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De Jure Republic versus De Facto State: Republican Legitimism as a Peculiar Feature of Irish Political Development

ABSTRACT

One of the more curious quirks of modern Irish history is the continuing assertion by re-publican legitimists that the Irish Republic proclaimed by the 1916 Easter Rising and con-firmed by the First Dáil in 1919 still exists as a parallel, legitimate sovereign entity and is entirely separate from the contemporary state (which later became a republic) founded in 1922. The doctrine, known as republican legitimism, is based partly on the claim that the Second Dáil was never legally dissolved, that numerous procedural issues arose in the creation of the State, and that the Anglo-Irish Treaty of 1921 was an unconstitutional ces-sion of sovereignty. Thus, the Irish Free State (now known as 'Éire' and 'Ireland') is re-garded as an illegitimate creation of an external entity (the UK), while in 1938 the authority over the real Republic was passed to the IRA Army Council. The theory has provided ide-ological continuity for hardline republicans for over a century, shaping the splits within Sinn Féin, the emergence of parties such as Republican Sinn Féin, and the worldview of similar groups. The broad aspects (this is not a complete or definitive discussion) of the historical origins, legal reasoning, and political development of republican legitimism are examined in this article. It examines how a tradition has argued that the 1916 Republic re-mains the only legal government of Ireland, and the tension between de facto state-building and de jure revolutionary continuity in Ireland's contested path to liberty. The continuing appeal of this entirely separate, 'parallel republic' reveals deeper cracks in Irish political identity that remain unhealed more than a century after the Treaty was signed.

KEYWORDS

Revolution, Legal Process, De Jure, De Facto, Case Law

INTRODUCTION

In 1922, Ireland was a notably chaotic place, where conflict arose between rival entities regarding their legitimacy to rule.¹ The opposing sides (the Anti-Treatyites and the new State) were composed of unwieldy and

¹ Diarmaid Ferriter, 'Despair, Defiance and Democracy: Ireland in 1922' (The Irish Times 2022) <<https://www.irishtimes.com/despair-defiance-and-democracy-ireland-in-1922-1.4857466>> accessed 25 June 2026.

fractious groups, and openly exposed the ideological fault lines that had existed in the broader 'nationalist' coalition beforehand.²

'Ireland,' known as 'Éire' in the Irish language, is the official designation of the State founded in 1922. The new state was initially called the 'Irish Free State.' Following changes, it was renamed 'Éire' (signifying 'Ireland') in 1937. In 1949, the description of the State was altered to 'Republic of Ireland,' however, the official name of the state remained unchanged. This arrangement was originally established by the Government of Ireland Act (1920) and the Treaty of Peace between Britain and Ireland (6 December 1921). The designation persisted until further State sovereignty was attained in 1937. However, the phrase 'Free State', or 'Free Staters', is sometimes employed by strict Republicans as a pejorative for political adversaries in Éire.³ The State and its Constitution were regarded not as the foundational organic law of a sovereign populace, but rather an externally imposed statute. The more pragmatic Fianna Fáil party, founded in 1926 and led by Eamon de Valera, would try to reform the State from within.⁴ The adoption of the 1937 Constitution ('Bunreacht na hÉireann') changed the state's constitutional framework and name, but didn't create a new state; rather, the Irish Free State continued as Éire/Ireland. It's pointed out that it's still the very same entity.⁵

Historically, republicans have deemed both the states in the north and south of Ireland as illegitimate, perceiving them as a betrayal of the Irish Republic established in 1916, and commenced functioning in 1919. 'Republican legitimists' assert that the Second Dáil, established in the immediate aftermath of the revolution, conferred its authority not to the entity of the Irish Free State (now 'Éire,' or 'Ireland'), but to the Army Council of the IRA. This reality underpinned the IRA's longstanding assertion of being the legitimate government of Ireland. At a conference in 1986, those who are now called "dissidents" asserted that the 'Provisional' Sinn Féin party had violated its own principles, contending that the decision to acknowledge the contemporary Dáil of the State

² Gavin Foster, 'Res Publica Na hÉireann? Republican Liberty and the Irish Civil War' (2012) 16 New Hibernia Review / Iris Éireannach Nua 20 <<https://www.jstor.org/stable/23266675>> accessed 25 June 2026.

³ 'CAIN: Glossary of Terms on Northern Ireland Conflict' (Ulster.ac.uk) <<https://cain.ulster.ac.uk/othelem/glossary.htm#I>> accessed 25 June 2026.

⁴ Donal K Coffey, 'The Need for a New Constitution: Irish Constitutional Change, 1932-1935' (2012) 48 Irish Jurist 275 <<https://www.jstor.org/stable/44027504>> accessed 27 June 2026.

⁵ Mary E Daly, 'The Irish Free State/Éire/Republic of Ireland/Ireland: "a Country by Any Other Name"' (2007) 46 Journal of British Studies 72 <<https://www.cambridge.org/core/journals/journal-of-british-studies/article/irish-free-stateeirerepublic-of-irelandireland-a-country-by-any-other-name/2C0024B54AB398985B3F2189BAA0A5BA>> accessed 25 May 2020.

could only be made after changing the party constitution. After their defeat, the dissidents established - or re-established, in their view - Republican Sinn Féin (RSF). Republican legitimism is regarded in public as a niche topic nowadays, mostly appealing to policy experts, history enthusiasts, and, naturally, republicans. Depending on one's perspective, the 'legitimate' mantle of republicanism may not rest with the RSF alone, but other entities - most parties active in the state of Éire have had some historical connections with militant republicanism at some stage. Yet, for those who prioritise such matters on a strict basis, RSF's assertion is likely the most persuasive.⁶

