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Patrick Hanafin

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# Constitutive Fiction: Postcolonial Constitutionalism in Ireland

Dr. Patrick Hanafin\*

Art was a weapon in the battle which a small fragile society waged in order to create itself.<sup>1</sup>

To draw up a plan is almost inevitably to express a philosophy. In shaping the sequence and proportion of the parts which are to comprise the whole, the trick of the mind will out; and it is in that trick of the mind that, ultimately, all philosophies are contained. Perhaps there are few who, after consideration, would deny this in all the ordinary (greater or lesser) concerns of life; but many will think it strange in a matter so dry as the drafting of a Constitution. Yet even in the drafting of a Constitution it will be found equally true.<sup>2</sup>

## I. Introduction

This Article attempts to analyze the contradictory notions of citizenship posited by postcolonial Irish constitutional discourse. The contradictions in the notion of Ireland inherent in constitutional discourse reflect a wider contradiction in the notion of Irishness posited in anticolonial and postcolonial political discourse. This split in the construction of Irishness gives rise not to a coherent conception of the nation but rather to a hybrid figure of Irishness. Irish citizenship has in the postcolonial period been marked by a conflict between foundational nationalist notions of the nation and a more liberal narrative of individual autonomy. The splintering of the Irish construct into competing classes, both economic and other identity positions, is at odds with the search for an Ireland, uncomplicated,

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\* Lecturer, University of London, Birkbeck College, School of Law, United Kingdom.

1. Colm Toibin, *Public, Private, and a National Spirit*, in *WHEN TIME BEGAN TO RANT AND RAGE* 23, 24 (J. Christen Steward ed. 1998).

2. DARRYL FIGGIS, *THE IRISH CONSTITUTION* 20 (1922).

cohesive and immutable. A gap exists which some think is required to be filled but with what does one replace the anchoring point that was nationalism and concomitantly religion? Indeed, should or could there be a replacement? Does this loss of the anchoring point of theocratic nationalism fail to reveal the impossibility of a coherent collective identity? Catholic nationalism itself was a mere device to bind together the people in an anti-colonial struggle. The nationalist movement was itself an amalgam of diverse voices united only by their antipathy to the colonial power. In the opening decades of independence, the notion of Ireland as a rural fantasy in opposition to the industrialized modern economy of the colonizers, continued to be portrayed in official discourses.<sup>3</sup> This model of Ireland reflected the elite's attempt to retain the allegiance of the varied citizenry of the new state. Nevertheless, this projected notion of a rural Ireland based on communal bonds excluded many including the urban working classes and the urban unemployed. Thus, even within the opening decades of this new nationalist state, not all citizens were cherished equally.

## II. The Postcolonial Legal Space

Ireland has always been a contradictory notion open to alternative readings and rereadings. This article is an effort to look at Ireland as a cultural and legal text, which is open to not one, but several readings, none of them definitive and none of them permanent. I have chosen the Constitution of 1937 as the primary text for study. This text is a multilayered representation of Ireland. It is both determinate and indeterminate, both rigid and fluid. What I am setting out to do is, to quote Schuster, not "to unblock the problem, if that is even desirable or possible, [but rather to enact] a circulation of questions to try to better understand the non-understandability of the aporia."<sup>4</sup> This is not to say that since its instantiation, the 'meaning' of the Irish Constitution has changed from one paradigm to another, rather the meaning of the text was always ambiguous. As a cultural phenomenon, the Constitution is a bundle of indeterminacies, contradictions and aporetic spaces. Within the bounded discourse of the law, the Constitution was an objective framework for the regulation of a polity. However,

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3. Delan Kiberd, *The War Against the Past*, in *THE USES OF THE PAST: ESSAYS ON IRISH CULTURE* 24 (A.S. Aylor & R.F. Garratt eds., 1988).

4. Joshua Schuster, *Death Reckoning in the Thinking of Heidegger, Foucault, and Derrida*, 1 *OTHER VOICES* 1, 10 (1997), available at <http://www.othervoices.org/jnschust/death.html> (last visited Jan. 31, 2002).

outside of the synthetic isolation of the law, the Constitution performs the symbolic role of representing the nation. By looking at the text with an eye towards Irish culture, one is able to expose the indeterminate nature of the constitutional text and the fragmented nature of the nation that it represents.

The writing of the nation cannot represent the nation completely; neither can it found the nation. For the nation is always in the future, always to come. What Eamon de Valera, the principal framer of the Constitution, was attempting to do was to represent a particular vision of the new Irish polity in the text. This is not to suggest that de Valera wrote the Constitution on his own but to state that his vision of Ireland was highly influential in the drafting process.<sup>5</sup> However, as with all projects of representation, the text always contains contradictions and opposing notions of nationhood. This exposes the very impossibility of writing a national identity. This impossibility was exposed tellingly in the writings of James Joyce where his attempt to write out of the postcolonial body politic appeared like a repressed spirit dormant in its unconsciousness. This writing was looked on by the censorious early postcolonial state as excremental and was, as such, expelled from the space of the body politic and treated as the abject, a threat to the illusory narrative of Irishness set up by the rulers of the "new" state.

The constitutional text, while purporting to be the mere legal foundation for the Irish State, is at another level, symptomatic of the contradictory nature of Irishness in the postcolonial period. In a society built on contradictions, it is only appropriate that the foundational document of the polity is itself a complex of conflicting positions. The Constitution is a consummate modernist text in that it contains within it contradictory ideological constructs. The Constitution in this sense can be read in a manner similar to the texts of literary modernism, as a repository of irreconcilable ideas, which together make up the whole, and without which, the text would not be complete. The Constitution's inner-tension between liberal and reactionary elements can be compared to the modernist tension between the primitive and the progressive. As Berman has observed:

Modernists . . . created complex compositions of heterogeneous elements, compositions whose unifying principles would only come into being with the individual work. Finally, sensitive to the intrinsic potential of each medium, an artist working with

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5. Dermot Keogh, *The Irish Constitutional Revolution: An Analysis of the Making of the Constitution*, 35 ADMIN. 4 (1987).

several media would not seek a direct translation of the "content" of each into the other, but would create composite works whose elements would harmonize with each other only indirectly.<sup>6</sup>

De Valera could be considered the consummate modernist auteur in his juxtaposition in one work of seemingly irreconcilable elements, the primitive and folkish enveloped in a modernist form. If we look at the Constitution as a Modernist text we can then understand the mingling of diverse elements as a symptom of the Modernist condition. It was written at the same time as that other masterwork of modernism, *Finnegans Wake*. While the *Wake* demonstrates the porousness of language and the fluidity of identity, the Constitution attempted to reflect an essentialist notion of identity in a language which was rigid. Whether this was a mere political propaganda exercise to create a sense of unity in a fragmented postcolonial polity or whether de Valera actually believed in what he was creating, the irony remains that the repressed identities in the text were to emerge and in effect transform the notion of citizenship inherent in the text.<sup>7</sup> To quote Berman,<sup>8</sup> the Constitution is "the expression of the double Modernist desire for both 'primitive,' authentic energy and sophisticated forms of high culture."

