



BOOK REVIEW

CONSTITUTIONAL LAW OF IRELAND, By Michael Forde, (Cork and Dublin: The Mercier Press. 1987 801 pp 1ii. £60)

In 1987, the fiftieth anniversary of the people's adoption of their Constitution was recorded. Coincidentally the people of the United States celebrated their Constitutional Bicentennial. When the people adopted Bunreacht ne hÉireann in 1937 the people of the United States were celebrating the sesquicentennial.

In 1937, a constitutional crisis brewed in the United States: President Roosevelt had decided to pack the Supreme Court with his own nominees. In the early years of the twentieth century, there was an obvious growth in the power and prestige of the executive branch of government in the United States. Yet, during this period the Supreme Court steadfastly invalidated social and economic legislation which was popular with the electorate. President Roosevelt launched his New Deal legislative programme in 1933. Subsequently the Supreme Court invalidated eight out of ten major legislative measures and thus destroyed the essence of the Roosevelt programme. When he won an overwhelming victory in 1936 with the electorate approving the New Deal, President Roosevelt felt confident in presenting Congress with his court-packing bill which would make sweeping changes in the federal judiciary. In his own words, the President sought to bring into

the judicial system “a steady and continuing stream of new and younger blood... younger men who have had personal experience and contact with modern facts and circumstances under which average men to live and work... thus saving [the] National Constitution from hardening of the judicial arteries” [Senate Reports, 75th Cong., 1st Session, Doc. No. 711, pp. 41-45]. Congress failed to approve the court-packing bill but the temperament of the Supreme Court appeared to change. By early 1937, the Court had dramatically reversed itself in a series of decisions relating to social and economic issues; a new era in American constitutional development had dawned. Your reviewer, conscious of the continuing influence of the interpreters of the oldest written national constitution on the interpreters of the 1937 Construction, mentions these issues to illustrate that this State has been fortunate in eschewing a similar constitutional crisis in its first 50 years. The balance between the “judicial activists” and those judges who favour a policy of “judicial self-restraint” has ensured that the delicate tension which exists in this State between the three arms of government and the nexus which exists between the governors and the governed have not been unduly upset.

Neither our Jubilee year of the Constitution nor the American Bicentennial touched the alchemy of either community. Yet the Jubilee did spur scholars to action. Professor Kelly (with Gerard Hogan and Gerry Whyte) produced the supplement to *The Irish Constitution*; Professor Casey wrote his *Constitutional Law in Ireland* and Dr. Forde has published his *Constitutional Law of Ireland*. These scholarly works were followed in early 1988 by the second edition of Mr. B. Doolan’s *Constitutional Law and Constitutional Rights in Ireland* and by Mr. F. Litton’s (as editor) *The Constitution of Ireland 1937-1987*. Students, practitioners and judges have been presented with an abundance of reading material. A newly appointed judge complained at the beginning of the eighteenth century that when he was a law student he could carry a complete law library around in a barrow, now that he was a grown man he needed a wagon. Bus Éireann might need to come to the rescue today; this is a cause for celebration.

Dr. Forde has produced a *magnum opus* of more than 850 pages. Apart from the usual illuminating foreword which we have come to

expect from Mr. Justice Walsh, this volume contains the customary table of constitutional provisions, table of statutes, and table of cases. In the 791 pages of text, there are no less than 28 chapters, many of which follow the usual pattern but there are some chapters which appear unexpectedly. Chapter 2 deals fully with the intricacies of "The State and its Citizens". In 40 pages, chapter 3 on the "Judicial Review of Law" throws new light on such complex matters as the principles of constitutional interpretation and the presumption of constitutionality. Chapter 12 discusses masterfully both the national and international concept of human and natural rights. Chapter 13 covers fully the problem of "Legality and the Rule of Law", including the concepts of accessible and comprehensible law, retroactive and individualised laws in a novel way. Chapter 15 on fair procedures is a comprehensive detailed exposé on this vital subject from the point of view of criminal, civil and administrative laws. At least 10 chapters are devoted to the fundamental rights contained in Articles 40 to 44 of the Constitution. Chapter 20 concentrates on "privacy and personality", where such transcendent matters as confidential information and sexual conduct are fully considered. The 30 page Chapter 23 on "Economic Rights" deals with business and the professions. Chapter 25 on "Social Welfare and Educational Rights" considers matters arising from the Directives of Social policy contained in Article 45. Chapter 27 contains 40 pages on "State Security and Emergencies" and has detailed shrewd observations on this most sensitive subject. Such procedural remedies as the declaration, compensation and the injunction are dealt with briefly in Chapter 28.

The industry and research of Dr. Forde are illustrated by the innumerable footnotes which concentrate not only on American and European cases but also on notes relating to American, French, German and Italian textbooks and periodical legal literature and, where necessary, on the text of the American, French and German Constitutions.

Dr. Forde has written a monumental treatise on the Irish Constitution. Hopefully a future paperback edition will make this book more accessible to those who cannot afford the price of this hardback edition. Dr Forde's book deserves to be read by all who value our fundamental law.

Eamonn G. Hall.

[This review was published in the *Gazette of the Law Society of Ireland*, vol 82, No 5 (June 1988) at p.147. The second edition of this book, *Constitutional Law*, was published by FirstLaw, Dublin, in 2004.]

