



Chief Justice of Ireland

The Hon. Mrs. Justice Susan Denham

Chief Justice

Waterford 1,100 Talks

"Waterfordian John J. Hearne:

A drafter of the Irish Constitution"

The Large Room, Theatre Royal,

Waterford Treasures Museum

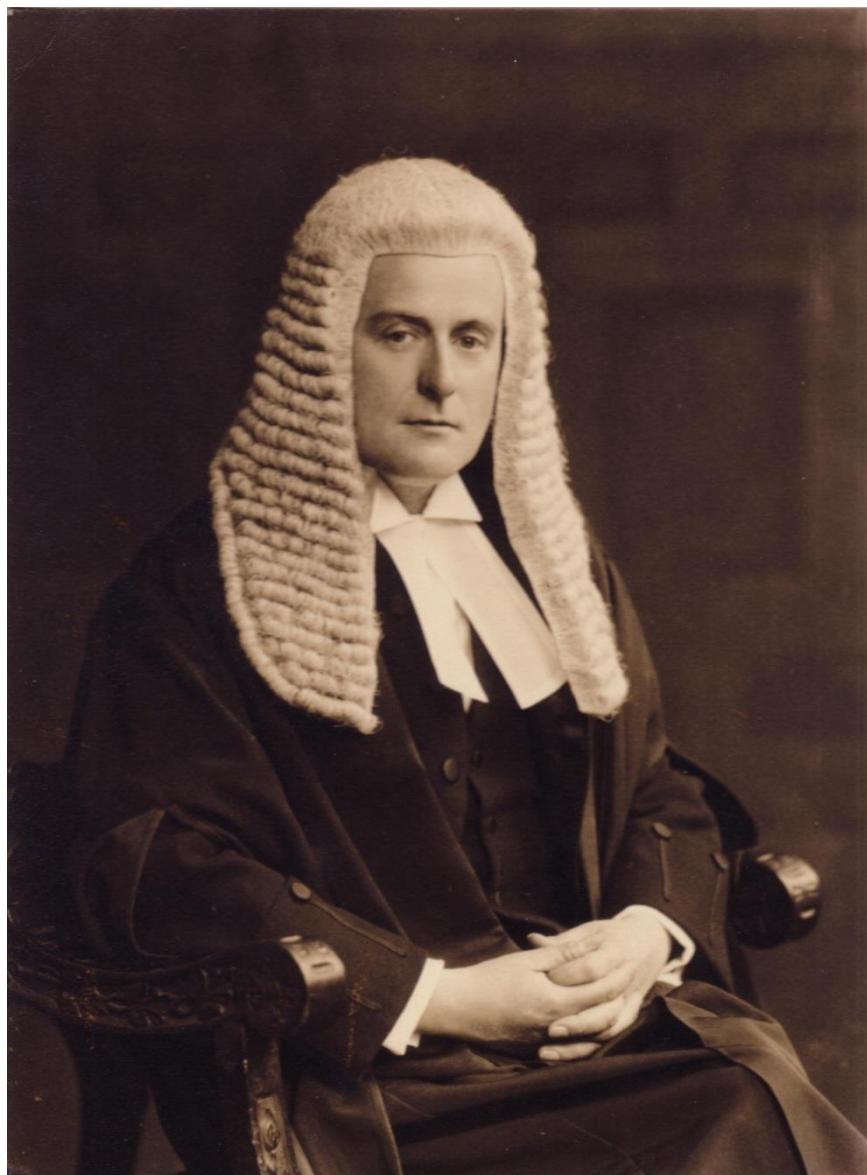
Waterford, 10th November 2014

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On the occasion of his call to the Inner Bar of Ireland in the Supreme Court, Four Courts,

Dublin on 20th June 1939 by The Hon. Mr. Justice Timothy Sullivan, Chief Justice

Introduction

Good evening Ladies and Gentlemen.

Thank you for the warm welcome. It is a great pleasure to be with you on this winter's evening. I am delighted and honoured for the invitation to speak in Waterford as part of a series of Talks. The Talks commemorate 1,100 years since the founding of Ireland's oldest city by the Vikings in 914 A.D.

This is an ancient city with origins that can be traced to long before the days of the Gaelic Chieftains, the arrival of the Vikings and the Anglo-Norman conquest. In living memory Waterford was at the heart of the quest for home rule and Irish independence. Indeed, this evocative "Large Room" where we gather which was built in 1783, the same year as the first Glass factory by William and George Penrose opened, has seen many well known figures in Irish history come through its doors. The roll call includes O'Connell, Meagher, Butt, Parnell, Redmond, and King Edward VII. In 1917, two future Presidents of Ireland and Freemen of Waterford attended a Céilí Mór in this room. They were Éamon de Valera and Seán T Ó Ceallaigh.

I am delighted to be in Waterford again. As Chief Justice and Chairperson of the Courts Service, I visit the Courts here to meet the Judges and Court Service staff. We are so pleased that Waterford Courthouse is part of the investment package agreed with the Government, in a Public Private Partnership.

The project here in Waterford involves the refurbishment and extension of the existing historic Courthouse, which currently has two courtrooms, to a position where it will have six courtrooms, improved custody facilities and court offices. The extension will be onto a site behind the Courthouse, part of which is currently occupied by the fire station, which is being relocated to a new site.

The procurement process is underway, and it is expected that by mid 2015 a preferred bidder will be selected, and construction will start by the end of 2015, which will take two years. So, the extended Courthouse should be in operation by 2017.

It is wonderful to see the economic tide turning – the future looking brighter – the growth of jobs and development again – of which this project is an example.

However, we are here this evening to honour a Waterfordian of times gone by.

I thank the organisers, in particular Eamonn McEneaney, Director of Waterford Treasures Museum, for inviting me. When Eamonn and his team contacted my Office about being a guest speaker in 2014, I was captured by their vision that the Talks would help to spread knowledge in the local community on a range of topics and to foster civic pride. These are very worthy aspirations which underpin the

series. Waterfordians can be proud of coming from a place rich in its people and heritage. Waterford is a place where the city's history is respected and cherished.

I know that previous speakers during the series of Talks have touched on many of life's interests: history, sport, current affairs and culture. Waterford is steeped in all of these things. It is my privilege to be a visitor once again to Waterford City and to contribute to these Talks by honouring this place.

John J. Hearne and the Constitution: an introduction

I have chosen to speak about a native son of the city, the late John Joseph Hearne who grew up in Waterford and whose family was prominent in the City's business and political life. Mr. Hearne would go on to become a lawyer and a public servant of great distinction at the Attorney General's Office and the old Department of External Affairs. In his later life Mr. Hearne served as a diplomat and represented Ireland as High Commissioner to Canada. In 1950 he became independent Ireland's first Ambassador to the United States of America and he retired in 1960.

My Talk will therefore include some of Waterford's local history and Irish history. I will also refer to our constitutional law, because John Hearne was a key person and assistant to Éamon de Valera when the Constitution of Ireland was drafted in the 1930s. Mr. Hearne's contribution to this was immense. For many years his name was a mere footnote in our history, and his painstaking work in developing the Constitution was not well understood.¹ Perhaps, that is the way Mr. Hearne would

¹ There have been honourable exceptions on the part of historians. See Keogh "The Irish Constitutional Revolution: An Analysis of the Making of the Constitution" in Litton (ed) *The Constitution of Ireland, 1937-1987* (Dublin, 1988); Kennedy "The special position of John Hearne" *Irish Times* 8th April 1987 and "John Hearne and the Irish Constitution (1937) *Éire-Ireland* 25:2 (Summer 1989) 121-127; Hogan "De Valera, the Constitution and the Historians" *Irish Jurist*, 41, 2005, 293-320, Keogh and McCarthy *The Making of the Irish Constitution 1937* (Cork, Mercier Press, 2007) and Hogan *The*

have wished for his working life to be remembered, in the way members of the permanent Government in the Civil Service carry out their duties. They work diligently and anonymously, staying in the background with no desire for the lime-light.

My reason for remembering John Hearne and his legacy here in Waterford is that the city can be proud that “one of its own” became one of the greatest public servants in the history of the State. Hearne was a key figure in drafting our Constitution. The significance of this contribution is evidenced by a hand-written note of Mr. de Valera. On 29th December 1937, the date on which the Constitution came into force, the Taoiseach dedicated a copy of the new Constitution to John Hearne. This copy is now kept in the National Library of Ireland and the note reads as follows:

“To Mr. John Hearne, Barrister at Law

Legal adviser to the Department of

External Affairs Architect in Chief

and Draftsman of this Constitution,

as a Souvenir of the successful

issue of his work and in testimony

of the fundamental part he took

in framing this the first Free

Constitution of the Irish People

Origins of the Irish Constitution, 1928-1941 (Dublin, Royal Irish Academy, 2012); Coffey, *Irish Constitutional History 1936-1937*, UCD PhD thesis (2010); and Broderick, “John Hearne and the Making of the 1937 Constitution” *Decies, Journal of the Waterford Archaeological and Historical Society*, no. 69, 2013.

Éamon de Valéra

Constitution Day 29.XII.37."

Thus, the man who is most closely associated with creating a new Constitution generously acknowledged Hearne as "Architect in Chief and Draftsman of the Constitution".² This was an extraordinary compliment for Mr. de Valera to pay since the Constitution is often regarded as one of his enduring achievements.

As I have stated on a previous occasion, much is known in other countries, such as the United States or Australia, about the men who drafted their respective Constitutions, and the careful process which led to forming those important documents.³ For example, Thomas Jefferson is the prime American example as he was the principal author of the American Declaration of Independence, which had such an impact on his country. Indeed, when John Hearne was Ambassador to the United States he made a speech to American lawyers and referred to the framers of the Irish Constitution as follows:

² Autograph inscription by Éamon de Valera for John J. Hearne, Legal Adviser to the Department of External Affairs, acknowledging the latter's role in the making of Bunreacht na hÉireann, 29th Dec. 1937, National Library of Ireland, Ms. 23,508. See http://sources.nli.ie/Record/MS_UR_001694.