This attempt to anchor the notion of Irish nationhood in a binding legal document is just as futile as the attempt by cultural nationalists to create the illusion of the nation in literary narratives. The attempt to compose identic wholeness against the reality of fragmented societal selfhood is ultimately doomed to fail. Attempts at "representing" Ireland in various texts of the culture have been numerous. Representation remains a highly subjective process. At the heart of all such attempts to represent the nation is a search for wholeness, for an essence of Irishness. However, this essential Irish nation is one that lies in the imagination of those who it represents. As cultural texts, legal texts also attempt to represent a notion of the national essence. The problem of representation remains the same, whether at the level of the cultural or the legal text, that is, the author

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6. Nathaniel Berman, *Modernism, Nationalism and the Rhetoric of Reconstruction*, 13 CURRENT LEGAL THEORY 3, 10 (1995).

7. ALAN STOECKL, *POLITICS, WRITING, MUTILATION: THE CASES OF BATAILLE, BLANCHOT, ROUSSEL, LEIRIS, AND PONGE XII* (1985). This book refers to literary modernism but is equally applicable to a legal modernist document such as the Irish Constitution, "Modernist texts may be the locus of an irresolvable struggle between different ideological forces, rather than the repository of a single one."

8. Berman, *supra* note 6, at 23.

endeavors to create an image of something that does not really exist. The image is not the reality but an attempt to disguise a lack or incompleteness. It is, in other words, an imago. It is a projection of an image, which the representor uses in an attempt to locate Ireland as a bounded unchanging construct. However, this attempt at representation is always incomplete because there always remains something beyond representation, a real that can never be reduced to mere symbolization. The problem then is one of identification. One identifies with a particular Ireland and personifies the nation in certain terms. However, this is a false image, which the representor creates to give the illusion of unity. The question goes to the heart of political organization and identification to the root of competing notions of citizenship.

As such, this text reveals the problems of representing the nation at all and the universal problem in postcolonial and other nations of trying to impose a natural notion of the nation, as a means of maintaining power.<sup>9</sup> This modernist text was thus on the surface a paean to the cultural nationalist vision of Ireland. Yet, like Irish society, it contained within its recesses counternarratives, a repression which was at large in the cultural imaginary despite the best efforts of the controlling elite. In this sense, the model which I will adumbrate, rather simplistically as Yeatsian romantic nationalism, was constructed against a Joycean reality of a late colonial/early post-colonial society every bit as chauvinistic as its near neighbor and former colonizer.<sup>10</sup>

If de Valera was a Reactionary Modernist auteur,<sup>11</sup> projecting a nationalist desire into the public sphere, then hidden within his urtext were traces of liberal modernism, which were to emerge some thirty years later in the more layered reading of the constitutional text by the Supreme Court. This battle for a new notion of Irish constitutional citizenship was advanced in part by the growth of social movements who projected an antithetical

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9. Luke Gibbons, (1991), *Constructing the Canon: Versions of National Identity*, in THE FIELD DAY ANTHOLOGY OF IRISH WRITING Vol. II 950, 954 (Seamus Deane ed., 1991).

10. Richard Kearney, *Myth and Motherland*, in IRELAND'S FIELD DAY 59 (1985).

11. A differentiation can be made between reactionary and liberal forms of modernism. Berman sums up the distinction in the following terms: "The liberal triumphs of Modernist sensibility . . . embody nuanced, ironic juxtapositions of the primal and the sophisticated—the former demystified, the latter energized. Reactionary Modernists . . . on the other hand, lent themselves to the prospect of a demonic nationalist mobilization conducted through the most advanced cultural techniques." Berman, *supra* note 6, at 23.

vision of an Ireland that was defined in opposition to traditionalist and Roman Catholic notions of the nation.<sup>12</sup> In other words, the Yeatsian paradigm of essentialist Irishness and the Joycean paradigm of the fragmented subject have always co-existed uneasily in Irish legal discourse since the State's "foundation." In the contemporary period, with judicial rereading or translation of the constitutional text, "progressive" social legislation and political change in the context of the 'Northern Ireland question,' we live through a Joycean redemptive moment where apparently divergent texts of the culture fuse and mingle in a "femilanguage" or "night-time" language.

The reality of early postcolonial Irish society was far more graphically portrayed in *Finnegans Wake*. As Brannigan, Ward and Wolfreys have written of the Ireland represented in *Finnegans Wake* "Ireland in *Finnegans Wake* is as sycophantic and mimetic of England as it disavows and amputates England, never more visible as the schizophrenic child of colonial and national discourses."<sup>13</sup> The Constitution is similarly the schizophrenic offspring of colonial and anti-colonial discourse. The neither-nor model of postcolonial official discourse is redolent of the Jesuitical influence on the framer of the Constitution.<sup>14</sup> Ireland, as inherently split culturally and textually, can be explored in the contradictory approach that constitutional interpreters have taken in the past thirty years exposing the radical indeterminacy or contingency of the notion of the nation. The Supreme Court's grappling with the positivist and naturalist elements of the Constitution is symptomatic of a broader cultural schizophrenia. The result is that the constitutional citizen is schizoid rather than complete, a radical refutation of the hopes of its proud father.

### III. Origination: Founding Fictions

The colonized, according to Seamus Deane, are "without a history."<sup>15</sup> They are therefore driven to create their own history. The story, which the postcolonial people of Ireland, or at least the dominant elite, who purported to give voice to this story, told

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12. PATRICK O'MAHONY & GERALD DELANTY, *RETHINKING IRISH HISTORY: NATIONALISM, IDENTITY AND IDEOLOGY* 168-69 (1998).

13. JOHN BRANNIGAN, GEOFFREY WARD & JULIAN WOLFREYS, *RE: JOYCE TEXT. CULTURE. POLITICS* XV (1998).

14. Sean Faughnan, *The Jesuits and the Drafting of the Irish Constitution of 1937*, 26 *IRISH HISTORICAL STUDIES* 79 (1987).