Under the leadership of Ruairí Ó Brádaigh, delegates advocating for the continuation of abstention executed a walkout following the Ard Fheis's decision, which passed by a vote of 429 to 161 to terminate the policy. Before the walkout, Ó Brádaigh delivered a speech in which he asserted that:

*"Sitting in Leinster House is not a revolutionary activity. Once you go in there, you sign the roll of the House and accept the institutions of the state. Once you accept the Ceann Comhairle's rulings you will not be able to do it according to your rules. You will have to go according to their rules and they can stand up and gang up on you, and put you outside in the street and keep you outside in the street."*⁷

The enumeration of illegitimacy comprises the December 1921 Anglo-Irish Treaty with the government of the UK; its January 1922 narrow approval by the second Dáil, in conjunction with the Government of Ireland Act, which legislated for separation from the United Kingdom and the establishment of Northern Ireland. Consequently, it's logical to assert that all constitutional and associated institutional developments, regardless of their magnitude, since that period are equally invalid: the 1937 Constitution and the Republic of Ireland Act 1948. Similarly, Éire's accession to the European Economic Community (EEC) in January 1973 and the concurrent referenda conducted in Northern Ireland and Éire in May 1998 to endorse the Belfast Agreement are without validity. Likewise, the reasoning persists that every law promulgated by the Oireachtas, the president, the judiciary, the Garda Síochána, the Defence Forces, and other public officials is rendered null and void due to their illegitimacy. According to a feature by the 'Irish Times,' Eamon de Valera required four years after

⁶ Jason Walsh, 'No, I'm the Real Irish Republican' (Spiked-online.com 5 November 2009) <<https://www.spiked-online.com/2009/11/05/no-im-the-real-irish-republican/>> accessed 24 June 2026.

⁷ Kerron Ó Luain, "'A Policy of Passive Resistance': Sinn Féin and Abstentionism' (The Irish Story 2018) <<https://www.theirishstory.com/2017/07/04/a-policy-of-passive-resistance-sinn-fein-and-abstentionism-an-historical-overview/>> accessed 25 June 2026.

the foundation of the Irish Free State in December 1922 to acknowledge the supposed futility of his viewpoint, which he renounced after founding the more pragmatic Fianna Fáil party.⁸

The Second Dáil has a crucial place in the history of hardline republicans. As noted in the 'Irish Independent' by Conor Cruise O'Brien:

"Younger readers - unless they come from strictly orthodox Republican families - may not be aware of the almost mystical resonance of the expression 'Second Dáil.' The Second Dáil, like the first, was a revolutionary assembly. The Third Dáil - elected after the Treaty - was not."

He explains that the Third Dáil was comprised of those who endorsed the Treaty and set up the new State that exists today. What is commonly known as the Third Dáil, from the perspective of staunch Republicans, was not considered a valid Dáil at all. The Second Dáil, which had never been formally dissolved, continued to convene and remained the exclusive focal point of legitimate authority in the view of Republicans. No subsequent elections conducted under the Treaty provisions that created the State could contest the Republican legitimacy of the Second Dáil.⁹ The year 1938 saw the transfer of "authority" to the anti-Treaty IRA's Army Council by seven of the Second Dáil's remaining refractory anti-Treaty members, who had considered themselves Ireland's legitimate government since 1922.¹⁰ The Army Council's authority in republicanism was historically entrenched, with purists regarding it as the sole 'legitimate government' of Ireland.¹¹

Following the outbreak of the Civil War, it was asserted that the Second Dáil had been challenged by the actions of the Free State's Provisional Government, without waiting for the Dáil to convene. An interesting viewpoint can be seen when leading figure Harry Boland corresponded to his contemporary, Joe McGarrity:

⁸ Peter Murtagh, 'The "True" Republicans: "Nothing since 1919 Is Legitimate"' (The Irish Times 26 March 2016) <<https://www.irishtimes.com/news/ireland/irish-news/the-true-republicans-nothing-since-1919-is-legitimate-1.2587308>> accessed 25 June 2026.

⁹ Conor Cruise O'Brien, 'Mandate for the Dead Is Long Gone' Irish Independent (13 July 1991).

¹⁰ Séan Ó Duibhir, 'A Short History of the Many Groups Who've Claimed to Be the IRA' [2020] www.rte.ie <<https://www.rte.ie/brainstorm/2020/1214/1184315-ira-history-ireland/>> accessed 25 June 2026.

¹¹ Philippe Eugène Duhart, 'From Armed Group to Movement: Armed Struggle and Movement Formation in Northern Ireland and the Basque Country' [2017] Social Movement Studies 1 <https://www.cpp.edu/faculty/peduhart/duhart_from-armed-group-to-movement.pdf> accessed 25 June 2026.

*"The Dáil has not been convoked as yet, and the second Dáil has not been dissolved. We expect to hear that there will not be another meeting of the old Dáil, as England is very anxious that Dáil Éireann will die and that the Partition Parliament will take its place."*¹²