³ Mrs. Justice Denham "Some thoughts on the Constitution of Ireland at 75", speech to UCD Constitutional Studies Group conference on the Constitution: Past, Present and Future at the Royal Irish Academy, 28th June 2012 available at www.supremecourt.ie.

"The task before the Irish lawyers, in their particular time and circumstances was to frame a Constitution that would not only be a framework of government, but would at the same time make for the restoration of an interrupted national tradition. In order, therefore, to understand the tardy and sometimes torturous constitutional development in Ireland during the time of which I am speaking it is necessary to interpret the collective mind of the lawyers and political leaders who directed it."⁴

Therefore, it is important that we reflect on the role of men such as John Hearne in drafting our Constitution.

Mr. Hearne has rightly been recognised in his native city. On 5th May 2007, the Waterford Civic Trust organised a blue circular plaque to be unveiled in his honour by the Mayor of Waterford at Mr. Hearne's home-place at William Street, to mark the 70th anniversary of the enactment of the Constitution. The plaque reads in both Irish and English that:

"John J. Hearne 1893-1969 Architect of the 1937 Irish Constitution and first Irish Ambassador to the United States 1950-1960 was born here."

A few years ago I read an online local newspaper report in the *Waterford News & Star* about John Hearne. It reported on the unveiling of a Blue Plaque by Waterford Civic Trust. The report referred to a description of Mr. Hearne as Ireland's very own

⁴ Address delivered at the Annual Meeting of the State Bar of California held in the Ambassador Hotel, Los Angeles, September 1956 courtesy of Hearne Papers held by Documents on Irish Foreign Policy, Royal Irish Academy.

Thomas Jefferson.⁵ That description illustrates the significance of Hearne in Ireland's constitutional and national history.

Governance by a written Constitution

The Constitution of Ireland 1937 is a document upon which the State is given expression, and shapes how our society is ordered. It belongs to the People of Ireland from whom, as Article 6.1 of the Constitution states, "all powers of government, legislative, executive and judicial, under God,..." derive from, and "whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good."

As a Judge of the Supreme Court, my task and that of my colleagues is to interpret the Constitution and to explain its meaning to the Irish People. In cases where the interpretation of the Constitution is argued, the Court must make a careful decision as to its meaning and do so, in a written judgment which is published.

We are fortunate to live in a country with a written Constitution. The very nature of a written Constitution is that it is a comprehensive document with a specially entrenched status, meaning that it cannot be changed by ordinary laws, for example primary or secondary legislation enacted by either the Oireachtas or brought into force by a government minister. In Ireland, it is the People alone who can change the Constitution. Irish independence provided the opportunity to make a break from the British tradition of parliamentary sovereignty where there is no written Constitution.⁶

⁵ This description is attributed to Dr. Michael Kennedy, historian and Executive Editor of Royal Irish Academy's Documents on Irish Foreign Policy cited in "Waterford honours famous diplomat John Hearne", *Waterford News & Star*, 22nd June 2007.

⁶ The President of the United Kingdom Supreme Court recently considered the British constitutional tradition and discussed the possible need for a written constitution.

In Ireland the law and the Constitution is in place to protect all persons. Sovereignty is derived from the People and they alone have the final say in all matters of national policy at the ballot box. It is a privilege that we can sometimes take for granted, and sadly we need only look to certain parts of the world today that are in turmoil and stand in stark contrast to Ireland. These are places where their peoples are oppressed, the rule of law and constitutionalism - the idea of being governed by a constitution - is replaced by mob law, violence and terrorism. Protection of human rights and legal responsibilities in these places are non-existent. Ireland is fortunate to have a basic document like our Constitution that provides the constitutional foundations for peace and prosperity.

We are approaching eighty years since the Constitution was enacted in 1937. Bunreacht na hÉireann was the first free constitution on which the Irish People had the opportunity to give their assent. Our grandparents and great-grandparents were part of the generations who were of voting age in July 1937 and who made a decision on the new Constitution. Such an act of popular democracy was remarkable when you recall that Europe of the 1930s was in meltdown. Hitler and Mussolini were on the rise and human rights were not high up on the list of priorities in many parts of Europe. Yet in Ireland, the People were enacting a basic law which included legally enforceable rights, and placed an obligation on the State to guarantee and to defend those rights. The eightieth anniversary of the Constitution in 2017 will merit further consideration and reflection and I hope it will be an occasion to commemorate and celebrate as we would for any eightieth birthday. The late Mr. Justice Brian Walsh of the Supreme Court, once described Ireland's enactment of such a progressive liberal

See Lord Neuberger "The UK Constitutional Settlement and the Role of the UK Supreme Court" delivered at the Legal Wales Conference 2014, 10th October 2014 at <https://supremecourt.uk/news/speeches.html>.

democratic Constitution at a time of European oppression as “quite startling”.⁷

Similarly, a US constitutional law scholar wrote that:

“It is, perhaps, an anomaly that a small, relatively poor country off the coast of continental Europe, for centuries subjugated politically by a more powerful neighbour, has become, in a number of respects, a microcosm for assessing the future of constitutionalism around the world.”⁸

When I studied history at school and law in college, the common perception was that Bunreacht na hÉireann, the Constitution of Ireland was largely the work of one man and it was labelled as “Dev’s Constitution”. However, the research of historians and scholars has uncovered original documents from the time of the drafting process which shed light on the reality that the Constitution was not the work of Mr. de Valera alone.⁹ We now know that neither he, nor indeed any other individual, religious or otherwise, was the sole drafter of the Constitution. Myths have been dispelled and the reality is that a team of public servants worked on drafting the Constitution. John Hearne was without doubt the most influential person. He did the meticulous legal drafting.¹⁰ He was trusted by Mr. de Valera because of his discretion and diligence.

Éamon de Valera selected a small group of advisers, including Hearne, to be members of a Constitution Committee. These men were knowledgeable on legal and

⁷ Mr. Justice Walsh, foreword to Casey *Constitutional Law in Ireland* (London, Sweet & Maxwell, 1987), vii at vii-viii.

⁸ Beytagh *Constitutionalism in Contemporary Ireland: An American Perspective* (Dublin, Round Hall, Sweet & Maxwell, 1996) at x.

⁹ Keogh and McCarthy *The Making of the Irish Constitution 1937* (Cork, Mercier Press, 2007) and Hogan *The Origins of the Irish Constitution, 1928-1941* (Dublin, Royal Irish Academy, 2012).

¹⁰ See interview with The Hon. Mr. Justice Gerard Hogan, “On the Origin of Species”, *Law Society Gazette*, 4th October 2012 at 24-27.

constitutional matters and they looked beyond Ireland for fresh ideas.¹¹ The Committee began meeting in May, 1934. They examined the 1922 Constitution of the Irish Free State article by article and ultimately came to the conclusion that the Committee's final report should take the form of a new Constitution.

When Éamon de Valera won the 1932 election, he became President of the Executive Council (effectively Taoiseach at that time) and he decided to serve as Minister for External Affairs as well. In this role he had firsthand experience of Mr. Hearne's skills, who was then the Legal Adviser in the Department. During that time, John Hearne was given the task of drafting a number of bills that had constitutional significance, such as the bill to remove the oath of allegiance to the King by Oireachtas members.¹² A fellow public servant at the time, Mr. Maurice Moynihan, recalled that when Mr. Hearne produced drafts of bills he included notes regarding the constitutional implications of their introduction, which Mr. de Valera studied carefully. Mr. Moynihan was of the view that in this way, Mr. Hearne was "pointing out the need for a new Constitution if these Bills were introduced."¹³

Background story of John J. Hearne and his family life in Waterford

Before discussing the precise role of John Hearne in formulating the Constitution, it is helpful to learn more about the man who contributed so much to our constitutional law. The fascinating life story of John J. Hearne begins here in Waterford, where he was born on 4th November 1893 at number 8, William Street

¹¹ The other members of the Committee are discussed in Denham "Some thoughts on the Constitution of Ireland at 75", speech to the UCD Constitutional Studies Group conference on the Constitution: Past, Present and Future at the Royal Irish Academy, 28th June 2012 available at www.supremecourt.ie.

¹² *Constitution (Removal of Oath) Act 1933.*

¹³ Moynihan (ed) *Speeches and Statements by Éamon de Valera 1917-73* (Dublin, Gill & Macmillan, 1980) at 237.

(which I believe is also known as Lombard Street), and is situated a few minutes walk from where we meet this evening.

- *Alderman Richard Hearne*

To understand more about John Hearne, we need to consider his father Richard Hearne who was born in 1850 at Drumrusk, Passage East. Richard Hearne was apprenticed to a leather merchant named Edward Walsh in the city. He inherited the business on Mr. Walsh's death and manufactured boots at premises on Broad Street. He was married to Alice Mary neé Power who came from County Waterford. They had seven children – three girls and four boys. John Joseph was the youngest boy.

The Hearnes were a prosperous family. The business was one of the few leather factories in Ireland and it traded under the title of Hearne and Cahill. James Cahill had worked with Richard Hearne when they were apprentices. They became business partners and were brothers-in-law. The Munster Express once wrote of the business that it was "known in every corner of Ireland", had a "national reputation" and was "one of the staple industries in Waterford."¹⁴

The 1901 and 1911 censuses, which are online courtesy of the National Archives, show that the Hearne family employed some staff to work in the family home. The census gives us a sense that the family were devout in their faith. Mr. Hearne recorded the family as being a member of the "Catholic Church" which he prefixed in beautiful handwriting with the words "Holy" and "Roman."¹⁵

- *Mayor of Waterford*

¹⁴ Mr. Richard Hearne Obituary, *Waterford News*, 3rd May 1929.