15. Seamus Deane, *Introduction*, in *NATIONALISM, COLONIALISM AND LITERATURE* 3, 11 (Terry Eagleton, et al. eds., 1990).

themselves, follows a pattern familiar in other decolonising contexts: the creation of a pre-colonial mythical self which negated the subjected colonial self. This all too familiar creation of a postcolonial subject from myth was to be translated into legal speech in the postcolonial period in particular in the Irish Constitution of 1937. A constitutional text is more than a mere source of rules, but is to a very real degree an expression of a national ethos. As Daniel Farber has written, "the Constitution plays a unique role in our culture, being not only a set of instructions but literally constitutive of our national identity."<sup>16</sup> Moreover, what is to be included in such a text is at the discretion of its authors and in many cases may reflect a particular conception of society. However, what is left out of the text reflects the excluded polity that the text creates. As Lotman and Uspensky have pointed out, "the conversion of a chain of facts into a text is invariably accompanied by selection; that is, by fixing certain events which are translatable into elements of the text and forgetting others, marked as nonessential . . . . The text is not reality, but the material for its reconstruction."<sup>17</sup>

This way of seeing Ireland was cozy and sentimental, a pre-modern vision contained in the writings of Yeats and Pearse, an Ireland personified as female yet patriarchal. It was thus not surprising that the legal philosophical basis of this "new" constitution was the natural law theory of Thomas Aquinas in vogue at the time in the social philosophy of the Roman Catholic Church. It thus combined the symbolic importance of religion and the romantic fallacy of returning to a primal scene. It was ironic that the period in which this vision was being translated into legal textual form, James Joyce was writing his masterwork of resistance to the dominant ideology.<sup>18</sup> The 1937 Constitution represented Joyce's worst fears of the dominant ideology, exclusionary and backward looking. The traditionalist narrative enunciated by the postcolonial elite aimed, as Valente has put it, "at securing a home not only in the sense of a self-determining Irish nation but in the sense of a stable, cohesive, more or less monolithic community organized around a single value and belief system . . . an Ireland purged of internal dissonance, not to say difference, as well."<sup>19</sup>

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16. Daniel Farber, *The Originalism Debate: A Guide for the Perplexed*, 49 OHIO ST. L.J. 1085, 1101 (1989).

17. Uri Lotman & Boris Uspensky, *On the Semiotic Mechanism of Culture*, 9 NEW LITERARY HISTORY 212, 216 (1978).

18. JAMES JOYCE, *FINNEGANS WAKE* (1939).

19. JOSEPH VALENTE, *JAMES JOYCE AND THE PROBLEM OF JUSTICE: NEGOTIATING SEXUAL AND COLONIAL DIFFERENCE* 34 (1995).



In this article, I question the fiction of Irish identity constructed in the early postcolonial period. I also attempt to draw a parallel between the fictional national narrative encapsulated in the constitutional text and the representations of Irishness in other cultural texts. Declan Kiberd's experiment in linking the literary and the political in an attempt to imagine new conceptions of Irishness<sup>20</sup> provides a preliminary framework for my experiment in linking the literary and the legal as a means of drawing out the ways in which identity was imagined in the emergent Irish state. The link that I want to make is that the literary conception of Irishness provided a powerful anchoring point for the manner in which Irish citizenship was to be imagined in legal terms in the postcolonial state. This occurred as the result of the privileging of a particular literary and philosophical conception of Irishness. Prager<sup>21</sup> has termed this strain of cultural thought the Gaelic Romantic tradition. Under this formation, Ireland, according to Prager,<sup>22</sup> was seen as a nation which:

Ought to strive to re-create its past and resist those changes that seemed to challenge the basic meaning of Ireland as embodied in its traditions . . . . Ireland was to be celebrated as a preindustrial nation; its identity was to be found in its rural character. The sanctity of the family was to be preserved, the [Roman Catholic] Church was to remain a central social institution second only to the family, and the farm was to serve as the backbone of a healthy, thriving society.<sup>23</sup>

The mythical idea of Ireland, as located in the post-revolutionary elite's imagination, was reflected in the constitutional document. This reflects the way in which myth may be used negatively to uphold a certain idea of nationhood. As Richard Kearney has noted "myth may distort a community's self-understanding by eclipsing reality behind some idealized chimera. In such instances, the nostalgia for a golden age of the past . . . may blind us to the complexities and exigencies of our present reality. Here myth serves as an ideological agency of distortion and dissimulation."<sup>24</sup> This process demonstrates the way in which a

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20. DECLAN KIBERD, *INVENTING IRELAND: THE LITERATURE OF THE MODERN NATION* (1995).

21. JEFFRY PRAGER, *BUILDING DEMOCRACY IN IRELAND: POLITICAL ORDER AND CULTURAL INTEGRATION IN A NEWLY INDEPENDENT NATION* 31 (1986).

22. *Id.* at 42.

23. *Id.*

24. Richard Kearney, *Between Tradition and Utopia: The Hermeneutical Problem of Myth*, in ON PAUL RICOEUR: *NARRATIVE AND INTERPRETATION* 55, 65 (David.

society's perception of itself and its history can affect the construction of laws. As Katherine O'Donovan has noted:

Old stories can retain a powerful hold. Stories affect the creation of law and its application. Such laws remain with us and affect our perceptions of realities and truths. The stories influence what we see and what we can see. Our relationships with other human beings at the center of our lives are structured by these ancient unchangeable stories and laws.<sup>25</sup>

This attempt to tell a unified story in the constitutional text is open to the criticism which Kearney has articulated in referring to narrative identity, generally: "storytelling can also be a breeding ground of illusions, distortions and ideological falsehoods. In configuring heterogeneous elements of our experience, narrative emplotment can serve as a cover-up. Narrative concordance can mask discordance, its drive for order and unity displacing difference."<sup>26</sup>

The foregoing leads one to ask the question: if literary conceptions of the nation can be appropriated in the service of imposing a repressive form of collective subjectivity, can alternative literary projections of identity be harnessed to create a more fluid notion of what Ireland means? To quote Kristeva, "national literature could . . . become not the expression of the people's enigmatic intimacy but a charmed space where irony merges with seriousness in order to lay out and break up the changing outlines of the totally discursive being, which, when all is said and done, constitutes the nation."<sup>27</sup> In this sense, cultural representations of Irish identities are important in dispelling the longstanding myths of an authentic Irish self. As Kiberd has observed, "the forms evolved by Irish artists . . . can be seen as answering questions which have not yet been fully asked in the more conventional political sphere . . . . Their texts thus become the signposts standing on a shattered road to a future."<sup>28</sup> Thus, writing a constitution or inscribing a collective identity is just the beginning of an unending dialectic between text and people. As Norton notes

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Wood, ed., 1991).

