



## BOOK REVIEW

**THE IRISH CONSTITUTION**, SUPPLEMENT TO SECOND EDITION. BY J.M. KELLY WITH G.W. HOGAN AND G. WHYTE [DUBLIN: JURIST PUBLISHING CO. LTD 1987 xvi and 211 pp IR£12.50]

Two fundamental principles characterise the manner in which we, the people, are governed in this State. Firstly, in general, it is a representative majority who rule after the people have exercised their franchise in the electoral process. Secondly, the governing majority constituting the Executive and the Legislature must act in accordance with law which is interpreted and often in constitutional rights sense made by the judicial arm of government, our judges.

The increasing challenges to the manner in which the majorities have governed since the Constitution of 1922 was enacted is reflected in the Supplement to the second edition of Professor Kelly's book *The Irish Constitution*. In the *Supplement*, Professor Kelly, a pioneering commentator in constitutional law and two legal scholars, Gerard Hogan and Gerry Whyte, record approximately 200 Irish decisions with a constitutional dimension in about 3½ years. This represents a phenomenal increase in litigation which reflects, to a certain degree, the politico-legal catch-phrase of recent times – "it must be unconstitutional". It is undoubtedly better that the challenges to the rule of the elected majority be taken in the courts than on the streets, a sentiment expressed recently by Mr. Justice Brian Walsh in one of his many perceptive extra-judicial commentaries.

In its review of the myriad of recent cases, the *Supplement* illustrates the strength and self-confidence of the judicial power in the State.

The authority to strike down a statutory provision as being unconstitutional vests an enormous power in one man or woman, the High Court Judge, subject to review of course, by a panel of judges in the Supreme Court.

The strength and self-confidence of the judicial power is illustrated in the words of judges condemning action as being “[not] permissible within the Constitutional framework” and in the articulation of the concept that a statutory provision is unreasonable and therefore unconstitutional. The causative factors influencing the decisions of those judges on grave constitutional issues remain complex. Decisions do not blossom unaided in the minds of men. Economic background, social status, cultural allegiances, political considerations, self-perception and the sheer power of ‘rhetoric’ – the process of deliberative and rational discourse excluding personal considerations – all play their parts, consciously or sub-consciously in the blossoming of the decisions of the judges.

The authors of the *Supplement* have sought, in conjunction with the second edition, to make available on a manageable scale all the law arising from or relevant to the Constitution over the 50 years since the Constitution’s enactment. Where the material in the *Supplement* relates to an existing heading in the second edition, the second edition page number is indicated in bold type and in square brackets and the existing heading or side note is reproduced. New material is designated by the word [NEW] and there is reference to the page in the second edition where the new material complements the existing material. This may appear somewhat distracting and a new edition would have been preferable, but would have been more expensive for the reader. In fact, the scheme of the book works well in practice and the *Supplement* can be read in its entirety as book without any distractions.

The cover illustration, Sir John Lavery’s “The Blessing of the Colours” is fetching. Do the authors consider it as a laconic comment on the current state of constitutional development in this State?

It was almost fashionable some years ago (dare it be mentioned) for some practitioners of all ilks to boast that they knew little of constitutional law. Today, those boasts have been transferred to the latest legal accretion – the law of the European Communities. *The Irish Constitution* and the *Supplement* to the second edition may be heartily recommended to practitioner and student alike and deserve to sit on the accessible book shelves of every practitioner and law student.

Eamonn G. Hall.

[The review of this book was published in the *Gazette of the Law Society of Ireland*, vol. 82, no. 1 (January/February 1988) p. 23. The 4th edition of *The Irish Constitution* was published by Butterworths in 2003.]