¹⁵ See www.census.nationalarchives.ie.

The censuses also show that Richard Hearne was a Justice of the Peace and was Alderman Mayor of the City. He served twice as Mayor of the City between 1901 and 1902. Mr. Hearne was a Councillor and represented the Custom House Ward where his business was situated for nearly fifty years before he retired in 1925. In later years he was elected senior Alderman on the City Corporation. During his political career he held a number of other prestigious positions including High Sheriff, Park Ranger and Master of the Holy Ghost House (a former hospital).

I was fortunate to have access to the fascinating Waterford City Archives when preparing this Talk and learned that Richard Hearne was involved in all aspects of the Corporation's activities, and was a member of the Board of Guardians. Notable projects during his time in office were the Corporation's purchase of the Waterford Bridge and Ferry Rights for £63,000 on 19th December 1907; and the establishment of the Carnegie Free Library at Lady's Lane.

- *Hearne politics*

Hearne was a member of the Irish Parliamentary Party and supported the quest for Home Rule in Ireland. The City's sole Member of Parliament, from 1891 to 1918, was the influential John Redmond, the leader of the Irish Parliamentary Party from 1900. He was, of course, a dominant figure in Irish and Westminster politics.

The Hearnes were steeped in the party. I understand that from the time of the party's split in 1890 until it reunited in 1900, Richard Hearne supported the anti-Parnell faction. When both groups merged at the turn of the twentieth century, it is interesting that in Waterford, Richard Hearne seems to have been viewed as the man who could provide understated leadership and bring both sides together for the good of the party in Waterford.

Hearne was unanimously elected Mayor of the City by his Corporation colleagues and became an ardent supporter of John Redmond who had led the pro-Parnellites during the split.¹⁶ During Hearne's tenure as Mayor he was, unsurprisingly, very instrumental in conferring the title of Honorary Freeman of Waterford on John Redmond on 12th September 1902. The Redmond Papers held by the National Library show correspondence between the two men about all matters relating to the City.¹⁷ When Richard Hearne died in 1925, his obituary in the *Waterford News* noted that he held "influence over the wider sphere of national politics."¹⁸

Thus, John Hearne grew up in a family where his father was active in public life and in fundamental issues of the Nation.

John Hearne: the seminarian

At the time of the 1901 census John Hearne was an eight year old boy, described by his father as a "scholar", who could speak Irish. He attended the well known Waterpark Christian Brothers School which was founded in 1892 and was the first classical school in Waterford.¹⁹ When the 1911 census was taken, seventeen year old John Joseph did not live at the family home. He was a student at the diocesan seminary of Saint John's College at John's Hill, Waterford. Saint John's was an important Irish seminary because it trained priests not only for the Diocese of Waterford and Lismore, but its graduates ministered all over the world, most notably Great Britain, and Newfoundland, Canada which has strong links to Waterford.²⁰ To

¹⁶ I am grateful to local historian Dr. Eugene Broderick for sharing his knowledge of the City's politics during this period of Irish history.

¹⁷ See www.nli.ie/pdfs/mss%20lists/Redmond.pdf.

¹⁸ *Waterford News*, 3rd May 1929.

¹⁹ See www.waterparkcollege.com/pages/school-history.php.

²⁰ Coogan *Wherever Green is Worn* (Hutchinson, London, 2001) at 415.

this day you can hear Irish sounding accents in that part of Canada. With the assistance of a former President of the College, we have discovered the College's Bursar records which show that John Hearne entered the seminary in September 1910 when he was just sixteen.²¹ I am grateful to Very Rev. Fr. Paul Murphy, Parish Priest of St. Johns, Waterford, and former President of St. John's College for providing me with this information.

The College records show that Hearne spent about a year at St. John's, before continuing his studies for the priesthood at St. Patrick's College, Maynooth from 8th August 1911. I understand that it was unusual but not exceptional for a student to transfer from a local seminary to the national pontifical seminary in Maynooth. He transferred with the assistance of a scholarship from Waterpark College.

Thanks to the wonderful Russell Library at St. Patrick's College in Maynooth, I learned that John or "Joannes" Hearne from the Diocese of Waterford and Lismore studied at the College for six years between 1911 and 1916.²²

After four years John Hearne graduated with a B.A. degree in Philosophy and Arts. In 1915, he began the first year of his Theology degree, and in 1916 he was enrolled for the second year of this degree. It would appear that he did not return to Maynooth to complete this degree. Ultimately, he made a decision not to be ordained a priest. According to written sources that came from the Hearne family, his family were disappointed about this, but his father Richard supported him in the

²¹ I am grateful to Very Rev. Fr. Paul Murphy, Parish Priest of St. John's, Waterford and former President of Saint John's College for providing me with this information.

²² St. Patrick's Maynooth College Calendar (Calendaria) 1911-1916. I am grateful to the staff of the Russell Library and Archives at St. Patrick's College: Ms. Susan Leyden, Ms. Audrey Kinch and Ms. Barbara McCormack for their assistance locating material on John Hearne's time in Maynooth.

decision.²³ It must have been a controversial choice to make in a devout family. But it may have been eased by the fact that an older son, Maurice was ordained for the priesthood in 1906 and served for many years in the Diocese of Waterford and Lismore. Canon Maurice Hearne was Parish Priest of Cahir, Co. Tipperary when he died in September 1964.

The years which John Hearne spent at St. John's and Maynooth are very important because he studied philosophy, morality and Church law; languages such as Irish, Latin, Greek and Hebrew, and was taught about ethics, logic and politics. This experience undoubtedly enriched his work as lawyer, public servant and diplomat. The class timetables which I have seen for students at that time show a heavy schedule of lectures and classes which required a great deal of intellectual vigour. The formative years spent at the seminaries in Waterford and Maynooth clearly influenced John Hearne's understanding of the world and human nature, and graced the stylishly written drafts that he wrote, which ultimately became part of our Constitution.

John Hearne: the lawyer

The Ireland of that time must have been difficult for a young man leaving the seminary. However, with his Bachelors degree in Philosophy and Arts from the

²³ According to written notes of the late Mr. Maurice Hearne (son) recalling his father's life now held by Documents in Irish Foreign Policy, Royal Irish Academy. I am grateful to Dr. Michael Kennedy and Dr. Kate O'Malley, for arranging access to this archived material which was presented by the Hearne family.

National University of Ireland, Maynooth, John Hearne enrolled as a student at The Honorable Society of King's Inns in 1916 to become a barrister. He was admitted as a student in the Michaelmas term (October) 1916, a few months after the Easter Rising in Dublin. He was admitted to the Degree of Barister-at-Law in Michaelmas 1919, less than a year after the 1918 election.²⁴ He was admitted to the Degree with the support of Thomas J. Campbell K.C who worked on the North-East Circuit and was later a Nationalist Senator and Member of Parliament at Stormont before becoming a County Court Judge in Northern Ireland.

At King's Inns he became a lifelong friend with a Cork born classmate with whom he shared lodgings - Patrick Philip O'Donoghue. They were called to the Bar of Ireland with eight other classmates on 3rd November 1919 by the Lord Chief Justice Thomas Molony.²⁵ As a student, Hearne was also auditor of the Law Students' Debating Society of Ireland during 1919-1920, and this is recorded on a wooden panel in the King's Inns building. This is a prestigious position for a young student to hold and it requires that they deliver one formal speech during their term of office to a packed Dining Hall full of students, lawyers and Judges each year. I have discovered that Hearne spoke on "University Culture and the Rule of Law". He referred to the failure of international law in preventing a world war and the responsibilities on all citizens to better themselves.

Mr. T. M. Healy K.C. (later the first Governor General of the Free State) was in attendance and prophesied that John Hearne would have a high place in the profession. It is also recorded that some students were awarded prizes on the night by the Lord Chancellor Sir James Campbell (later to become Baron Glenavy). For the years 1917-1918, John Hearne won gold medals for oratory and legal debate as well

²⁴ I am grateful to Síle O'Shea, Assistant Librarian at King's Inns for this information.

²⁵ See Ferguson (ed) *King's Inns Barristers 1868-2004* (Dublin, The Honorable Society of King's Inns/The Irish Legal History Society 2005).

as the Lord Chancellor's Prize.²⁶ His friend Philip O'Donoghue took the silver medals, and went on to win the gold medals in 1918-1919.²⁷ Hearne and O'Donoghue had bright futures ahead of them.

John Hearne was also awarded a Bachelor of Law degree LL.B., from UCD, where he was involved in the Literary and Historical Society.²⁸

I have read some of the speeches which Hearne made as Ambassador to the United States in the 1950s. He occasionally recalled his younger days and said that his ambition was to become a leading barrister in Ireland, and indeed he did practice for a time and was a member of the Leinster Bar.

John Hearne: the political activist

As a young man who had left the National Seminary, John Hearne also put his energies into campaigning for his father's party, the Irish Parliamentary Party in the March 1918 bye-election. Following John Redmond's death in 1918, his son Captain William Archer Redmond was called back from the trenches to fight the seat. His opponent was local G.P. Dr. Vincent White of Sinn Féin who would later recall that:

²⁶ *The Irish Times*, 29th October 1919.

²⁷ O'Donoghue was appointed a District Justice in 1922 and would later serve for thirty years as Legal Assistant to the Attorney General. He worked alongside Hearne on the Constitution Committee set up in 1934 which recommended a new written Constitution. Both Hearne and O'Donoghue were called to the Outer Bar as Senior Counsel by Chief Justice Sullivan on 20th June 1939 in recognition of their work on the Constitution. O'Donoghue would later serve as the Irish Judge at the European Court of Human Rights (1971-1980).