25. Katherine O'Donovan, *Marriage: A Sacred or Profane Love Machine?*, 1 FEMINIST LEGAL STUD. 75, 90 (1993).

26. RICHARD KEARNEY, POETICS OF MODERNITY: TOWARD A HERMENEUTIC IMAGINATION 99 (1995).

27. JULIA KRISTEVA, NATIONS WITHOUT NATIONALISM 44 (1993).

28. KIBERD, *supra* note 20, at 301.

Acknowledgement of the Constitution's authority, coupled with recognition of the Constitution's author, must persuade one of the dialectical relation between the people and the text. Consideration of this relation reveals that the dialectic must continue while the text retains its constitutional character. There is no end to it. The process of transubstantiation that the writing of the Constitution inaugurates is not simply one from flesh to word and word to flesh. It reiterates a series of earlier transformations from a collective to an individual condition, from an unconscious to a conscious state. This greater dialectic marks a fundamental difference in human constitution. Rather than a state of being, of uniformity and constancy in the constitution of the species and its individual members, humanity is characterized by a condition of inconstancy, a state not of being but of becoming.<sup>29</sup>

The Constitution is a text in which two very different notions of Irish selfhood have existed side by side in an uneasy relationship. The Constitution is heavily indebted to the Thomist Natural Law tradition but also acknowledges notions of liberal constitutionalism. The Framers of the Constitution attempted to reconcile their theocratic aspirations with their republican ideals. This was an impossible task, as the divine and the secular are twin faiths that cannot live in harmony. The liberal in constitutional interpretation constantly disrupts the divine. In combining these two strands in the constitutional text, the Framers created a legal fiction that recalls the mythico-religious fiction upon which the postcolonial state was founded. The Natural Law content of the Constitution signifies in constitutional discourse the myth of the monotheistic, monocultural Irish State. Natural Law theory formed the basis of the dominant strand in the Constitution as envisioned by its framers. The original understanding of the Irish Constitution configures with the textualization of the social form of community. This social form, to quote Post, "attempts to organize social life based on the principle that persons are socially embedded and dependent."<sup>30</sup> The notion of community as applied to the postcolonial Irish context exhibits a state that is insular, autocratic, agrarian and imbued with a set of values which reflected such notions of social formation.

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29. Anne Norton, *Transubstantiation: The Dialectic of Constitutional Authority*, 55 U. CHI. L. REV. 458, 468 (1988).

30. ROBERT POST, *CONSTITUTIONAL DOMAINS: DEMOCRACY, COMMUNITY, MANAGEMENT* 179 (1995).

The Gaelic Romantic tradition in Irish political discourse was but one strand of the anti-colonial movement. The Gaelic Romantic strand became privileged in the postcolonial period due to the emergence of the adherents of this philosophy as the dominant group in the spectrum of Irish nationalist thought. However, it was still part of a wider nationalist body politic with other tendencies therein. Thus, as with other political texts, the Constitution of 1937 contained both the dominant discourse and within its interstices, the discourse of the other voices of nationalist discourse. This dualistic nature of Irish constitutional discourse can be compared to Daniel N. Hoffman's analysis of the strains within the Constitution of the United States:

Where the liberal strand . . . stressed individual autonomy and social pluralism, the republican strand . . . always stressed the importance of homogeneous local communities as centers of self-government. The exclusion of strangers . . . was not a lapse, but was (for many) an integral part of the original vision, closely bound up with Anti-Federalist and republican distrust of central authority.<sup>31</sup>

#### IV. Authoring the Nation

The writing of a constitution is an act that purports to found a nation. However, the term foundational document is laden with complexity. A foundational document such as a constitution is usually given to the people by themselves. But by what authority do the people give themselves this new nation that is inscribed in the constitutional document? Strictly speaking the people do not exist at the moment of founding. It is the founding document that gives them legal effect. Therefore, in order to exist, the people must found themselves. This is the puzzle that Derrida has written of when he speaks of the signature of the people authorizing themselves to sign.<sup>32</sup> The inauguration of the constitutional text preceded the establishment of a *de jure* Irish Republic by twelve years. Thus, the foundational document of the new polity pre-empted Ireland's status as a republic. In this sense it mirrors

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31. DANIEL N. HOFFMAN, OUR ELUSIVE CONSTITUTION: SILENCES, PARADOXES, PRIORITIES 99-100 (1997).

32. See Jacques Derrida, *Declarations of Independence*, 15 NEW POLI. SCI. 7 (1986); Jacques Derrida, *The Laws of Reflection: Nelson Mandela in Admiration*, in FOR NELSON MANDELA 11 (Jacques Derrida & Mustafa Tlili eds., 1987); Jacques Derrida, *Force of Law: The Mystical Foundation of Authority*, in DECONSTRUCTION AND THE POSSIBILITY OF JUSTICE 3 (Michel Rosenfeld & David Gray Carlson eds., 1992).

Derrida's notion of the performative nature of such foundational documents. Referring to the American Declaration of Independence, Derrida notes that the act of writing a constitutional document paradoxically creates that which gives it authority. In other words, the national entity that empowers the inauguration of the Constitution can only exist with the signing into law of the Constitution. The people cannot decide as a result whether it is constating that the people already constitute an independent republic or whether it is performing the act that makes the people independent. As Derrida notes:

The total unity of a nation is not identified for the first time except by a contract—formal or not, written or not—which institutes some fundamental law. Now this contract is never actually signed, except by supposed representatives of the nation which is supposed to be 'entire'. This fundamental law cannot, either in law or in fact, simply precede that which at once institutes it and nevertheless supposes it: projecting and reflecting it? It can in no way precede this extraordinary performative by which a signature authorizes itself to sign, in a word, legalizes itself on its own without the guarantee of a pre-existing law.<sup>33</sup>

The Preamble announces the transcendental origins of the Constitution. The Constitution is given to the people themselves by themselves "in the name of the Most Holy Trinity." This model links the notion of Irishness with Roman Catholicism so that both become conflated.<sup>34</sup> In writing the word of the revolution in the foundational text of the postcolonial Irish polity, the founding father of modern Ireland, Eamon de Valera, instituted a performative, which gave effect to the new nation. In so doing de Valera was not merely instantiating a neutral legal document that would form the basis for the governance of the new state, but he was also textualizing the mythico-religious violence of the anti-colonial struggle. The creation of an authentic past and of an authentic national tradition was therefore necessary. As Žižek observes:

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33. Jacques Derrida, *The Laws of Reflection: Nelson Mandela in Admiration*, in FOR NELSON MANDELA 11, 20 (Jacques Derrida & Mustafa Tlili eds., 1987).