THE SECOND DÁIL AND SURVIVAL OF THE IRISH REPUBLIC PROCLAIMED IN 1916

From 1919, Sinn Féin representatives elected in the 1918 UK general election refrained from participating in the House of Commons and founded Dáil Éireann as the parliament of a self-proclaimed Irish Republic, with members designated as Teachtaí Dála, or 'TDs.' In December 1920, during the Irish War of Independence/ Anglo-Irish War, the British Government enacted the Government of Ireland Act 1920, which instituted partition by creating two home rule parliaments in distinct regions of Ireland. These provisions originate from negotiations conducted during the Irish Convention in 1917, from which Sinn Féin abstained. In May 1921, the inaugural elections for the House of Commons of Northern Ireland and the House of Commons of Southern Ireland were conducted using the single transferable vote. On 10 May, 1921, the Dáil adopted a resolution declaring that the elections planned for later that month in both regions of the country would be considered elections to the revolutionary Dáil Éireann. In the Southern Ireland elections, all seats were uncontested, resulting in Sinn Féin securing 124 of the 128 seats, while Independent Unionists obtained the four seats representing Dublin University. In the 1921 Northern Ireland general election, the Ulster Unionist Party (UUP) secured 40 of the 52 seats, while Sinn Féin and the Nationalist Party each obtained 6 seats. Of the six seats secured by Sinn Féin in Northern Ireland, five are occupied by individuals who previously attained seats in Southern Ireland. The Second Dáil positively acknowledged King George V's proposal for a truce on 22 June, 1921, which takes effect at noon on 11 July, 1921. This was supported by many of the participants, as the protracted process of negotiating a treaty commenced. The Truce permitted the Dáil to convene publicly without the apprehension of arrest for the first time since September 1919, when it was proscribed and forced underground. During the Second Dáil, the Irish Republic and the British Government led by David Lloyd George consented to engage in peace discussions. Eamon de Valera, as President of Dáil Éireann, served as the highest authority in this Republic, although he was nominally merely the head of government. In August 1921, to bolster his position in the discussions, the Dáil amended the Dáil Constitution to confer upon him the title of President of the Republic, so establishing him as head of state. On 14 September, 1921, the Dáil confirmed the designation of Arthur Griffith,

¹² TP O'Neill, 'Death of Cathal Brugha' Irish Press (6 July 1972).

Michael Collins, Robert Barton, Eamonn Duggan, and George Gavan Duffy as plenipotentiary envoys for the peace conference in England. The envoys ultimately executed the Anglo-Irish Treaty on 6 December 1921. The discussion over the Treaty commenced on 14 December 1921 and persisted until 7 January, 1922. On that date, the Dáil ratified the treaty with a vote of 64 in favour and 57 opposed. De Valera resigned as President, leading the anti-Treaty minority. He permitted himself to be nominated once more, but was defeated by a vote of 60 to 58. Arthur Griffith succeeded him as president. For a time, however, the anti-Treaty deputies persisted in their attendance to the Dáil, with de Valera assuming the role of the inaugural Leader of the Opposition in the Dáil. The ratification outlined in the Treaty was conducted by "a meeting summoned for the members chosen to serve in the House of Commons of Southern Ireland." The Dáil vote is inadequate, as four unionists are missing and one member from the House of Commons of Northern Ireland is present. The necessary permission was obtained at a distinct meeting on 14 January 1922, attended by unionists, but boycotted by anti-Treaty TDs. The assembly also endorsed a Provisional Government headed by Michael Collins, which operated concurrently with Griffith's Dáil government, and shared overlapping membership. The Government of Ireland Act 1920 mandated that the Commons be convened by the Lord Lieutenant, with its members required to take an oath of allegiance to the king; nevertheless, the assembly in January is convened by Griffith, and the attending members do not take an oath. According to the Treaty, a Constituent Assembly would be chosen to formulate a Constitution for the Irish Free State, which was to be implemented by 6 December, 1922. The assembly would function as a "Provisional Parliament" to hold the Provisional Government accountable. The election would occur on 16 June, 1922, in accordance with a resolution of the Second Dáil on 20 May, and a proclamation by the Provisional Government on 27 May. The 'Third' Dáil (the first of the Free State) was elected during the general election conducted on 16 June, 1922. This election was to be conducted in accordance with the Anglo-Irish Treaty signed on 6 December, 1921.¹³

Michael Collins struggled to substantiate his claim that the Treaty would align with Irish republicanism, nor could he exclude the king from the Free State constitution; however, he could demonstrate that a majority of the population endorsed the treaty and the peace it was anticipated to deliver. In attempting to rally electoral support and justification, he asserted that:

¹³ Jim Doyle, 'The Convening of the Second Dáil' (16 August 2022) <<https://seamusdubhghaill.com/2022/08/16/the-convening-of-the-second-dail/>> accessed 25 June 2026.

"The election was declared to be one in which the Treaty issue was not being decided. The people have chosen to declare otherwise. The Government made the Pact with the Anti-Treaty party, believing that only by doing so could an election be held at all. That Pact appeared to muzzle the electorate. The electorate have not allowed the pact to muzzle them."

His faction of the old Sinn Féin party lacked an overall majority among the newly elected parliamentarians; but, the Treaty would garner significantly higher support in the proposed third Dáil than it had in the second. His administration would also claim a level of legitimacy that it had hitherto been unable to assert, until its programs received an endorsement from the electorate. In an apparent constitutional quirk, the second Dáil didn't dissolve itself when it mandated elections to select its successor. It opted to reconvene for two concluding sessions on 30 June and 1 July, just prior to the inaugural sitting of the new parliament. In his journal, de Róiste enquired whether the attendees in Dublin would comprise the current personnel or the new people. To him, it appeared chaotic, unstructured, and irrational. However, in several aspects, this pattern adhered to the precedent set (at de Valera's recommendation) by the inaugural Dáil a year prior. During that period, Sinn Féin may have justifiably feared that if the Irish parliament were to dissolve while hostilities persisted, and if the British government subsequently annulled the May 1921 elections, there would be no avenues to re-establish an independent Irish legislature. The inaugural Dáil was determined to persist until its successor was ready to convene, at which point it would dissolve. During the Civil War, Eamon de Valera and other republican thinkers contended that the 2nd Dáil persisted as the rightful parliament of an ongoing Irish Republic. In the Westminster system, a dissolution of parliament invariably precedes a general election, concluding the term of the current parliament, with the subsequent assembly of newly elected members marking the commencement of a new parliament. However, this convention was explicitly violated during the transition from the 1st Dáil to the 2nd Dáil, which effectively adopted the Continental European model, wherein the term of the previous parliament persists until the inaugural meeting of the new one, despite not utilising the Continental European terminology that characterises a dissolution as merely initiating a snap election without terminating the old parliament's term. This deviation was also implicitly reflected in the transition provisions established in May-June 1922. The changing of the guard, the official transfer of authority from one parliament to another, was scheduled to occur two weeks post-election; the outgoing second Dáil, still in existence, would conduct formal sessions, followed by the convening of its successor. However, political enquiries were eclipsed by the onset of intense hostilities on 28 June, when government forces shelled the republican stronghold at the