²⁸ See statement of Mr. Justice Cahir Davitt, President of the High Court, to the Bureau of Military History, 20th August 1954

"From the moment of the opening of the election campaign, life took on a quick tempo in Waterford city...."²⁹

I am indebted to historian Dr. Eugene Broderick for bringing to my attention numerous local newspaper reports from Waterford which show that John Hearne was an active campaigner during the 1918 bye-election. Hearne is recorded in the *Waterford Standard* as having made his first public speech to great applause on 12th March 1918. It reported him as saying that the election was going to turn the tide in favour of the constitutional movement, and would purge Ireland of corruption and rottenness.³⁰ The *Munster Express* gave a full account of what Hearne said and recorded his speech as follows:

"It is fitting that it should be here in Waterford city, the city of our dead Leader's political adoption, the city which his name has made renowned in the political annals of the Irish nation, that the first staggering blow should be struck for Redmondism and reason when John Redmond himself, the living embodiment of political sound sense, is no more (cheers).

[...]

One word more. Daniel O'Connell told Isaac Butt that it was not the Clare election which won emancipation; he said it was the Waterford election of some time before that turned the tide finally for religious freedom. It was the Waterford election of 1891 which gave us John Redmond for our member, and gave him to Ireland for the Chief. Let it be the Waterford election of 1918 which will vindicate the greatness of his chieftaincy. We are going to lift up

²⁹ Statement of Dr. Vincent White, Mayor of Waterford 1920-1926 to the Bureau of Military History, 13th December 1958. See www.bureauofmilitaryhistory.ie.

³⁰ *Waterford Standard*, 16th March 1918.

the old flag and unfurl it upon our City Hall, upon our Cathedral and upon the castles and towers of our dear ancient city, and we are going to proclaim Waterford the greatest, the most powerful and the most impregnable stronghold of the principles of John Redmond and Constitutional Home Rule (loud cheers)."

Perhaps when Hearne made this speech, he was exercising the oratorical skills he had the opportunity to hone at Maynooth and King's Inns! The bye-election was very significant for the Home Rulers. Retaining the Waterford City seat in the midst of increasing support for Sinn Féin would be a real victory and provide hope to the Irish Parliamentary Party. A win for Sinn Féin would confirm its place as the dominant nationalist voice and herald the demise of the Home Rulers. The election campaigns were bitter and at times saw skirmishes between supporters of the Irish Parliamentary Party and Sinn Féin. For example there was a hostile reaction to Sinn Féin and one of its leaders, Éamon de Valera, when he came to Waterford to campaign with their candidate Dr. Vincent White in the bye-election.

In 1958 when Dr. White was on his deathbed he recalled in a statement for the Bureau of Military History that de Valera insisted on not having a body-guard in the hostile areas of the city proclaiming that "I have no need of a body-guard in any part of Ireland". When canvassing on Michael Street a block of timber weighing more than a pound was flung at his head and barely missed him. Dr. White recalled that:

"the result of the incident was that Dev. began to have other ideas about the need of having a body-guard in Waterford."³¹

³¹ Statement of Dr. Vincent White, Mayor of Waterford 1920-1926 to the Bureau of Military History, 13th December 1958. See www.bureauofmilitaryhistory.ie.

In any event, Redmond retained his father's seat at the bye-election winning nearly 62% of the vote in the first passed the post electoral system used by Westminster. At the victory celebration John Hearne spoke again and was given a complimentary reception according to the *Waterford Standard*. He is reported as saying the following:

"A week ago we came here for the first time, not to introduce Captain Redmond but to renew his acquaintance. That night they had come to tell them what they knew already, what had already been flashed to the farthest ends of the earth, that Waterford had been true to the father and loved the son.³²

On the 2nd November 1918, the *Munster Express* gave a great deal of coverage to the "Eloquent Address by Young Waterford Man" at the inaugural meeting of the Young Ireland Branch of the United Ireland League. The paper noted that his speeches "made such an impression during the election campaign of March last". During the course of his speech, he spoke fondly of Redmond and how the allegiance of Waterford's youth was to:

"the age-old principle of Parliamentary representation for Ireland, to work for and to win full and final self-government, absolute and unconditional, for our native land."

It was reported that at the close of the meeting, Canon Furlong, V.F., said that "the eloquence of Meagher, Sexton, and Leamy was not dead while they had Mr. John Hearne amongst them" and that he was proud of his young fellow-citizen, who was an ornament to his native city.

³²

Waterford Standard, 27th March 1918.

In the General Election of December 1918, Hearne is reported in the local newspapers as having spoken at numerous meetings in Waterford city and county. On 14th December 1918, the *Freeman's Journal* commented that "Mr. J.J. Hearne, B.A., Waterford, delivered a powerful speech" in support the Home Rule candidate James John O'Shee at a meeting in Lismore.

The December 1918 General Election which followed some months later would see Redmond re-elected as Waterford's MP against the Sinn Féin candidate, Dr. White, although with a much reduced majority of 53% of the vote. Of the six seats which the Irish Parliamentary Party won at that election, Waterford was the only seat outside of Ulster which it retained in the face of a surge of support for the newly formed Sinn Fein. This is testament to the depth of loyalty and support which voters had for the Redmond family.

From the years 1912 to 1914 when Redmond was about to achieve Home Rule for Ireland, the city supported him. The City supported his call to fight for Belgium. Indeed, the youngest known battle casualty of World War I was fourteen year old Private John Condon from Wheelbarrow Lane off Barker Street, and whose sacrifice is remembered by a piece of sculpture entitled "The Boy Soldier" outside Christchurch Cathedral.³³

It is remarkable how opponents can put past differences aside and work together when they have a common purpose. In 1918 de Valera and Hearne were on different

³³ www.irishtimes.com/news/ireland/irish-news/memorial-to-youngest-allied-soldier-to-die-in-first-world-war-unveiled-1.1800353.

sides of the nationalist cause, campaigning in two divisive elections campaigns in Waterford. Did they meet in 1918? We will never know. Yet they would go on to work closely with each other in the years to come as Taoiseach and public servant.

When John Hearne was Ireland's Ambassador in Washington, he sometimes referred to his early life as a lawyer and his involvement in Waterford politics. He made the following remarks during an address delivered at the Annual Meeting of the State Bar of California in September 1956:

"If my career as a practising lawyer was brief, my career as a politician, which was confined to my student days, was briefer still. I supported a political party which not only lost control of the country the year I joined its young hopefults, but at the same time passed out of existence."³⁴

John Hearne: army officer

When the Irish Free State was formed and Civil War broke out in 1921. Hearne joined the Free State Army and left the Bar. He was assigned an interesting duty, in circumstances described by Calton Younger author of *Ireland's Civil War*, as follows:

"Sean McEoin had recently been promoted to major-general and appointed G.O.C. (General Officer Commanding) of the Western Command, an appointment he accepted reluctantly. He was a man of action and didn't want to be tied down by administrative work. He would accept the

³⁴ Address delivered at the Annual Meeting of the State Bar of California held in the Ambassador Hotel, Los Angeles, September 1956 courtesy of Hearne Papers held by Documents on Irish Foreign Policy, Royal Irish Academy.

command, he told Michael Collins, only if he were given a legal officer and quartermaster. Collins quickly produced John Hearne, who afterwards reached ambassadorial rank. Hearne was rushed down to O'Callaghan's, the military outfitters, where he exchanged his natty lawyer's dress for an army uniform. He emerged with a Sam Brown belt that creaked its newness and a small holster. Having been issued with a large revolver, he took his place in McEoin's car to travel to Athlone. As they set off, Hearne suddenly realised that McEoin had no escort and asked rather anxiously where it was. McEoin laughed. "Haven't I got you?" he said and, pointing to the revolver added, 'and that'.³⁵

In recollections recorded by John's son the late Maurice Hearne, what General MacEoin did not know was that Hearne had never removed his revolver from its holster, let alone fired it!³⁶

He was eventually appointed Legal Officer of the Western Command and promoted to the rank of Commandant. He was in charge of conducting military courts in the Western seaboard counties, as well as Longford, Roscommon, Sligo and Leitrim. When the Civil War came to a halt in 1923, he was de-commissioned and re-mobilised on 19th November.³⁷ John's son, Maurice recalled that his father's time in the Army gave him the chance to get to know Irish men and women from different

³⁵ Calton Younger, *Ireland's Civil War* (London, 1968) at 271-272. Grateful thanks to Dr. Eugene Broderick for bringing this reference to my attention.

³⁶ Hearne family papers held by Documents on Irish Foreign Policy, Royal Irish Academy, Dublin.

³⁷ For an interesting account of Hearne's career, see statement of Mr. Justice Cahir Davitt, President of the High Court, to the Bureau of Military History, 9th January 1959. Apparently, in 1922 the Minister for Justice Kevin O'Higgins wanted to appoint Hearne as a District Justice, however owing to a lack of vacancies and "opposition within the Government which he had been unable to overcome", he was unable to do so. O'Higgins had a high opinion of Hearne's character and ability and recommended him to Davitt (Judge Advocate General, Irish Free State Army, 1922-1926) who was organising the Army's legal staff and military courts system. Davitt knew Hearne as a student in UCD and Hearne appeared before him as a junior barrister when Davitt was a Circuit Court judge of the republican Dáil Éireann courts (1920-1922).

See www.bureauofmilitaryhistory.ie/reels/bmh/BMH.WS1751.pdf#page=101

backgrounds to his own rather comfortable and sheltered life to that point. As a junior barrister he was a volunteer with the St. Vincent de Paul in Dublin's inner city which made him appreciate the wretched living conditions which his fellow Irish were experiencing.

