sufficiently similar to that of England that English textbooks and decisions could be relied on for guidance.134

Costello acknowledged that the Minister for Justice and his Ministry had been preoccupied with other matters and law reform had had a low priority. The Minister, Gerry Boland, was quick to claim that the Ministry had been busy with other matters, that there had been no clear calls for reform from other agencies, and that it had been his understanding that no Bills of this type would be introduced during "this present emergency" (that is, for the duration of the War).135 He was however ready to see the Bill go to a Select Committee for further consideration. Boland's support for the Bill would appear to have been genuine, insofar as contemporary departmental correspondence indicated he was concerned the Bill might draw opposition as not being part of an orderly process of law reform.136 Certainly the officials had few concerns with Costello's Bill as it stood. A memorandum prepared for the Minister in November was quite supportive of the Bill's passage:

> "…[E]xcept for one Section, the Bill is copied word for word from an English "Law Reform" Act of 1935 …the Parliamentary Draftsman says that the drafting, being for the most part a copy of the English statute, is

[131] *Dail Debates* vol 85, column 1140-1152, 3 December 1941.
[132] *Dail Debates* vol 85, column 1139, 3 December 1941.
[133] *Dail Debates* vol 85, column 1146, 3 December 1941.
[134] *Dail Debates* vol 85, column 1146, 3 December 1941.
[135] *Dail Debates* vol 85, columns 1150-52, 3 December 1941.
[136] Memorandum for Attorney-General, 26 November 1941, in A-Gs Office file AGO/2000/10 2935 SR 012/41 2221/53 Civil Liabilities Bill: Proposal to amend the Law relating to Torts, NAI

satisfactory subject to some minor amendments which could be inserted at the Committee stage."[137].

Costello was later to acknowledge that the relevant provisions of the English Act were not ideal, but he had thought adoption of it would be politically advantageous::

> "Had I been left to myself I would have endeavoured to draft a Bill making the Bill clearer than it is in the British Bill. I felt however that when I introduced the Bill into the Dail that I would have a better chance of getting a hearing if I could point to the fact that it was merely a copy of an English Bill which had carried out similar Reforms[sic] some years before than if I endeavoured to draft a Bill in accordance with my own ideas."[138]

The statement is somewhat ambiguous, as it is not clear whether Costello meant that a Bill based on an English model would receive a better hearing that one locally drafted, or whether partisan politics would have prevented a bill drafted *by Costello* from getting a favourable reception. Either reading suggests Costello considered Fianna Fail and its allies would be motivated to oppose the Bill because of its English origins.

Costello's Bill was reported on, apparently favourably, by the Committee to which it was referred but, in view of the Committee's report the Bill was withdrawn, a move apparently having the general agreement of the Dail.[139] However, progress on the Bill was limited. Costell and government officials corresponded, in desultory fashion, over the bill in 1943 and 1944, and progress went as far as the preparation of a draft Bill in 1944.[140] The issue was raised again in 1947, with the Minister for Justice replying that the reform was of the kind that would be best examined by a Law Reform Committee, and as the establishment of such a body was "under active consideration", the Bill had been deferred.[141] In the result the core of Costello's original Bill does not appear to have come back before the Dail until 1950 – by which time Costello was Taioseach!

Costello was not alone in recommending adoption of English reforms – in 1948 George Gavan Duffy, then President of the High Court, could suggest to Costello that nine-tenths of the English Law Reform Committee proposals could be adopted en bloc, although Gavan Duffy was apparently at least equally interested in a re-statement of case law on the lines of the American *Restatement*.[142] A number of the same changes were recommended in a public speech by Justice Meredith,[143] and by Irish legal journals.[144]

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[137] Memorandum for Attorney-General, 26 November 1941, in A-Gs Office file AGO/2000/10 2935 SR 012/41 2221/53 Civil Liabilities Bill: Proposal to amend the Law relating to Torts, NAI.

[138] Costello to Dixon, 5 October 943, in A-Gs Office file AGO/2000/10 2935 SR 012/41 2221/53 Civil Liabilities Bill: Proposal to amend the Law relating to Torts, NAI.

[139] *Dail Debates* vol 85, 4 February 1942.

[140] See correspondence in A-Gs Office file AGO/2000/10 2935 SR 012/41 2221/53 Civil Liabilities Bill: Proposal to amend the Law relating to Torts, NAI. The file contains a printed version of the Tortfeasors Bill, with a printed date of "1944" amended by hand to "1945" and bearing the the pencilled annotation " "borrowed from P.D[Parliamentary Draftsman]'s file."

[141] *Dail* Debates, volume 104, column 1207, 25 February 1947

[142] Gavan Duffy to Costello, 28 February 1948, in A-Gs Office file AGO/2000/10 2935 SR 012/41 2221/53 Civil Liabilities Bill: Proposal to amend the Law relating to Torts, NAI.

[143] The speech, delivered on 18 April 1940 to the Statistical and Social Inquiry Society of Ireland was published later, see (1940) 74 ILT 108-09. A copy of the speech is in A-Gs Office file AGO2000/10/1167 7/35 Justice Meredith "Desirable Amelioration of the Law".

[144] See (1937) 71 ILT 25; (1935) 69 ILT 357, (1942) 76 ILT 1 and(1940) 6 Irish Jurist 17.

12. CONCLUSION

The Irish Free State was to some extent a paradoxical state – the elements of revolutionary nationalism – and its highly divisive political effects - being largely balanced by the unifying elements of social conservatism, itself in part due to the influence of the Catholic and other churches. There was, in counterpoint to the nationalist element, a great continuity of economic social and cultural links with Britain. The IFS was also not a rich state, and resources for governmental action were limited – both materially and in terms of governmental willingness to push controversial policies through the Oireachtas.

As we might expect, the legislation of the IFS reflects these contrary elements. There were some statutes which show a high degree of local initiative – particularly de Valera's 1937 constitution – and others which show a careful selection from a range of overseas precedents, such as the 1922 Constitution and electoral law. Dominion precedents were, perhaps naturally, important here. Nationalist policies inspired other important legislation, as with the citizenship and immigration provisions of the 1930s, legislation which is important for showing a continuity of policy under governments of different hues.

However to focus on these landmark statutes is to understate the continuing and most important stream of statutes which were modelled on contemporary British legislation. Reliance on these precedents was sensible both in terms of consistency with the inherited law of the IFS and the resources that would have been required if all statutes had been independently drafted. As we have seen in the discussion of law reform, there was sometimes considerable resistance to many reform proposals based on British, or occasionally other Dominion, law. Political factors explain some of the lack of action – particularly where Fianna Fail was less than eager to countenance controversial Bills and the leading proponents of reform were its political opponents. Yet even so, as the statement by Costello discussed above evidences, an English model for law reform was sometimes an asset.

I suggest any study of IFS statute law must consider both the occasional radical legal changes – usually inspired in some fashion by nationalist aims – which might nevertheless draw on Dominion precedents and the more numerous statutes which in form and substance continued to draw on British law. This latter has perhaps been understated by other writers. Both aspects are important and require study. However I suggest that to understand IFS law we must look at the interplay of continuity and change, not at either in isolation.