Four Courts. The Civil War caused the frequent postponement of the calling of the new third Dáil, and its predecessor never reconvened in full session as it was supposed to. This allowed republican fundamentalists to assert that the second Dáil, elected in May 1921, was the sole genuine Irish parliament. They felt at liberty to reject all its successors, starting with the one elected in June 1922 (the first of the Free State), and over the ensuing decades, this conviction would propel them into constitutional debates.¹⁴ The Second Dáil had not been dissolved - and therefore remained the sovereign authority of the Irish Republic.¹⁵ This was also seen in a letter penned by de Valera, which were released to the press during October 1922 by the Free State's Provisional Government:

*"The Second Dáil is not dissolved. It is the sovereign authority in the country in my opinion at this moment."*¹⁶

Newspapers that endorsed and opposed the Treaty had previously advocated for a convening of the Dáil, although varied regarding which Dáil they wished to see convene. Proponents of the Treaty sought the immediate convening of a third Dáil, while adversaries concentrated on the scheduled assembly of the second Dáil on 30 June 1922. Critics of the Treaty employed delays in convening the Dáil to allege that the interim administration was veering towards dictatorship. Critics of the Treaty expressed discontent when the 'Third Dáil' convened on 9 September 1922, without a prior assembly of the Second Dáil.¹⁷

The Republicans had declined to acknowledge the Irish Free State or occupy their positions in its Dáil and established a clandestine 'republican government.' It possessed its own parliament, 'Comhairle na dTeachtaí.'¹⁸ This has been defined as acknowledging the 2nd Dáil as the de jure authority, Comhairle na dTeachtaí as the "de jure de facto" authority, and the Free State Oireachtas as the "de facto de facto" authority.¹⁹ While abstaining from the State's Dáil, members of Fianna Fáil had addressed a Comhairle na dTeachtaí meeting in December 1926, the minutes of which were uncovered during a 1928 raid on the Cumann

¹⁴ Michael Laffan, *The Resurrection of Ireland: The Sinn Féin Party, 1916-1923* (Cambridge University Press 1999).

¹⁵ David McCullagh, *De Valera Volume 1: Rise (1882-1932)* (Gill & Macmillan Ltd 2017).

¹⁶ 'The de Valera Letters - Published by the Government' *Southern Star* (21 October 1922).

¹⁷ Thomas Mohr, 'The "Provisional Period" - Law and the Birth of the Irish Free State, 1921-1922' (2023) 70 *Irish Jurist* 345 <<https://researchrepository.ucd.ie/entities/publication/dab21166-32c7-486d-af53-f1a1e2187ac4>> accessed 27 June 2026.

¹⁸ John Dorney, 'The "State Will Perish": Comparing the Elections of 1932 and 2020' (The Irish Story 2020) <https://www.theirishstory.com/2020/02/12/the-state-will-perish-comparing-the-elections-of-1932-and-2020/#_edn2> accessed 25 June 2026.

¹⁹ T Ryle Dwyer, *De Valera: The Man and the Myths* (Poolbeg 1992).

na mBan headquarters and subsequently published in 1930 by the Cumann na nGaedheal administration.²⁰ Cumann na nGaedheal deputies referenced such that year to undermine the notion of Fianna Fáil's adherence to the State's constitution.²¹

A submission by the "Government of the Irish Republic" to the International Committee of the Red Cross in January 1923 sought international recognition that the ongoing civil conflict was a continuation of the Empire's war against the Irish Republic, rather than an internal Irish dispute. The document argued that the Irish Republic, proclaimed in 1916 and ratified by the First Dáil in 1919, was the only lawful entity in Ireland. It emphasised that both Dáil deputies and members of the IRA had sworn an oath of allegiance to defend the Republic and its government against all enemies, and that the IRA had fought the War of Independence in fulfilment of that oath. The memorial claimed that the Anglo-Irish Treaty had been signed unlawfully by the Irish plenipotentiaries, who had exceeded their authority and broken their undertaking not to sign without cabinet approval. It further argued that the Treaty had been accepted under British threats of "immediate and terrible war" and that the Second Dáil had no constitutional power to abolish the Republic or surrender Irish sovereignty. In the republican view, the Treaty also subordinated Ireland to the British Crown through the oath of allegiance, entrenched partition, and granted Britain military, naval, and commercial rights incompatible with genuine independence. The document maintained that although Eamon de Valera resigned after the Treaty vote, the IRA's oath to defend the Republic remained binding. It justified the establishment of an IRA Executive in March 1922 and the occupation of the Four Courts as legitimate military measures taken to defend the Republic, noting that no objection had initially been raised by Dáil deputies to the occupation. It argued that the June 1922 election had been conducted on the basis that the Republic would continue and claimed that the pro-Treaty majority in the Second Dáil had effectively become a minority after the election results. According to the memorial, before the adjourned Second Dáil could reconvene, the British government ordered the Provisional Government to attack the Four Courts. The bombardment on 28 June 1922, carried out with British artillery and under British direction, was presented as the true beginning of the Civil War and evidence that the conflict was initiated by the Empire, rather than by republicans. The texts concluded that the Empire-

²⁰ 'Holdings: Two Documents "A" and "B" Found by the Police on 10 April 1928 during the Course of a Search of the Premises, 27 Dawson Street, Dublin ... / :: Library Catalog' (Catalogue.nli.ie) <<https://catalogue.nli.ie/Record/vtls000233703>> accessed 25 June 2026.