John Hearne: the public servant

According to notes written by John's son Maurice, it was John A. Costello who in 1923 encouraged him to join the Attorney General's Office in Dublin. In November of that year, he became Deputy Parliamentary Draftsman under Arthur Mathieson K.C and was in the post for the next six years. Costello also handpicked Hearne's brilliant friend Philip O'Donoghue, a District Justice in Limerick, to become his Legal Assistant. During his work Hearne worked on important legislation to establish State sector institutions, such as the E.S.B.

In 1956 John Hearne reflected on his joining the civil service. He recalled that:

"It happened that when I was of three years standing at the Bar an event took place which changed the course of the lives of many Irish lawyers and gave the legal profession a new place, and a new responsibility and a new influence in the country, - I mean the establishment of the Irish Free State in the year 1922. For my own part I was invited to work with the first Attorney General and spent five years in that Department of the new Government. When our Foreign Office was set up I became its first Legal Adviser a post which I occupied for over ten years."³⁸

³⁸ Address delivered at the Annual Meeting of the State Bar of California held in the Ambassador Hotel, Los Angeles, September 1956 courtesy of Hearne Papers held by Documents on Irish Foreign Policy, Royal Irish Academy.

Life has many coincidences. My grandfather also worked in the Department of External Affairs. While preparing this Talk, I have learned that John Hearne was sanctioned by the Attorney General Mr. Costello to join the Department as Legal Adviser with the rank of Assistant Secretary in February 1929. This was around about the same time that my grandfather Seán Lester was promoted from being Special Correspondence Officer to Principal Officer in the Department. Their formal appointments were made within days of each other and the civil service paperwork surrounding their appointments deals with both men, which I have seen thanks to the Department of Foreign Affairs and Trade.³⁹

My grandfather was Ireland's permanent representative to the League of Nations in Geneva in the 1930s. Hearne was part of numerous visiting Irish delegations and they would have known each other well.⁴⁰ In my father's biography of Seán Lester, he writes about a petition received by the League of Nations from a Jewish man against Nazi discrimination in Upper Silesia. Seán Lester was at that time rapporteur for minorities and is recorded as having received "invaluable help from John Hearne". During the discussions which were aimed at producing a report, Hearne and Lester saw representatives of numerous countries to discuss the matter, aiming to provide "objective impartiality" but also showing "every possible courtesy and consideration of the views expressed on behalf of Germany" which views were often delivered in a heated manner.⁴¹ Their report was ultimately adopted by the Council of the League of Nations.⁴²

³⁹ I gratefully acknowledge the helpful assistance of Mr. James Kingston B.L., Legal Advisor, Department of Foreign Affairs and Trade.

⁴⁰ See the Royal Irish Academy's Documents on Irish Foreign Policy which illustrate some of the work interaction and meetings involving Hearne and Lester. See www.difp.ie.

⁴¹ Kennedy "The special position of John Hearne" *Irish Times* 8th April 1987.

⁴² Gageby *The Last Secretary General: Sean Lester and the League of Nations* (Town House, Dublin, 1999).

Hearne's role in the Department meant that he was a member of the Irish Free State delegations to the League of Nations, becoming a core member in the 1930s.⁴³ He was a substitute delegate in 1931 and 1932, and was a delegate for the four years from 1934 to 1938.⁴⁴ During this time he was Ireland's rapporteur to the League on the civil and political status of women.⁴⁵ He was cool headed and had excellent diplomatic judgment.⁴⁶ Ireland was elected to the Council of the League of Nations in 1930 which was an important achievement for a young state. In 1931, Hearne made it clear how the Irish Free State saw its role in the League of Nations as separate from Great Britain:

"The Irish Free State had made it clear, both before and at the time of its election to the council, that it did not seek election on the grounds that it had associations with other states."⁴⁷

Hearne was also a delegate at the International Labour Conference in 1925. In 1926 he attended the Imperial Commonwealth Conference in London as a technical adviser to the Irish delegation, led by Justice Minister Kevin O'Higgins. He took part in further conferences: the Conference on the Operation of Dominion Legislation in 1929, and the Commonwealth Conference in 1930. He played an important role in the preparations of the Statute of Westminster, which gave the Free State more freedom to govern. He was recognised as an authority on constitutional law and was invited to attend many international legal seminars before the Second World War, such as the Hague Conference on Codification of International Law 1930, the

⁴³ Kennedy, *Ireland and the League of Nations 1919-1946* (Dublin, 1996) at 223.

⁴⁴ *Ibid* at 268-270.

⁴⁵ See Memorandum of Michael Rynne, Assistant Secretary, Department of External Affairs, 16th August 1937 at www.difp.ie/docs/Volume5/1937/2219.htm.

⁴⁶ Keogh, *Ireland and Europe 1919-1948* (Dublin, 1988) at 26.

⁴⁷ Quoted in Kennedy, *League of Nations* at 149.

Disarmament Conference 1932, and various sessions of the League of Nations Assembly 1930-1938.⁴⁸

In his later life, Hearne spoke about his attendance at these conferences as follows:

"Irish freedom became partially restored in 1921, but the right of the Irish people to frame their own Constitution had not been at once established. It was the subject of 4 long drawn out discussions conducted over many years in London, Geneva, the Hague, at various international conferences."⁴⁹

John Hearne and drafting the Constitution

Éamon de Valera viewed the Constitution of the Irish Free State 1922 as having been "forced upon the people" along with the Anglo-Irish Treaty.⁵⁰ When Fianna Fáil formed a Government in 1932, Éamon de Valera advanced his concept of "external association". Professor Keogh and Dr. McCarthy describe this concept as:

"An advanced constitutional conceptualisation capable of facilitating a sovereign republic associating voluntarily with the British government."⁵¹

The external association formula involved removal of the oath of allegiance to the British monarch sworn by members of the Dáil and Senate;⁵² abolition of the right of

⁴⁸ Kennedy, "The special position of John Hearne" *Irish Times* 8th April 1987.

⁴⁹ Hearne "The National Constitution of Ireland", address to Villanova College Pennsylvania, 22nd September 1950 on the occasion of a conferral of the degree Doctorate of Humane Letters on John J. Hearne.

⁵⁰ *Dáil Debates*, Vol. 52, Col. 1, 249, 17th May 1934.

⁵¹ Keogh and McCarthy *The Making of the Irish Constitution 1937* (Cork, Mercier Press, 2007) at 41.

⁵² *Constitution (Removal of Oath) Act 1933*.

appeal to the Judicial Committee of the Privy Council in London;⁵³ abolition of all references to the King in the 1922 constitution, particularly in the wake of the abdication crisis of 1936; abolition of the post of Governor-General, representative of the British monarch in Ireland;⁵⁴ and introduction of both the *Irish Nationality and Citizenship Act 1935* and the *Aliens Act 1935*. Hearne was instructed to draft the bills to abolish the oath of allegiance and to set out Ireland's future external relations and abolition of the Governor General post. In this way de Valera had firsthand experience of his work.⁵⁵

On 30th April and 2nd May 1935 Éamon de Valera instructed John Hearne to draw up the heads of a new Constitution. At these meetings, de Valera made handwritten notes in a squared paper notebook which still survive.⁵⁶ The notes include references to "constitutional court" and "organic laws" which are concepts that would have been known only to constitutional lawyers such as Hearne. An explanatory memorandum written by John Hearne on 17th May 1935 sets out de Valera's verbal instructions at these meetings and they emphasise how the draft was to contain certain basic Articles guaranteeing fundamental human rights placed "in a specially protected position" and "unalterable save by the people themselves or by an

⁵³ *Constitution (Amendment No. 22) Act 1933*. It is interesting to note that the Privy Council endorsed the right of the self-governing Dominion states to legislate for the ending of appeals to the Privy Council in the Irish case of *Moore v The Attorney General of the Irish Free State* [1935] 1 IR 472, [1935] AC 484 (PC). The Council held that the Dominions were entitled to do so by virtue of the *Statute of Westminster 1931*.

⁵⁴ *Constitution (Amendment No. 27) Act 1936* and the *Executive Powers (Consequential Provisions) Act 1937* which completed the abolition of the office of Governor-General. The *Executive Authority (External Relations) Act 1936* was further required to give effect to Edward VIII's abdication as King in Ireland and to regulate Ireland's diplomatic relationship with other nations and the by now minimal role of the British monarch in Ireland's external affairs.

⁵⁵ Kennedy "The special position of John Hearne" *Irish Times* 8th April 1987.

⁵⁶ See Keogh and McCarthy *The Making of the Irish Constitution 1937* (Cork, Mercier Press, 2007); and Hogan *The Origins of the Irish Constitution, 1928-1941* (Dublin, Royal Irish Academy, 2012). The Royal Irish Academy has a dedicated website with documents relating to the drafting process. See www.ria.ie/research/oic.aspx.

elaborate constitutional process".⁵⁷ This was in contrast to the method for amending the 1922 Constitution which ended up being amended by Acts of the Oireachtas.

Hearne completed the draft of the heads on 18th May 1935, having put de Valera's instructions into writing. These included the fundamental rights provisions which survived all subsequent drafts and the manner in which the State would be governed. The fundamental rights provisions drafted by Hearne corresponded with those contained in the 1922 Constitution for the most part. For example the equality guarantee in Article 40.1 of the Constitution came from an article in the 1922 Constitution which provided that "All citizens of Saorstát Éireann are equal before the law". This appears to have been modelled on the equality guarantees in the German Weimar Constitution and the fourteenth Amendment of the US Constitution.⁵⁸ A difference from 1922 was that Hearne drafted a Preamble or Introduction to the Constitution. This was amended during later stages of the drafting process. Further Constitution drafts were completed on 5th November 1936, 11th January 1937 and 13th February 1937.