34. Indeed as Prager notes, "The people of Ireland, in acting for God, were establishing a holy nation where decisions were providentially legitimated. This constituted an absolutist conception of a political community whose actions were not determined by an emergent and indeterminate collectivity, but were teleologically justified." PRAGER, *supra* note 21, at 79

national identity constitutes itself through resistance to its oppression—the fight for national revival is therefore a defense of something which comes to be only through being experienced as lost or endangered. The nationalist ideology endeavors to elude this vicious circle by constructing a myth of origins—of an epoch preceding oppression and exploitation when the nation was *already there* . . . the past is trans-coded as Nation that already existed and to which we are supposed to return through a liberation struggle.<sup>35</sup>

This new state was in a very real sense unreal, a melange of myths and stories projected onto the *de jure* reality of the twenty-six county state. Thus, as Deane has put it: “The fake nation with its inflated rhetoric of origin and authenticity, had given way to the fake state, with its deflated rhetoric of bureaucratic dinginess. In the passage from the fantasy of one to the realism of the other, the entity called Ireland had failed to appear.”<sup>36</sup>

Yet paradoxically this projection of mythical rhetoric led to the instantiation of a political reality that was to reflect the values of this imagined Gaelic Romantic notion of Ireland. This new state was indeed fake. Yet, it was for its citizens only too real in its narrow-minded, craven “bureaucratic dinginess.” This use of rhetoric by the elite reflects Threadgold’s thesis that the telling of stories by elites can lead to the creation of particular institutional realities:

the way the telling of stories at all levels in a social system becomes a huge machinery for the construction of social realities, social and cultural institutions and the people . . . who inhabit them and make them in their turn. For they are made, not given . . . and the law is but one of the factors involved in this making . . . . This begins to explain how apparently just, impartial and “truthful” institutions like law “make” the worlds they think they merely represent—and do it in talk and in writing—in discourse as social process.<sup>37</sup>

The Constitution became the canon, which contained these traditional tales of Irishness. However, as in literary practice the canon can be challenged by other stories, other voices that reflect alternative notions of reality and identity. Constitutional discourse

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35. SLAVOJ ŽIŽEK, FOR THEY KNOW NOT WHAT THEY DO: ENJOYMENT AS A POLITICAL FACTOR 213-14 (1991).

36. SEAMUS DEANE, STRANGE COUNTRY: MODERNITY AND NATIONHOOD IN IRISH WRITING SINCE 1790 162 (1997).

37. TERRY THREADGOLD, FEMINIST POETICS: POIESIS, PERFORMANCE, HISTORIES 148 (1997).

as social process is evidenced in the manner in which the foundational themes of Irish identity have been subject to reinterpretation and amendment in recent years. Thus, the core themes of territory, gender, family and religion have been opened to interrogation and revision. In this sense the canon that is the Constitution has been challenged by the “minor literatures” which exist within the space of constitutional discourse.

The Constitution of 1937 was not the first attempt to announce a new nation. The Declaration of 1916, the Dail Constitution of 1919 and the Irish Free State Constitution of 1922 all preceded this so-called foundational document. The aim of the Constitution’s primary framer, Eamon de Valera, was to create a more authentic notion of Ireland than that contained within the text of the 1922 Constitution. In this sense, the Constitution of 1937 acted as a belated means of enunciating the elite’s notion of a separate Irish polity. The Irish Free State was not whole. Missing six of its original counties, this amputee state turned to illusion to fill the gap. The constitutional author attempted to conceal this particular territorial fact by the trick of writing out a complete nation. The textual illusion of a whole nation found in the 1937 Constitution in Articles 2 and 3 mirrored this attempt by the national psyche to cover up its lack. The 1922 document was in addition a creation of the imperial power. It existed as a hybrid legal document in that it was both an Act of the British Parliament and the basic law of the Irish Free State. The genealogy of this legal document thus gave the nationalist elite grave cause for concern. The 1922 Constitution was enacted in the wake of the cessation of the War of Independence and the conclusion of the Treaty between Britain and the Irish Free State, and had to be confirmed by the British legislature. Following the promulgation of *The Irish Free State Constitution Act 1922* by the Westminster parliament, the 1922 Constitution was enacted by royal proclamation on December 6, 1922.

The Treaty led to the Civil War of 1922 which split the country into two opposing political camps, those who wanted a thirty-two county state and those who were willing to accept a Free State comprising twenty-six counties. The pro-treaty side was victorious but a society built on a faultline was the result. Cumann na nGaedhael, the pro-treaty party remained in government until the general election of 1932, when Fianna Fail, the pro-treaty party, came to power. The primary proponent of the anti-Treaty side, Eamon de Valera, wished to return to the rural idyll of Gaelic Romantic yore as a means of shoring up his political project. The 1922 Constitution did not include such an overt Roman Catholic naturalist theme. It was a

working document for a new nation. However in de Valera's eyes it was not substantially removed from the colonial moment given its status as a constituent Act passed by the Westminster parliament. Thus, the "new" Constitution was in de Valera's view an attempt to create a sufficiently discrete nation "Ireland" with its own distinct characteristics. As Joyce has noted "nations have their egos just like individuals."<sup>38</sup> The ego of the new Irish nation was thus constructed against the id that was English, Protestant, secular, and urban. In this sense the 1937 Constitution was written in order to negate or erase the trace of the other. The aspirations of revolution having not been attained, the post-revolutionary elite reverted to homologizing in the text of a revised constitutional document the desire for a thirty-two county republic built on traditional Roman Catholic values. The failures of revolution were to be translated in the constitutional text as a fantasy creating a parallel (ir)reality of unity. As Anne Norton has observed in the context of the American Constitution but which is equally applicable to the Irish context:

[t]hese narratives extended the reach of state regulatory mechanisms into the individual psyche where these fantasies have historically performed functions that are both extensive and complexly interrelated. They organized collective representations of the national people, transmitted the official scenarios wherein individuals were subjectivized as its citizen-subjects, and controlled the individual citizen's relation to the state. Overall, these narratives positioned a totalized community as the narratee of a story that structured the subject positions, actions, and events of that community within a masterplot that performed the quasi-metaphysical function of guaranteeing its perpetuity.<sup>39</sup>

#### V. (Re)Covering the (Post)Colony

The rhetoric of the Framers of the 1937 Constitution relied heavily on the negation of the colonial administration. The post-colonial elite wished to radicalize the new nation with anticolonial ideology while mimicking the institutions and psyche of the colonial administration thus creating a chimerical creation "the new Irish nation." This led to the hailing of a pure pre-colonial Gaelic self, which would emerge as the dominant trope in political discourse. The construction of an all-encompassing Irish identity at the level of

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38. JAMES JOYCE, *CRITICAL WRITINGS* 154 (1959).