²¹ 'Nomination of President of the Executive Council' (Oireachtas.ie 2 April 1930) <<https://www.oireachtas.ie/en/debates/debate/dail/1930-04-02/2/>> accessed 25 June 2026.

backed Provisional Government and its state had suppressed the institutions of the Irish Republic and waged war throughout the country with British personnel, weapons, and financial support, while disregarding the accepted laws of war. It stated that the republican government had been reconstituted in October 1922 and that the IRA continued to observe the recognised laws and customs of warfare. The purpose of the memorial was to persuade the International Committee of the Red Cross to investigate alleged breaches of the laws of war by British and Free State forces and to recognise the republican side as the lawful government and armed forces of the revolutionary Irish Republic, rather than as insurgents in a domestic civil conflict.²²

SETTING UP THE STATE - AN OVERVIEW (1922)

The formulation of the 1922 State Constitution was intended to remain confidential. Nonetheless, it was, in reality, susceptible to several leaks. This made it clear to opponents of the Treaty that the draft Constitution presented in London significantly differed from the paper that was returned. These conditions enabled adversaries of the Treaty to assert that the entire 1922 Constitution was a British imposition. This viewpoint was conveyed in a cartoon featured in the anti-Treaty publication called 'The Plain People,' which illustrated the Constitution as a racehorse with Arthur Griffith as the jockey adorned in Union Jack colours. Griffith's mount, named 'Constitution,' wore a crown and, rather than being a thoroughbred, was illustrated as a knock-kneed donkey. Anti-Treaty publications highlighted the article that would eventually be termed the 'Repugnancy Clause', which stipulated that the provisions of the 1921 Treaty would supersede all other sources of Irish law, including the Constitution itself. This overriding provision was utilised to refute the notion that the Constitution would serve as the fundamental legislation of the future State. Critics of the Treaty would further support their claim that the Constitution was an external imposition by asserting that it was enacted through a British Crown statute. Critics of the Treaty dismissed the legitimacy of the third Dáil Éireann, so enabling them to challenge the legal validity of the 1922 Constitution enacted by that parliament. This position was predicated on the assertion that the second Dáil Éireann had not been legitimately dissolved and, hence, continued to exist. This argument surfaced only towards the conclusion of 1922, when it began to feature in anti-Treaty publications, however it would yield significant long-term repercussions. This legal rationale, commonly referred to as 'republican legitimism', enabled multiple factions and iterations of the IRA (Irish Republican Army) to dismiss the legal validity

²² Art O'Brien, 'Republican Case Stated to International Red Cross' Nation (3 March 1923).

of the 1922 and 1937 Constitutions and the Irish State itself in the subsequent decades.²³

The Constitution of the Irish Free State was enacted by legislation (Constitution of the Irish Free State (Saorstát Eireann) Act, 1922) in late October 1922. The 1922 Constitution officially took effect in early December, following the receipt of royal assent little over a month prior. The State's inaugural Constitution comprised 83 Articles. It was primarily founded on the stipulations of the Anglo-Irish Treaty of 1921. Michael Collins was chair of the Constitution Committee, however, he participated in only two meetings of this Committee due to his numerous obligations at the time. The establishment of the principle of separation of powers among the legislative, executive, and judiciary was a major aspect of the 1922 Constitution. The text eliminated the intricate dual-court arrangement that had existed since 1920 from a legal standpoint. The system encompassed both the ordinary courts and the 'Dáil courts.' The Courts of Justice Act 1924 formally established the new judicial system, which includes the High Court and Supreme Court specifically referenced in the 1922 Constitution. The 1924 Act established the contemporary District Court and Circuit Court.²⁴

THE STATE AS THE UK'S CREATION

From 1922, the Free State Constitution was frequently contested due to its connections with the 1921 Treaty. Critics of the 1921 settlement dismissed all assertions that it represented any type of international treaty and occasionally enclosed the term "Treaty" in quotation marks. From their viewpoint, it was a coerced agreement aimed at dismantling the republic that the members of the second Dáil had pledged to uphold and protect. Another oath, articulated in Article 4 of the Treaty and reiterated in Article 17 of the Constitution, was posited as a means to exclude adversaries of the Treaty from political affairs. Certain adversaries of the Treaty relied on its inclusion in a UK statute, the Irish Free State (Agreement) Act 1922, to contend that the settlement constituted the imposition of external law. In early 1922, adversaries of the settlement were assured that the stipulations of the Treaty would significantly impact the content of the undisclosed Constitution. Notwithstanding such issues, they were eager to assert that the Constitution's fundamental existence is rooted in the Treaty. Erskine

²³ Thomas Mohr, 'Irish Newspapers and the Creation of the 1922 Constitution of the Irish Free State' [2023] Comparative Legal History 1 <<https://www.tandfonline.com/doi/full/10.1080/2049677X.2023.2270389#d1e103>> accessed 25 June 2026.