During 1936 and 1937, Hearne and de Valera attended League of Nations meetings in Geneva, where they continued to discuss and work on the draft Constitution. Recollections of John Hearne that were recorded by the Hearne family depict a man who did his work writing drafts of the Constitution at the family home long after the day's official working hours ended. He worked into the late hours of the night and early morning. His son, Maurice recalled how his mother used to stay up late making countless pots of tea and plates of sandwiches while his father and Éamon de

⁵⁷ UCD, P150/2370, Preliminary Draft of Heads of a Constitution for Saorstát Éireann, 17th May 1935 in Hogan, *The Origins of the Irish Constitution*, at 186-187.

⁵⁸ See Mr. Justice Hogan "Some thoughts on the Origins of the Constitution" Binchy Memorial Lecture, Burren Law School, 5th May 2012.

Valera worked on the draft Constitution in the family home.⁵⁹ The first printed draft was ready on 15th March 1937.

Despite the subsequent changes to Hearne's draft a significant proportion found its way into the final draft. Mr. Justice Hogan of the High Court has written of how John Hearne produced such an elegant and comprehensive document, single-handedly, within a short time frame, and that this is a tribute to his skill and imagination as a constitution drafter.⁶⁰ Five of the fifty articles of the Constitution are devoted to Fundamental Rights. I have stated previously that the Constitution was ahead of its time.

"Many of the principles set out in the Constitution of 1937 were ahead of their time. It was a prescient Constitution. Thus, the Constitution protected fundamental rights, fair procedures, and gave to the Superior Courts the role of guarding the Constitution to the extent of expressly enabling the courts to determine the validity of a law having regard to the provisions of the Constitution. Over the succeeding decades international instruments, such as the United Nations Charter and the Universal Declaration of Human Rights, proclaimed fundamental rights and fair procedures, and it became established that in a democratic state constitutional courts should have the power to protect fundamental rights, including due process, even to the extent of declaring legislation to be inconsistent with the Constitution and to be null and void."⁶¹

These rights provisions have generated a rich source of caselaw from our courts. The Superior Courts have held that rights not specifically mentioned in the Constitution,

⁵⁹ Hearne family papers courtesy of Documents on Irish Foreign Policy held by the Royal Irish Academy.

⁶⁰ Hogan *The Origins of the Irish Constitution, 1928-1941* (Dublin, Royal Irish Academy, 2012) at 156.

⁶¹ *A. v. Governor of Arbour Hill Prison* [2006] 4 IR 88 at 145-146.

such as the right to bodily integrity, are also worthy of protection.⁶² Outside of the United States the Irish judiciary has probably the longest and most extensive experience of judicial review of legislation in the common law world.⁶³ Ireland is in a unique position of being a common law country, a member of the European Union, with a written constitution.⁶⁴

- *Influences on the Constitution*

There are a number of documents that influenced Hearne in his work For example,

- the Constitution of Saorstát Éireann 1922 with its reference to rights.⁶⁵
- United States Declaration of Independence (1776), “Life, Liberty and the pursuit of Happiness”.⁶⁶
- Declaration of the Rights of Man and the Citizen (1789).⁶⁷
- United States Bill of Rights (1791), which guaranteed certain rights, would also have been an influence.⁶⁸

Other documents also figured in the drafting of the Constitution. On the “squared paper draft” of the draft heads of a Constitution, that were drawn

⁶² *Ryan v Attorney General* [1965] IR 294.

⁶³ Hogan in Kilkelly (ed) *ECHR and Irish Law* (Dublin, Jordans, 2004) 13 at 14-15.

⁶⁴ See Mrs. Justice Denham “Leadership in Human Rights Law, Past and Future” speech to the Irish Human Rights Commission and Law Society of Ireland Public Conference, 16th October 2004.

⁶⁵ See Mr. Justice Keane writing extra-judicially in “Fundamental Rights in Irish Law: A Note on the historical background” O'Reilly (ed) *Human Rights and Constitutional Law* (Dublin, The Round Hall Press, 1992) 25 at 27.

⁶⁶ See www.archives.gov/exhibits/charters/declaration_transcript.html/

⁶⁷ See www.hrcr.org/docs/frenchdec.html.

⁶⁸ See www.archives.gov/exhibits/charters/bill_of_rights_transcript.html.

See also the late Mr. Justice Walsh in “200 years of American Constitutionalism-A Foreign Perspective” 48 Ohio St. LJ 757.

up by Éamon de Valera, he made specific reference to the following documents:⁶⁹

- *The Proclamation of the Irish Republic* of 24th April 1916, which guaranteed:

“religious and civil liberty, equal rights and equal opportunities to all its citizens, and declares its resolve to pursue the happiness and prosperity of the whole nation and of all its parts, cherishing all of the children of the nation equally.”

- The *Declaration of Independence* issued by the First Dáil Éireann on 21st January 1919, stated:

“And Whereas the Irish People is resolved to secure and maintain its complete independence in order to promote the common weal, to re-establish justice, to provide for future defence, to insure peace at home and goodwill with all nations and to constitute a national polity based upon the people’s will with equal right and equal opportunity for every citizen.”⁷⁰

- While the *Democratic Programme* released by the First Dáil Éireann on the same day declared that:

“[w]e desire our country to be ruled in accordance with the principles of Liberty, Equality, and Justice for all, which alone can secure permanence of Government in the willing adhesion of the people.”⁷¹

⁶⁹ See Hogan *The Origins of the Irish Constitution, 1928-1941* (Dublin, Royal Irish Academy, 2012) at 166.

⁷⁰ *Dáil Éireann Debates* Vol. 1, 21st January 1919.

⁷¹ *Dáil Éireann Debates* Vol. 1, 21st January 1919.

The 1922 Constitution provided the inspiration for holding referendums to alter or amend the Constitution, even though it was never used. This idea of direct democracy where changes to the Constitution can only be made by referendum came from Switzerland.

The new Constitution was a visible outward symbol of nation-building, something to set Ireland apart from its colonial past. As one historian has noted, the Constitution was a validation of values established over fifteen years of Irish independence.⁷² The 1937 Constitution was innovative in so many ways because John Hearne looked to other Constitutions abroad to see what might work. Some examples are:-

- *Dignity of the person*

The Preamble of our Constitution, inspired by the Polish Constitution, refers to the dignity and freedom of the individual. It reads:

"And seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations."⁷³

⁷² Fanning *Independent Ireland* at 116-118 cited in Ferriter *The Transformation of Ireland 1900-2000* (London, Profile Books, 2004) at 359.

⁷³ Mr. Hearne's first drafts of the Preamble were secular in contrast to the final version which includes religious components inspired by the Polish Constitution of 1921. See Hogan *Origins of the Irish Constitution* at 155 and 211 and Samuel Moyn, The Secret History of Constitutional Dignity (October 9, 2012) available at www.extempore.ie/2012/10/11/moyn-on-dignity-and-the-irish-constitution.

Dignity, is a moral value. It is the foundation upon which respect for all human rights is built. Such respect is not dependent on social status. It is deserved because each person is a unique human being and shares a common humanity with their fellow citizens of the world. References to human dignity were not included in the US Constitution. In the *Declaration of the Rights of Man and the Citizen*, the concept of dignity was linked to superiority.⁷⁴ Ireland led the way by referring to dignity in the Constitution. Eleven years after the enactment of Bunreacht na hÉireann, the aspirational *Universal Declaration of Human Rights 1948* articulated the right to dignity of the human person in its Preamble and other articles.⁷⁵ Many post-World War II constitution builders made express provision to dignity in their new constitutions.⁷⁶ In European Union law, the first Chapter of the *Charter of Fundamental Rights of the European Union 2009* is dedicated to “Dignity”. Article 1 concerns human dignity and proclaims that:

“Human dignity is inviolable. It must be respected and protected.”⁷⁷

⁷⁴ “All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.” See www.hrcr.org/docs/frenchdec.html.

⁷⁵ See Articles 1, 22 and 23 available at www.hrcr.org/docs/universal_decl.html. As does the Preamble to the *United Nations Charter 1945*, see www.un.org/en/documents/charter/index.shtml, the International Covenant on Civil and Political Rights, see <http://www2.ohchr.org/english/law/ccpr.htm> and the International Covenant on Economic, Social and Cultural Rights, see <http://www2.ohchr.org/english/law/cescr.htm>.

⁷⁶ The Preamble to the French Constitution of 1946 required protection of the dignity of the human person from all forms of degradation. Article 1(1) of the German Basic Law of 1949 provides that: “The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority”. Article 2 of Israel’s Basic Law on Human Dignity and Liberty, passed in 1992, states that “There shall be no violation of the life, body or dignity of any persons as such”. Section 10 of the Constitution of the Republic of South Africa of 1996 on “Human Dignity” provides that “Everyone has inherent dignity and the right to have their dignity respected and protected”. See Hale “Dignity”, The Ethel Benjamin Commemorative Address 2010, delivered at Dunedin Public Art Gallery, Dunedin, New Zealand on 7th May 2010 available at www.supremecourt.gov.uk.

⁷⁷ See www.europarl.europa.eu/charter/default_en.htm.

- *Judicial Review*

Another innovative aspect of the Constitution may be found in Article 34.3.2°, which expressly confers upon the High Court and the Supreme Court (as well as the new Court of Appeal) the power to review the constitutionality of legislation and to invalidate it if a Court holds that it infringes human rights. This was a novel measure to explicitly entrust to the judiciary, especially as the British tradition of parliamentary sovereignty dominated in Ireland until the enactment of the Constitution. Even the United States Constitution of 1788, a product of the American Revolution, did not explicitly provide for this jurisdiction.⁷⁸ As I have said previously:

“Ireland led the common law world in 1937 by expressly stating in the Constitution that the jurisdiction of the Superior Courts shall extend to the question of the validity of any law having regard to the provisions of the Constitution. This, perhaps more than any other aspect of the Constitution, signalled the nature of the State, its divergence from the system of government in the United Kingdom, and the parallels which may be drawn with the Constitution of the United States of America.

