

# Foreword

The core idea in the long republican tradition is that the affairs of law and government are *res publica*: public business. They are not the property of an hereditary dynasty, a wealthy elite, a political party, a professional bureaucracy or a majority church. Whether legislative, executive or judicial in character, they often have to be put in the hands of particular officials, committees and assemblies. But the idea is that in discharging their offices, those individuals and bodies have to be constrained, in full transparency, to operate on the people's terms. They have to be forced to satisfy the standards and expectations of the community – endorsed in election or appointment to office – on pain of exposure and challenge, sanction and dismissal.

At the core of this core idea is the commitment to organising law and government around a popularly accepted constitution that satisfies two broad constraints. First, it recognises the sovereignty of the collective people: their right to control what happens in public life under provisions for which the constitution itself makes room. And second, it establishes a framework of law and policy that protects people in their individual identity, giving each a domain in which they can enjoy a personal form of sovereignty. This framework has to define the liberties that are fundamental to human life; to provide those who lack them with the resources required for enjoying those basic liberties; and to shield each member of the community from private interference or intimidation in their exercise.

Eoin Daly and Tom Hickey argue that, scoring well on these two fronts, the Irish Constitution has a fundamentally republican character. It emphasises popular sovereignty and democratic control in insisting that all powers of government derive from the people. And at the same time it highlights the rights that have to be secured for individuals if they are to enjoy personal sovereignty in the exercise of their basic liberties. The Constitution was drafted and adopted in a force field of special interest, partisan pressure and ecclesiastical influence. But the authors show that despite this, it emerged from that process, and from later processes of interpretation and amendment, with a republican identity intact.

This in itself is an achievement worth noting and celebrating, but it is merely a first step in the argument that the writers pursue in this book. For their main

aim is to show that if we read the Constitution in light of its republican character, then we can find a basis within the document for a wide-ranging, indigenous philosophy of law and government. This philosophy makes sense of our institutions in general, they argue, while calling for the reinterpretation or reform of some in particular. It offers an account of the sort of country and people we are, providing guidance on where we must go in order to remain faithful to that identity.

Thus this book provides sure and stirring guidance on the ways in which we can use the republican understanding to determine the role of legislature and executive envisaged in the Constitution, to construe the relationship between courts and people that is encoded there, and to provide a basis for the interpretation of the document as a whole. More than that, it goes beyond the written Constitution to the republican system of norms that it encodes, exploring the implications of these norms in two crucial, troubled areas. One relates to the education that we should be providing for our children and the other to the relationship that we should establish between Church and State.

The republican theory in light of which Daly and Hickey interpret the Irish Constitution is a European, not an exclusively Irish, heritage. But their book faithfully echoes the themes of Theobald Wolfe Tone, the founder of Irish republicanism. In their image of the constitutionally empowered citizen, able to look others in the eye without reason for fear or deference, they show themselves to be republicans who, as Wolfe Tone puts it, ‘detest ever the name of master’.<sup>1</sup> And in elucidating the implications of popular sovereignty they roundly support a claim that he formulates in appealing understatement: ‘It is not a bad pledge for the good conduct of rulers, that they should have a wholesome fear of the spirit of a people united in interest and sentiment.’<sup>2</sup>

## Notes

- 1 Theodore Moody, Robert McDowell and Christopher Woods (eds), *The Writings of Theobald Wolfe Tone 1763–98: Volume 2* (Oxford: Oxford University Press, 2001), p. 30.
- 2 Theodore Moody, Robert McDowell and Christopher Woods (eds), *The Writings of Theobald Wolfe Tone 1763–98: Volume 1* (Oxford: Oxford University Press, 1998), p. 101.

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