²⁴ Tom O'Connor, 'Our Legal Heritage: 100 Years since the 1922 Irish Free State Constitution' (Irish Legal News26 October 2022) <<https://www.irishlegal.com/articles/our-legal-heritage-100-years-since-the-1922-irish-free-state-constitution>> accessed 25 June 2026.

Childers stated that the "Treaty" grants the pro-Staters the means to formulate a Constitution, while another newspaper item characterised the Treaty as "the very source of all the magic" supporting the nascent constitutional framework.²⁵

This view is supported in-so-far as that UK courts emphasise that this constitution was established through legislation enacted at Westminster, as notably seen *Moore v Attorney-General for the Irish Free State [1935]*.²⁶ This issue has been intensified by the connections established between the formulation of the 1922 constitution and the inception of the state itself. These puzzles remain unsolved due of their inherent design as intractable challenges. The settlement was structured to enable both parties to maintain credibility before their domestic adversaries.²⁷

Article 12 of the State's 1922 Constitution established its own legislative body referred to as the 'Oireachtas'. The structure was to include the King and two parliamentary houses: the 'Chamber of Deputies' (also formally termed 'Dáil Éireann') and a 'Senate', officially designated as 'Seanad Éireann'.²⁸ This original Seanad was abolished in 1936 after it exercised its authority to postpone multiple constitutional reforms approved by the Dáil. The Dáil remained the exclusive chamber of the Oireachtas until the ratification of the new Constitution in 1937.²⁹

Thomas Mohr outlines that while some politicians have rhetorically valued the advantages of potential ambiguity in claiming that the State in operation today is the same one proclaimed in 1916 and affirmed during 1919, lawyers do not possess this privilege. The drafters of statutes necessitated accuracy regarding the date of the establishment of the state. Statutes of the state from the early 1920s, with few confusing exceptions, predominantly acknowledge 6 December 1922 as the pivotal date signifying the separation from the United Kingdom. The sequential numbering of bodies identifying as "Dáil Éireann" constitutes the exclusive legislative recognition of the events of 1919-1922. The lower chamber of the first parliament of the Irish Free State was designated as the "third Dáil Éireann," following the existence of a "first Dáil Éireann"

²⁵ Thomas Mohr, 'Opposition to the Constitution of the Irish Free State in 1922' <<https://researchrepository.ucd.ie/entities/publication/2b716657-7b56-47a1-8aff-098ca322b90e>> accessed 27 June 2026.

²⁶ [1935] IR 472, [1935] AC 484

²⁷ Thomas Mohr, 'Law and the Foundation of the Irish State on 6 December 1922' (2018) 59 *Irish Jurist* 31 <<https://www.jstor.org/stable/26431266>> accessed 27 June 2026.

²⁸ 'The Constitution of the Irish Free State (Saorstát Éireann) Act, 1922 and Public General Acts Passed by Oireachtas of Saorstát Éireann during the Year 1922' (Celt.ucc.ie2021) <<https://celt.ucc.ie/published/E900003-004/text002.html>> accessed 27 June 2026.

²⁹ 'Seanad Abolition Is an Admission of Failure' (History Hub - UCD24 February 2013) <<https://historyhub.ie/seanad-proposal-admission-of-failure>> accessed 27 June 2026.

from 1919 to 1921 and a "second Dáil Éireann" from 1921 to 1922, under the auspices of a revolutionary republic. Yet, this token gesture to prior events was only founded on legislative provisions enacted post-1922. As previously alluded to, the UK accepted the notion of a UK-based origin for the Irish Free State and its Constitution. Irish adversaries of the Treaty employed the hypothesis of this origin of the Irish Free State and its Constitution to further their assertion that the accord constituted a betrayal of their objectives. Irish anti-Treaty publications asserted that the Treaty was "not an international compact, but a British Act of Parliament - a Home Rule Act." An Irish anti-Treaty pamphlet also contended that the Treaty was what lawyers referred to as a "creature" of the UK parliament, originating from it and subject to the legal risk of termination by it.³⁰

Historians and legal experts have characterised the Irish Free State as combining between administrative independence and a high degree of legal continuity. The State did not throw out the UK legal system, but preserved the existing common law, legislation, court system, legal profession and judicial staff, but over time adapted them to the new entity, being the very same one that left the Commonwealth in 1948 and was recategorised in its legal description as 'Republic of Ireland.'³¹ The State was also answerable to the Judicial Committee of the Privy Council, which served as the ultimate appellate court of the British Empire. In 1935, the Irish Free State became the first component of the Empire to eliminate the privilege of appeal to the Privy Council.³² This change was part of the "stepping stone" approach, when the Statute of Westminster from 1931 also enabled the dilution of the role of Governor-General and removal of the "odious oath." These were done following de Valera's election as head of government.³³ Ironically, though the de Valera-led

³⁰ Thomas Mohr, 'The Anglo Irish Treaty - Legal Interpretation, 1921-1925' [2021] SSRN Electronic Journal.

³¹ Jeremy Finn, 'Innovation and Continuity: Statute Law of the Saorstát Éireann / Irish Free State 1922-1948' [2008] Legal History <<https://classic.austlii.edu.au/au/journals/AULegHist/2008/5.html>> accessed 28 June 2026.

³² Thomas Mohr, *Guardian of the Treaty* (Four Courts Press 2016).

³³ Helene O'Keeffe, '"An End and a Beginning": Birth of the Irish Free State' [2022] www.rte.ie <<https://www.rte.ie/history/irish-free-state/2022/1124/1338099-the-irish-free-state/>> accessed 28 June 2026.