The power to review the constitutionality of legislation expressly given by the Constitution to the Superior Courts was a novel aspect of the Constitution in 1937. No such power existed expressly elsewhere in common law jurisdictions, such as the United Kingdom, Australia, or Canada.... Consequently, Ireland, in 1937, led the common law countries by giving such a power expressly to the Superior Courts.”⁷⁹

⁷⁸ See Mr. Justice Walsh writing extra-judicially in “The Judicial Power, Justice and the Constitution of Ireland” Curtin and O’Keeffe (eds) *Constitutional Adjudication in European Community and National Law* (Dublin, Butterworth (Ireland) Ltd, 1992) 145 at 155 and Beytagh *Constitutionalism in Contemporary Ireland: An American Perspective* (Dublin, Round Hall, Sweet & Maxwell, 1996) at 14.

⁷⁹ *A. v Governor of Arbour Hill Prison* [2006] 4 IR 88 at 146.

It is clear from the documents now available from the archives that the drafters of the Constitution, de Valera and Hearne understood the power structure being established. It was a visionary approach to a democracy with three organs of State, where the Superior Courts were entrusted with judicial review of legislation.⁸⁰ The Constitution is a living entity in the sense that it must be construed as of its time. The duty of interpreting, explaining and ultimately guarding the Constitution rests on the judicial branch of government. The Judiciary of the Superior Courts must ensure that "...the Constitution keeps in step with the times rather than the times keep in step with the Constitution".⁸¹

- *European Echoes*

There are European echoes which may be found in the Constitution. For example, Article 40.5 of the Constitution provides that:

"The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law."

Its succinctness belies its significance as one of the most important, clear and unqualified protections given by the Constitution to the citizen. Article 40.5 was strongly influenced by constitutional texts of European civil law countries. We know that Mr. Hearne and the drafters studied an array of European constitutions during the drafting process. Mr. Justice Hogan has discussed how Article 40.5 of the Constitution is quite similar to Article 115 of the German (Weimar) Constitution of

⁸⁰ Speech of Mrs. Justice Denham "Leadership in Human Rights Law, Past and Future" to the Irish Human Rights Commission and Law Society of Ireland Public Conference, 16th October 2004.

⁸¹ See Mr. Justice McCarthy writing extra-judicially in "Observations on the Protection of Fundamental Rights in the Irish Constitution" Curtin and O'Keeffe (eds) *Constitutional Adjudication in European Community and National Law* (Dublin Butterworth (Ireland) Ltd 1992) 179 at 180.

1919.⁸² The German Basic Law “GrundGesetz” of 1949 has a similar provision in Article 13.

There are strong links between the Constitution and that of our European neighbours. It is significant that our Constitution’s development was influenced by such a diversity of comparative constitutional law materials, which were carefully examined by the drafters and incorporated in the text. They were men deeply interested in world affairs and the legal systems of other countries. John Hearne was a comparative constitutional lawyer and so it is not surprising that such careful international comparative research was undertaken by him.⁸³

- *Family, education and property rights*

Further evidence of the Constitution’s progressive nature in an international law context is the inclusion of the family rights in Article 41, the education rights in Article 42, and the property rights in Article 43. These same rights would be recognised in international human rights law in the 1948 *Universal Declaration on Human Rights*.⁸⁴ The internationalist perspective of John Hearne

⁸² The Binchy Memorial Lecture, Burren Law School, “Some thoughts on the origins of the Constitution”, 5th May 2012 delivered by Mr. Justice Gerard Hogan of the High Court.

⁸³ Keogh has written of Hearne and Moynihan that they “transcended the limitations of their own times. Both helped to infuse the document with a balance and basic humanism which stood in marked contrast to the legal positivism of the decade in continental Europe... The broad-based culture of these men prevented the triumph of extremism”. See Keogh “The Irish Constitutional Revolution: An Analysis of the Making of the Constitution” in Litton (ed) *The Constitution of Ireland 1937-1987* (Dublin, Institute of Public Administration, 1988) at 65 cited by Hogan “De Valera, the Constitution and the Historians” (2005) 40(1) *Irish Jurist* at 293 fn 87.

⁸⁴ Article 16 family rights, Article 26 right to education and Article 17 rights to property. See www.un.org/en/documents/udhr. For further analysis of the international influences on the Constitution see speech of Mr. Justice Hogan “The 1937 Constitution” to the Constitutional Convention, Dublin Castle, 1st December 2012 at www.constitution.ie/Convention.aspx and his foreword to Keogh and McCarthy *The Making of the Irish Constitution 1937* (Cork, Mercier Press, 2007) at 13.

and his drafting colleagues is also evidenced by the inclusion of Article 29 of the Constitution which is concerned with International Relations.⁸⁵

John Hearne: the Ambassador and his thoughts on the Constitution

John Hearne also had a diplomatic career. In 1939, he was appointed Ireland's High Commissioner to Canada. He became quite good friends with the Canadian Prime Minister William Lyon Mackenzie King. According to King's diaries he viewed Hearne as being "persuasive" and having a "keen mind".⁸⁶ Through their friendship, Hearne persuaded King to call on the British to respect Ireland's neutrality. During Hearne's tenure the Taoiseach John A. Costello visited Canada, where he announced that Ireland would formally become a Republic and leave the Commonwealth. Hearne spent a decade in Ottawa before being appointed Ireland's first Ambassador to the United States in 1950, where he spent ten years before retirement.

Hearne did important work in improving the relationship between Ireland and the US, which was strained because of our neutrality during World War II and by not joining NATO. On St. Patrick's Day 1952, John Hearne presented a small box of shamrock to President Truman, and started the tradition of the Shamrock Ceremony

⁸⁵ On this point see comments of Mr. Justice O'Donnell in *Nottinghamshire County Council v B* [2011] IESC 48 at paragraph 65. Mr. de Valera acted as his own Minister for External Affairs and on being elected to office in 1932 was the Representative of the Irish Free State which held the Presidency of the League of Nations Council in 1932. He was President of the League of Nations Assembly in 1938. One historian has commented that "[t]he League of Nations involvement was not just significant as an exercise in nation-building, but also provided an opportunity to go beyond the constraints (and presumably, sometimes the tedium) of Anglo-Irish relations, or as Deirdre McMahon put it more bluntly, the League of Nations offered an escape from 'the constitutional navel-gazing of the Imperial conferences and more exciting opportunities for a new, small state'. See Ferriter *Judging Dev* (Dublin, Royal Irish Academy, 2007) at 129 and McMahon "Ireland, the Empire and the Commonwealth" in Kenny (ed) *Ireland and the British Empire* (Oxford, Oxford University Press, 2004) at 208-212.

⁸⁶ See [ww.bac-lac.gc.ca/eng/discover/politics-government/prime-ministers/william-lyon-mackenzie-king/Pages/search.aspx](http://www.bac-lac.gc.ca/eng/discover/politics-government/prime-ministers/william-lyon-mackenzie-king/Pages/search.aspx).

with the Taoiseach and US President in the White House each year.⁸⁷ He organised the successful first visit of an Irish President, President Sean T. Ó Ceallaigh, in 1959.

Hearne kept no personal papers about his time assisting Mr. de Valera with the Constitution.⁸⁸ His time in the States is interesting because it provided him with numerous opportunities to refer to the Constitution in a number of speeches. Some of the speeches were kept by his family and presented to the Royal Irish Academy's Documents on Irish Foreign Policy Archives. The speeches give us another insight into John Hearne's thoughts on the Constitution. On reading them it seems that he was clearly of the view that the government of Ireland, the Oireachtas, the Cabinet, the Civil Service and also the Courts, must have due regard to prudence and justice.⁸⁹ His words have echoes of the words of the Preamble to the Constitution, which he helped to draft and which refer to "the dignity and freedom of the individual" being assured.

He was awarded a number of honorary doctorates by universities in the US such as Villanova College Pennsylvania on 22nd September 1950 when he spoke on the "National Constitution of Ireland" which was one of his first speeches as Ambassador.⁹⁰ He said, and his words which capture his sense of human rights:

"I want to refer ... to the part of our political system which relates to the life of the individual in the community, as a factor in the life of the Nation and in the relations of the Republic of Ireland to the other States of the world. It is here that the philosophy of life of our people has most clearly determined the

⁸⁷ I am grateful to Dr. Michael Kennedy for this information.

⁸⁸ Kennedy "The special position of John Hearne" *Irish Times* 8th April 1987.

⁸⁹ His Excellency Ambassador John J. Hearne S.C., LL.D. Ambassador of Ireland at St. Patrick's Day Banquet held in New Orleans, Louisiana, 18th March, 1957.

⁹⁰ 22nd September 1950.

substance of our fundamental law. The members of the community are regarded not only as citizens, but, what is far more important in the development of civil society, as human persons. Their equality before the law is equality not as members of the community but as human persons. An individual is not antecedently a citizen of the State; he is first of all a human person, whose relation to the State is determined by his relation to God. We did not theorise about that when the Constitution was being framed. We began with the basic historic fact that man is a creature of God, made in God's image, The State was made for time, the human soul for time and eternity. That was the standpoint from which we began. It is, I think, subject to correction, the standpoint of Jeffersonian Democracy. We were framing this instrument at a time when Western society was collapsing all round us as a result of about two centuries of the complete secularisation of Western civilisation. The Constitution was to be, as I think it became, the Irish answer to the challenge thrown down to all free Nations in the primitive ideological war being waged around the controversy of the relation of the citizen to the State. We set out to enthrone in our law the historic human person arrayed in all the faculties of his created nature, robed in the full light of his supernatural destiny, the masterwork of God, who became the temple of the very Spirit of God. We made provision for the protection of his life, his liberty, his right to work, and to a living wage, his property, the sanctity of his home, and so on."