39. ANNE NORTON, *REFLECTIONS ON POLITICAL IDENTITY* 4-5 (1988).



political and legal rhetoric disguised the rather contradictory reality whereby the apparatuses of the new Irish State mimicked the apparatuses of the colonial bureaucracy. Thus, a similar bicameral parliament was established, supported by a bureaucracy based on the Whitehall model, as well as a legal system, which was based on the English common law. By prefixing each of these institutions with the term "Irish," the elite tried to lead the citizens to believe that these institutions were new creations not adaptations of previous institutions. This postness, which is not post but a mere hybrid state, collapses when one realizes that the postcolonial regime repeats all the old inequalities of the previous regime. As Gibbons has observed in this regard:

"Post," in this context, signifies a form of historical closure, but it is precisely the *absence* of a sense of an ending which has characterized the national narratives of Irish history. This has less to do with the "unfinished business" of a united Ireland than with the realization that there is no possibility of undoing history, of removing all the accretions of conquest—the English language, the inscriptions of the Protestant Ascendancy on the landscape and material culture, and so on. For this reason, there is no prospect of restoring a pristine, pre-colonial identity: the lack of historical closure, therefore, is bound up with a similar incompleteness in the culture itself, so that instead of being based on narrow ideals of racial purity and exclusivism, identity is open-ended and heterogeneous. But the important point in all of this is that the retention of the residues of conquest does not necessarily mean subscribing to the values which originally governed them.<sup>40</sup>

The problems, which this poses for the "new" constitutional regime, are reflected in the constitutional text, which on the surface excludes and includes simultaneously. The authorial intention is to include in the text, as a form of sustaining leitmotif, an idea of the nation as whole and bounded. In this sense whilst purporting to reflect the body politic, it in effect gave it substance, creating a body politic where none existed before and claiming that this representation was the one true Irish self. This effect of the Constitution is redolent of Luke Gibbon's assertion that cultural identity does not pre-exist its representations in the media of mass culture. He argues that cultural identity is in fact "generated and transformed by them—whether they take the form of the mass media, literary genres such as the novel and drama, visual representations, or other cultural or

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40. LUKE GIBBONS, TRANSFORMATIONS IN IRISH CULTURE 178 (1996).

symbolic practices.”<sup>41</sup> This process displays the manner in which the rhetoric of the anti-colonial elite created a reality which prolonged the colonization of the citizen behind a charismatic leader who bound the people together in common cause around a narrow notion of the common good. Indeed as Ungar has pointed out:

The myth of a direct transition from colonial to postcolonial as marker of collective identity elides a slippage from the explicit territorial nature of the colonial to the subtler economic and cultural domination fostered in the postcolonial by illusions of independence and self-determination. Unless it is questioned, the category of the postcolonial can all too easily operate as a decoy allowing new orientalisms and new prejudices to go unchallenged.<sup>42</sup>

The need on the part of the nationalist elite who favored a United Ireland was thus expressed in legal terms in the writing of a “new” Constitution. This new Constitution was a textual projection of a nationalist fantasy of wholeness. This, however, entailed an ideological leap of blind faith into a parallel fantasy. It could indeed be seen either as a desperate political ploy or as a cynical masterstroke of political propaganda, which attempted to unite a dispirited and exhausted postcolonial citizenry around the brutal aesthetic of utopian asceticism. The new elite deployed political rhetoric in a manner, which would rally the citizens and bind them together using a hypnotic discourse.<sup>43</sup> The charismatic leader of postcolonial Ireland held the newly freed people in thrall, and as Fanon has noted in the context of postcolonial African states, asked them “to fall back into the past—and to become drunk on

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41. *Id.* at 10.

42. STEVEN UNGAR, *SCANDAL AND AFTEREFFECT: BLANCHOT AND FRANCE SINCE 1930* XVI (1995).

43. JACQUES LACAN, *ECRITS: A SELECTION* 272-73 (1977). This book describes hypnotic discourse as that which produces a collective fascination. This collective fascination is produced by a mode of discourse that marshals the different types of identification in a way opposite to that of psychoanalysis. MARK BRACHER, *LACAN, DISCOURSE, AND SOCIAL CHANGE: A PSYCHOANALYTICAL CULTURAL CRITICISM* 136 (1993). This book states that “[r]ather than maintaining a separation and dialectical tension between Imaginary and Symbolic identifications, on the one hand, and desire in the Real, on the other, as does psychoanalytic treatment, hypnotic discourse collapses the three in relation to a single object or person: the masses identify with the figure at all levels, thus investing him or her with tremendous psychological and therefore political power . . . the figure in question embodied for his followers not only insignia of their ego ideal but also emblems of their desire in both Real and Imaginary orders (the latter entailing the narcissistic gratifications of parade, prestige, rivalry, and murderous opposition).”

remembrance.”<sup>44</sup> Thus the master signifiers of nationalist political rhetoric attempted to suture together a state built on a split, the violence of the civil war.<sup>45</sup> The history of the Irish State post-independence is a constant attempt to negotiate this tension, an attempt to avoid the trauma of this foundational violence.

## VI. Constitutional Boundaries

The constitutional text created a body of law that was artificially bounded. Yet this text like the society represented was open to the contradiction that what it wished to exclude was necessary for its construction. The attempt to enunciate in language this bounded notion of subjecthood is an impossible task, as the subject is already constituted by its others. As de Silva has noted in the case of the Sri Lankan Constitution of 1972 but which is equally the case in relation to the Irish Constitution of 1937:

[the Other] succeeds in breaching the boundary and distorting the outline . . . of the Constitution's self-identity as a projection of the desires of the majority . . . . The boundary (i.e., the external limit) of the Constitution's self-identity confronts its limit, what it can never fully be, as it finds itself tethered to the "excess" that is the . . . "Other." This internal limit prevents the Constitution from achieving full identity with itself. Simultaneous to a failure of full identity is the ultimate failure of exclusion . . . . The "Other" is ever present even if in a marginalised space that is never quite outside but never quite inside either.<sup>46</sup>

The emphasis by the framers on a particular societal narrative could not exclude the reality of the existence of alternative narratives within the text and the wider culture. The attempt to create a body, which is rigid and impermeable, is a mere denial strategy. The fluid nature of the body politic belies this assertion. As McLean has noted: "At once vital and threatening, bodily fluids must be concealed and uncovered, protected within the body, and somehow expelled . . . for the

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44. FRANTZ FANON, *THE WRETCHED OF THE EARTH* 135 (1967).