Fianna Fáil began as what Niamh Puirseil called an “anti-system party,”³⁴ it ultimately continued the role of their original opponents.³⁵

In a separate article, Mohr points out how the Irish Free State went to great lengths to assert the impression of legitimacy. While the painting of postboxes green is frequently portrayed as an example of trivial and superficial alteration, it must be acknowledged that the modification of coinage in 1928, for example, was significantly more conspicuous to the general public in their daily lives than intricate matters of constitutional law.³⁶

DE JURE V DE FACTO

In a speech at the Sinn Féin Ard Fheis from 1926, Mary MacSwiney argued that the surviving members of the Second Dáil continued to constitute the de jure government of the Irish Republic, as they had been elected under the Republic's constitution and the Second Dáil had never been legally dissolved by its own procedures. She acknowledged that additional TDs had been elected in 1923, but maintained that they could not lawfully sit as the “Third Dáil” because the Second Dáil remained in existence and had not yet been dissolved. To resolve this constitutional problem, MacSwiney explained that the surviving members of the Second Dáil decided to reserve the title “Dáil Éireann” for themselves, while creating a broader representative body known as Comhairle na dTeachtaí. This assembly included both the surviving members of the Second Dáil and those elected in 1923. The Second Dáil delegated its authority to this body, and the President and Cabinet of the republican government became responsible to it, allowing the republican institutions to continue functioning, despite the constitutional deadlock. MacSwiney argued that this arrangement had preserved the continuity of the Irish Republic as a functioning government, rather than merely an abstract ideal. She contended that maintaining the republican government demonstrated to the world that Irish sovereignty was an inalienable right that no parliamentary majority had the authority to surrender or exchange for political or material advantages. She concluded by arguing that, if the Irish people had possessed a stronger

³⁴ Niamh Puirseil, ‘Fianna Fáil and the Evolution of an Ambiguous Ideology’ (2016) 32 *Irish Political Studies* 49 <<https://www.tandfonline.com/doi/abs/10.1080/07907184.2016.1269755>> accessed 28 June 2026.

³⁵ Bill Kissane, ‘Democratic Consolidation and Government Changeover in the Irish Free State’ (2001) 39 *Commonwealth & Comparative Politics* 1 <<https://www.tandfonline.com/doi/abs/10.1080/713999536>> accessed 28 June 2026.

³⁶ Thomas Mohr, ‘The Political Significance of the Coinage of the Irish Free State’ (2015) 23 *Irish Studies Review* 451 <<https://www.tandfonline.com/doi/full/10.1080/09670882.2015.1087801>> accessed 28 June 2026.

tradition and understanding of national independence, they would have recognised that no alternative constitutional position could legitimately replace the original Republic.³⁷

In March 1926, Sinn Féin activists from throughout Ireland convened for a specially organised extraordinary meeting of the Sinn Féin Ard Fheis, to discuss the party's abstentionist policy. A division within the Sinn Féin movement was increasingly likely, with State intelligence reports indicating that "a number of Irregulars are in favour of entry to the Dáil". In a speech to delegates, Sinn Féin, its president (Eamon de Valera) proposed a motion asserting that once the admission oaths of the Irish Free State and Northern Ireland assemblies were abolished, the issue would shift from a matter of principle to one of policy regarding the attendance of Irish Republican representatives at these assemblies. As expected, Fr. Michael O'Flanagan contested de Valera's motion, along with several other participants, suggesting an amendment to categorically refuse membership into the Irish Free State assembly. O'Flanagan asserted that it was "incompatible with the fundamental principles of Sinn Féin" and detrimental to Ireland's honour to send representatives to any usurping entity established by English law in Ireland. The resolution to terminate abstentionism was narrowly rejected by delegates, with a vote tally of 223 to 218. Despite his inherent disappointment, de Valera leveraged the defeat to his advantage and, in a pivotal move, resigned as president of Sinn Féin two days thereafter. Additionally, ten prominent "revisionists," including Seán Lemass, Gerald Boland, and Seán MacEntee, resigned from the Sinn Féin standing committee. Preparations were already in progress to establish a new political organisation, which would ultimately become Fianna Fáil. The assassination of Kevin O'Higgins, Minister for Home Affairs, significantly altered the political landscape. In August 1927, the government enacted legislation mandating that elected TDs either take their seats in its Dáil and the oath of allegiance, or forfeit their positions. Despite some hesitation, it was at this point that the party participated in the institutions of the State and abandoned abstentionism. When they arrived at Leinster House, they were greeted by the leader of the opposition, Tom Johnson (he was also the Labour Party leader). De Valera was the final one to arrive. De Valera characterised Fianna Fáil's resolution to terminate its abstentionist policy as 'painful and humiliating,' asserting that any alternative would have precipitated 'civil war.'³⁸ Furthermore, in a prominently remembered Dáil address in

³⁷ 'The Guiding Principle of Sinn Féin' Irish Freedom (1 November 1926).

³⁸ Stephen Kelly, 'How de Valera Set Fianna Fáil in Motion 100 Years Ago This Month' RTE.ie (7 May 2026) <<https://www.rte.ie/brainstorm/2026/0507/1571786-fianna-fail-formation-may-1926-eamon-de-valera-ireland-politics/>> accessed 25 June 2026.