John Hearne's focus on the human person shows an insight into his philosophy.

John Hearne's thinking on the Constitution was also recalled by his son Maurice. In his personal memoirs, he wrote that his father had regularly conveyed to him when growing up, and in school in Canada and the United States, that the Constitution was constructed in such a way as it could be interpreted by the Courts not simply by reference to the political, economic and social environment prevalent in the 1930s, but should be regarded by the judiciary as a "living document" relevant to political, economic and social conditions prevailing into the future.

After Hearne's retirement in 1960 he attended a lecture on the life and times of Abraham Lincoln in Dublin. His son Maurice accompanied him. As they were leaving the venue, they were saluted by a gentleman unknown by sight to John Hearne but recognised by his son. Hearne senior asked who the gentleman was and Maurice replied it was Mr. Justice Ó Dálaigh of the Supreme Court. John Hearne asked to be introduced to him. As a result of that meeting, the two men became friends in a short time and often discussed the Constitution in terms of the criteria that should be used in its interpretation. They also had lengthy discussion about the US Constitution on the same basis.

In 1962, when Maurice followed in his father's footsteps and became Auditor of the Law Students Debating Society at King's Inns, Mr. Justice Ó Dálaigh was then Chief Justice and President of the Society. He insisted that John Hearne be invited as guest of honour and he returned to Ireland from Africa, where he was working as a legal adviser.

John Hearne: final years

Hearne retired as Ambassador to the USA four days before John F. Kennedy's election as President. He arrived home to Cobh on board the *Brittanic* on 11th August 1960.⁹¹ In his retirement years he worked as a legislative consultant to the governments of Nigeria and Ghana, when they became independent. This was encouraged by An Taoiseach Seán Lemass who during his time as Taoiseach spoke of the positive role Ireland could have on the world stage in terms of assisting newly independent countries, particularly those that were former British colonies.⁹²

⁹¹ *Irish Times* 10th August 1960.

⁹² Speech of Mr. Seán Lemass, speech to International Social Study Congress, 26th June 1960 courtesy of Documents on Irish Foreign Policy.

John Hearne died on 29th March 1969 aged 76 years. He was survived by his wife Mona, two of his three surviving sons and a daughter. His funeral was attended by President de Valera, Chief Justice Ó Dálaigh and numerous Oireachtas members and civil servants.⁹³ He was buried in Dean's Grange Cemetery in Dublin.

A thought on the Constitution

The Constitution and the law belong to the people of Ireland. The Constitution has generated a wonderful body of academic scholarship which includes the magnificent works of Professor John Kelly beginning in the early 1960's right up to our scholars of today.⁹⁴

For many Irish citizens who have not had the opportunity to study law in any great depth their knowledge of the Constitution is basic. Professor Dermot Keogh of UCC has said that students of history have a lack of familiarity with the Constitution and are distracted by negative perceptions that have build around it in the last thirty years or so.⁹⁵

It is fascinating to learn that several drafts of circulars and detailed explanatory memoranda to schools were drafted with the assistance of Mr. Hearne with a view to devising a scheme which would see classes on the Constitution being taught in national, secondary and vocational schools. Despite the scheme being finalised in the summer and autumn of 1939, the documents were never issued.⁹⁶

⁹³ *Irish Times* 1st April 1969.

⁹⁴ See Hogan & Whyte (eds) *J.M. Kelly: The Irish Constitution* (Dublin, Lexis Nexis Butterworths 2003).

⁹⁵ Address to Constitutional Convention, 1st December 2012 available at www.constitution.ie/Default.aspx.

⁹⁶ Hogan *The Origins of the Irish Constitution, 1928-1941* (Dublin, Royal Irish Academy, 2012) fn 41 at 667.

Today, the Civic Social and Political Education programme includes teaching of the Constitution and our legal system to Junior Certificate students. The transition year programmes often incorporate a law element. Of course this is not an option nor is it compulsory in many schools therefore some students cannot avail of it. The Courts Service receives thousands of students each year who visit the Four Courts and Criminal Courts of Justice in Dublin. Last year 3,000 school children visited the Courts of Criminal Justice building in Dublin. A further 2,000 visited Courts throughout the country.

Perhaps, it is time look again at the example set in those circulars, to see could they be incorporated in the primary school curriculum so as to create interest in our legal system in our youngest of citizens.⁹⁷ As the Department of Education Circular to all Managers and Teachers of National Schools of June 1939 stated:-

"It is of the greatest importance that all citizens should know, clearly understand and fulfil in practice the principles of the Constitution of their country, and it is essential, for the achievement of this aim that the pupils of our schools should receive proper instruction in the Bunreacht and be led, through a sound knowledge of its matters and a realisation of its spirit, to cherish the ideals of loyalty and service to the nation and to pay due honour to these ideals and to the unity of the nations, in the symbols of the National Flag and the National Anthem."⁹⁸

This is a really good idea.

⁹⁷ See Mr. Justice Hogan in his recent speech at the Inaugural Justice Henchy Memorial Lecture "*Elegantia Juris: Mr. Justice Seamus Henchy – some thoughts on two leading judgments*" Corofin Co. Clare, 23rd October 2014.

⁹⁸ Hogan *The Origins of the Irish Constitution, 1928-1941* (Dublin, Royal Irish Academy, 2012) at 666-667.

John Hearne: his legacy

John Hearne was a man who embodied the true spirit of public service. That spirit calls on us to lend our talents and abilities to the good of the State and to our fellow citizens. He was a patriot with his eye on future Irish generations when he was drafting the Constitution. John Hearne believed that:

“A nations laws are as much part of its national life as are its language, its literature, its arts and its particular outlook upon the great public questions of the age.”⁹⁹

John Hearne treasured his links with Waterford. He grew up learning about local figures such as Thomas Francis Meagher, the man who is synonymous with our National Flag, the tricolour. In 1848, Meagher was presented with a green, white and orange tricolour by a group of French women who were sympathetic to Irish independence. When he returned home, the flag was flown from the headquarters of Meagher’s Wolfe Tone Confederate Club at Number 33, The Mall. It was not until 1937 that the flag was formally recognised by the State in Article 7 of the Constitution. John Hearne would have been conscious of this in his discussions with Éamon de Valera, and how coincidental it was that another Waterford man should have been involved in restoring the tricolour in this way.

At Christmas 1945 when the World War had ended, he and his family returned to Ireland from Canada for a visit to family. In the Freedom Roll of Waterford Corporation held by the City Archives we can see that he was granted the freedom of

⁹⁹ NAI, DT S9905, “The Constitution and National Life”: Memorandum prepared by John Hearne, dated 12th June 1937.

the City alongside his young son Maurice on 18th December 1945. It gives us an insight into his sense of place and ties to this great City.

Ladies and Gentlemen, John Hearne was a patriot. Waterford can be proud of him, and his legacy, which continues to benefit Ireland today.

Thank you.

Appendix of Photographs



At the League of Nations, Geneva 1931

A delegation from Ireland: My grandfather Seán Lester is on the left and John J. Hearne is on the right. The gentlemen in the centre are from right to left: John M. O'Sullivan, Minister for Education; Patrick McGilligan, Minister for External Affairs and John A. Costello, Attorney General.



Washington D.C., 1951

John J. Hearne, Ireland's Ambassador to Washington. He is seen here on the right signing the Double Taxation Agreement in December 1951 alongside US Secretary of State Dean Acheson. (Irish News Agency).

Photographs published in "The Catholic Church and the writing of the 1937 Constitution" by Professor Dermot Keogh and Dr. Andrew J. McCarthy, *History Ireland*, Issue 3 (May/Jun 2005), Volume 13. See <http://www.historyireland.com/20th-century-contemporary-history/the-catholic-church-and-the-writing-of-the-1937-constitution/>

Acknowledgements

I wish to record my sincere thanks to the following individuals for their assistance to the Office of the Chief Justice during the research of this lecture:

Mr. Eamonn McEneaney, Director of the Waterford Treasures Museums; Dr. Eugene Broderick, Waterford historian; Mr. James Kingston B.L., Legal Adviser, Department of Foreign Affairs and Trade; Dr. Michael Kennedy, Executive Editor and Dr. Kate O'Malley, Assistant Editor, Royal Irish Academy's Documents on Irish Foreign Policy series; Very Rev. Fr. Paul Murphy Parish Priest of St. John's Waterford and former President of St. John's College Waterford; Mr. Seán Aylward, Under Treasurer, The Honorable Society of King's Inns; Ms. Joanne Rothwell, Waterford City and County Archivist; Ms. Susan Leyden, Archivist St. Patrick's College Maynooth; Ms. Audrey Kinch, Library Assistant and Ms. Barbara McCormack, Assistant Librarian at the Special Collections: Russell Library, St. Patrick's College and John Paul II Library, University of Maynooth; Ms. Síle O'Shea, Assistant Librarian, The Honorable Society of King's Inns; Ms. Orna Somerville, Archivist and Ms. Sarah Poutch Archivist, at University College

Dublin Archives; the Roman Catholic Diocese of Waterford and Lismore; The Hon. Mr. Justice Gerard Hogan, The Court of Appeal; staff of the Supreme Court Office, Four Courts and Mr. Richard McNamara, Solicitor, Executive Legal Officer to the Chief Justice.