45. As Kiberd has observed that "[a]fter independence, a fear of the bleakness of freedom had so gripped the people that autocracy and censorship were the order of the day. Re-Oedipalization became manifest in all walks of life, brought on by sheer exhaustion: the energy consumed in expelling the British had been so great that there was little left with which to reimagine Ireland." KIBERD, *supra* note 20, at 391-92.

46. Roshan De Silva, *Ambivalence, Contingency and the Failure of Exclusion: The Ontological Schema of the 1972 Constitution of the Republic of Sri Lanka*, 5 *SOC. & LEGAL STUD.* 365, 372 (1996).

narrative as a whole, coping with the ubiquitous ambiguity of fluids demands elaborate mechanisms of control.”<sup>47</sup> Like the body corporeal, the body politic demands expulsion.

Like the characters in the “Nausicaa” episode of Joyce’s *Ulysses*, the Framers of the Constitution wished to conceal the alternative narratives of Irishness, which existed within the body politic, creating a society where control of the body politic as well as the individual body was to be the order of the day. As McLean has noted in relation to the “Nausicaa” episode in *Ulysses*:

the dirty secret that the narrative and characters strive so hard to conceal is precisely the troubling property of the body: its inner fluids are both life and waste, sustenance and poison. Any verbal or bodily effort to filter, to separate these contradictory properties, to align the body definitively with one or the other, is consistently undermined in this episode. The paradoxical nature of bodily fluids inevitably seeps to the surface of the body and the text.<sup>48</sup>

The Irish self that was posited by the postcolonial elite was pure and clean, expelling what it considered to be “impure” elements. In this sense, it conforms to Kristeva’s notion of abjection, which she describes as the process by which the subject attempts to expel the unclean or impure elements of its corporeal existence. The notion of abjection as developed by Kristeva refers to that “which is rejected from which one does not part.”<sup>49</sup> It is that threat to identity both individual and societal that comes from outside. Thus for Kristeva: “Excrement and its equivalents (decay, infection, disease, corpse, etc.) stand for the danger to identity that comes from without: the ego threatened by the non-ego, society threatened by its outside, life by death.”<sup>50</sup> This link between the construction of a bounded social body and the individual body had been made by Mary Douglas, in her work on pollution and taboo, where she noted that the:

body is a model, which can stand for any bounded system. Its boundaries can represent any boundaries which are threatened or precarious . . . . The functions of [the body’s] different parts and their relation afford a source of symbols for other complex structures. We cannot possibly interpret rituals concerning

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47. Christina McLean, *Waste Words: The Body Language of Joyce’s ‘Nausicaa’*, in JOYCEAN CULTURES/CULTURING JOYCES 44, 45 (Vincent Cheng, et al. eds., 1998).

48. *Id.* at 45.

49. JULIA KRISTEVA, POWERS OF HORROR: AN ESSAY ON ABJECTION 4 (1982).

50. *Id.* at 71.

excreta, breast milk, saliva and the rest unless we are prepared to see in the body a symbol of society, and to see the powers and dangers credited to social structure reproduced in small on the human body.<sup>51</sup>

In applying this notion of abjection to the self-projected in Irish constitutional discourse, I contend that the construction of an “Irish” constitutional subject operates in a manner similar to the construction of the individual subject in attempting to expel that which it deemed impure. The result in terms of de Valera’s constitutional narrative is that bodies, which disrupt the normalcy of the body politic are marked as abjected. Otherness threatens certain groups in society as it acts as a threat both to the ego ideal and the ideal ego. In such discourses the outsider is denied the love of the Symbolic Other (e.g., God, natural law, community etc.). Moreover the Other acts as a threat to the ego ideal (ideal du moi) of the subject where the value of the master signifier is threatened. It also acts as a threat to the ideal ego (moi ideal) where the possession of the master signifier for human subjects as a collective, is felt to be threatened. It therefore acts as a threat to communal identity.

However, the abject can never be fully excluded. It is that element which is rejected but from which one does not or cannot part. Thus, the subject is aware that it is impossible to exclude the abject completely. It is this awareness that leads to the sensation of abjection in the subject. Looking at the national subject created by the postcolonial elite, it is clear that “impure” elements were to be excluded from the Irish body politic. To paraphrase Grosz, “the abject is both a necessary condition of the subject, and what must be expelled or repressed by the subject in order to attain identity and a place within the symbolic.”<sup>52</sup> Anne McClintock has extended Kristeva’s notion of abjection to include within its compass socially excluded groups such as women, gays and lesbians.<sup>53</sup> It is my contention that the construction by the postcolonial elite of a subject of national self-identification entailed the rejection or expulsion of certain groups from the national family. This notion of abjection was reflected at the level of the national narrative.<sup>54</sup> The

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51. MARY DOUGLAS, PURITY AND DANGER: AN ANALYSIS OF THE CONCEPTS OF POLLUTIONS AND TABOO 115 (1966).

52. Elisabeth Grosz, *The Body of Signification, in* ABJECTION, MELANCHOLIA AND LOVE: THE WORK OF JULIA KRISTEVA 88-89 (Julia Fletcher & Andrew Benjamin eds., 1990).

53. ANNE MCCLINTOCK, IMPERIAL LEATHER: RACE, GENDER AND SEXUALITY IN THE COLONIAL CONTEXT 72 (1995).

54. The idea of a national narrative is captured by DONALD PEASE, NATIONAL

national narrative posited an idea of a pure Irish self, uncontaminated by colonial or other polluting forces. By viewing, as Bhabha does, the postcolonial nation as narrative,<sup>55</sup> one is enabled to go beyond a mere description of political and social institutions, to explore how “the nation is articulated in language, signifiers, textuality, [and] rhetoric. It emphasizes the difference between the nation as a set of regulations, policies, institutions, organizations and national identity—that is nation as culture. It offers a perspective that enables us to enter discourses beyond those fixed, static, “official” ones.”<sup>56</sup>

The imaginary body, i.e., the Roman Catholic male, projected in Irish constitutional discourse by the postcolonial elite can be likened to that of the image projected by the individual in the mirror stage. Just as the individual attempts to avoid fragmented reality by projecting an image of the self as whole, so too did the postcolonial elite project an image of the nation as whole. The imago of the bounded nation like the imago of a coherent self-projection by the individual subject helps explain the tension that lies at the heart of naming the nation. This deliberate misrecognition on the part of the postcolonial elite was an attempt to achieve stability or identic wholeness in the face of an irremediable rupture.<sup>57</sup> Constitutional documents give the notion of identity in diversity, a means of binding together the diverse strands of the polity into a cohesive whole. This may be taken to be the illusion of identic wholeness to which polities, both postcolonial and otherwise, succumb. The constitutional master signifiers, nation and territory, for example, form part of what Bracher<sup>58</sup> has described as the “core of [the nation’s] Symbolic order sense of identity located in the ego ideal.”<sup>59</sup> The postcolonial elite

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IDENTITIES AND POST-AMERICANIST NARRATIVES 3 (1994). “The term national narrative itself refers to the process whereby the discourse of the Enlightenment produced particulars—nation states—out of universal norms: Reason, Equality, Social Justice, Liberty. Acting as agents of the state, these national narratives constructed imaginary relations to actual sociopolitical conditions to effect imagined communities called national peoples.”

55. HOMI K. BHABHA, *NATION AND NARRATION* 3 (1990).

56. E. ANNE KAPLAN, *LOOKING FOR THE OTHER: FEMINISM, FILM AND THE IMPERIAL GAZE* 32 (1997).

57. Judith Feher Gurewich, *Toward a New Alliance Between Psychoanalysis and Social Theory*, in *DISSEMINATING LACAN* 151, 154 (David Pettigrew & Francois Raffoul eds., 1996). As Gurewich has observed, “Lacan’s conception of *meconnaissance* or misrecognition, which derives from his theory of the mirror stage is, of specific interest to sociology because it explains the necessary role that ideology plays in social life.”

58. BRACHER, *supra* note 43, at 105.

59. *Id.*

engaged in the passive narcissistic fantasy of being the object of the Symbolic Other's (i.e., Ireland, nation) love. Like the individual body, the national body politic's passive narcissistic Imaginary-order desire was shored up by the Constitution's narcissistic mirroring of this Roman Catholic male body. As Bracher notes, anything which upsets or challenges this body image "represents a threat to our sense of self and is thus met with opposition and aggressivity."<sup>60</sup> Thus, for many years, social policy, which stressed individual freedom from the tyranny of community, was opposed rigorously by the traditionalist elite. Throughout the period until the late 1960s the resistance to outside forces and individual liberty was reflected at the level of collective and individual bodies. Even today the reactionary rump in Irish political culture continues to place obstacles in the way of greater pluralism. This need to create one true universal Irish subject of law against myriad competing identities is thus impossible. As Rosenfeld has observed, the constitutional subject is characterized by its absence. However, absence does not negate its indispensability, thus necessitating its reconstruction. The constitutional subject is in constant need of reconstruction, but no such reconstruction can ever become definitive or complete. The constitutional subject always involves a lack because it is inherently incomplete, and hence always open to a necessary but impossible quest for completion.<sup>61</sup>

## VII. Conclusion

In deciding to replace the constitutional document of 1922 with a blueprint for an Irish Ireland in 1937, the then prime minister, Eamon de Valera, was attempting to found the nation anew, to erase the traces of the Other in the 1922 document.<sup>62</sup> De Valera saw the vision of Ireland created by the first postcolonial administration as antithetical to his philosophy. In order to protect or give the illusion of Roman Catholic nationalist purity, a new legal corpus had to be written. This act of textual violence mirrored the real violence of the civil war period. The persistence of this enmity exposed the schizoid nature of postcolonial Ireland, two competing philosophies at odds

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60. *Id.* at 38.

61. See also Michel Rosenfeld, *The Identity of the Constitutional Subject, in LAW AND THE POSTMODERN MIND: ESSAYS ON PSYCHOANALYSIS AND JURISPRUDENCE* 143 (Peter Goodrich & David Gray Carlson eds., 1998).

62. O'Mahony & Delanty have pointed out that "the 1922 Constitution had to be changed to express the fundamental values of a Catholic nation . . . [and that a] main aim of the drafters of the [1937] Constitution . . . is that individuals shall be subordinate to the Catholic collectivity." O'MAHONY & DELANTY, *supra* note 12, at 153-54.

with one another. However, despite the attempts of de Valera to create an overtly pre-modern monotheistic state by replacing the Constitution, he could not eliminate all traces of this “other” Ireland. The Constitution and the notion of national identity encapsulated therein are not fixed or stable. It is always in a state of becoming, never complete, with no definitive construction of identity gaining permanency. The so-called monolithic notion of Irishness, which it is assumed is captured in the text, is not the end of the constitutional story.

The notion of identity contained within the text of the Constitution is always open to disruption, always open to the presence of contrary notions of “Irishness.” As Spivak has put it: “The text has no stable identity, no stable origin, no stable end.”<sup>63</sup> National identity is as fluid as individual identity, ever changing and reforming in a reflexive reaction to societal transformations. Mellor has observed that: “self-identity is . . . subject to the pervasive reflexivity of high modernity, so that it is created and maintained through the continual reflexive reordering of self-narratives. As the narratives of the individuals who make up the nation are reordered so too is the narrative of the nation.”<sup>64</sup> The Constitution is an attempt to pass from the imagined idea of Irishness to the realized state of Ireland. The writing of the nation cannot found the nation, the nation is, to paraphrase Derrida, always in the future (*avenir*), always to come (*a venir*). The foundational legal document attempts to posit a definitive national identity. However, this notion of Irishness is only posited against difference, against the “other,” the marginalized, whether that be the foreigner in the case of Articles 2 and 3 or women in the case of Article 41. The Constitution purported to be a definitive narrative of Irish identity. However, this narrative could not erase the other stories of Irishness against which it was composed. Within its very framework it contained the seeds of its revision. As Brannigan has put it: “At the heart of the writing of national identity, is also its contradiction, its frustration, its impossibility, and waiting within these aporetic spaces, the other.”<sup>65</sup>

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63. Gayatri Chakravorty Spivak, *Preface*, in JACQUES DERRIDA, OF GRAMMATOLOGY XII (1976).

64. David Mellor, *Death in High Modernity: The Contemporary Presence and Absence of Death*, in THE SOCIOLOGY OF DEATH: THEORY, CULTURE, PRACTICE 14, 19 (David Clark ed., 1993).

65. John Brannigan, *Writing DeTermiNation: Reading Death in(to) Irish National Identity*, in APPLYING: TO DERRIDA 55, 69 (John Brannigan, Ruth Robbins & Julian Wolfreys eds., 1996).