March 1928, Lemass characterised Fianna Fáil as "a slightly constitutional party."³⁹

Despite participating in the institutions of the State, leading Fianna Fáil members nonetheless initially declared that they had lacked legitimacy. For example, in February 1929, Sean T. O'Kelly called the Cumann na nGaedheal minister for defence the "so-called minister for defence" and Eamon de Valera would notably remark in March 1929 that:

*"I still hold that our right to be regarded as the legitimate Government of this country is [faulty], that this House itself is [faulty]. You have secured a de facto position. Very well. There must be some body in charge to keep order in the community, and by virtue of your de facto position you are the only people who are in a position to do it. But as to whether you have come by that position legitimately or not, I say you have not come by that position legitimately. You brought off a coup d'état in the summer of 1922... Those who have continued on in that organisation which we have left can claim exactly the same continuity that we claimed up to 1925. They can do it."*⁴⁰

Nonetheless, upon assuming the role of prime minister of the Irish Free State, he prohibited the IRA in 1936, and his dedication to achieving goals by constitutional methods inside established frameworks and systems led to a permanent estrangement from his former allies. In 2011, freshly released documents revealed that de Valera even went as far as to covertly collaborate with Crown intelligence to crush the IRA. As noted by the 'BBC', "it seems hard to believe that this was the same militant Republican who had been at the forefront of the Easter Rising against British rule in 1916."⁴¹

NO BACKING DOWN

In May 1932, an article in 'An Phoblacht' argued that, although the Second Dáil had approved the Anglo-Irish Treaty by a narrow majority in January 1922, the republican government had never been dissolved. It explained that after President Éamon de Valera and his supporters resigned, a new government headed by Arthur Griffith was elected, while a separate Provisional Government was established under the Westminster-based Government of Ireland Act 1920 to oversee the transfer of powers to the proposed Free State. However, the article maintained that it had been agreed that the Government and Dáil of the

³⁹ Ronan Fanning, 'Lemass, Seán' (Dictionary of Irish Biography 2009) <<https://www.dib.ie/biography/lemass-sean-a4787>> accessed 25 June 2026.

⁴⁰ Tim Pat Coogan, *The IRA* (Harper Collins 1995).

⁴¹ Mike Thomson, 'How de Valera Asked UK to Smear IRA Chief Sean Russell' BBC News (28 March 2011) <<https://www.bbc.com/news/world-12848272>> accessed 25 June 2026.

revolutionary Irish Republic would continue as the legitimate government until it was formally dissolved, something which never occurred. The article described how divisions over the Treaty deepened after the Sinn Féin Ard-Fheis rejected it. It praised the Collins-de Valera Pact Election agreement, which was intended to preserve national unity by creating a coalition arrangement, regardless of differing views on the Treaty. It claimed that Michael Collins initially demonstrated a renewed commitment to political unity by declaring that he would sacrifice the Treaty if necessary to maintain peace amongst people. According to the article, Collins abandoned this position after pressure from Westminster, breaking the Pact by urging voters to support only pro-Treaty candidates. In contrast, de Valera was portrayed as honouring the agreement by instructing his supporters to uphold the Pact, despite Collins' actions. The article argued that the coalition government envisaged under the Pact never came into existence, because the Civil War intervened. It maintained that the subsequent 1923 election was held only under the constitutional arrangements created by the Treaty for the new State and therefore did not legally replace the republican parliament. On this basis, it concluded that the Second Dáil Éireann and the Irish Republic had never been formally or legally dissolved. Turning to the origins of the Civil War, the article argued that both the pro and anti-Treaty sections had remained bound by the same oath of allegiance to the Republic and continued to recognise a degree of comradeship, as shown by the existence of a Joint Council attended by representatives from both factions. It claimed that pressure, particularly from Winston Churchill, had been responsible for provoking the conflict. According to the article, Churchill had first urged General Sir Neville Macready to attack the anti-Treaty IRA in the Four Courts, but when Macready refused, Michael Collins, as head of the Provisional Government, was ordered to carry out the assault using forces under Richard Mulcahy. The attack on the Four Courts was therefore presented as the event that began the Civil War. The article concluded by arguing that the Civil War constituted an attack on the legitimate Irish Republic, rather than a defence of the state. It questioned the legality of the Provisional Government - an entity belonging to a separate state - ordering republican "troops" to attack republicans, while the republican Dáil had never authorised such action. Richard Mulcahy was portrayed as having betrayed his oath to defend the Republic by obeying the orders of the British-backed Provisional Government and new state. Responding to criticism of anti-Treaty republicans in the Dáil, the article reversed the accusation, arguing that those who had taken up arms against the

Republic were in fact the pro-Treaty forces, while the anti-Treaty side had remained loyal to the lawful government established in 1919.⁴²

As reported by the political paper 'Wolfe Tone Weekly,' on 8 December 1938, which was the anniversary of execution of the 'Four Martyrs' (Liam Mellows, Rory O'Connor, Richard Barrett, and Joe McKelvey), the Council of the hardline Irish Republican Army (IRA) announced that it had taken over the Government of the Irish Republic from the Executive Council of Dáil Éireann. Republican sources defended the move on the basis of a decision of the First Dáil during the War of Independence, which provided for the continuity of the republican government in the event of normal civil administration becoming impossible through enemy action. Supporters of the move presented it as a constitutional safeguard to protect the authority and legitimacy of the Irish Republic declared in 1916. Surviving hardline members of Executive Council of Dáil Éireann from the revolutionary second Dáil declared that, due to British opposition and the defection of elected representatives since the establishment of the Irish Republic, it was transferring its authority to the IRA Army Council. The statement cited decisions of the First and Second Dáil as the basis for this action and called on supporters of the Republic, both in Ireland and abroad, to reject Imperialist influence and remain detached from international conflicts. Expressing confidence in the IRA's commitment to republican ideals, the Executive Council formally entrusted the Army with responsibility for safeguarding and advancing the Republic's objectives. It was signed by Mary MacSwiney, Tom Maguire, John J. O'Kelly, George Noble Plunkett, Professor William Stockley, Brian O'Higgins and Cathal Ó Murchadha.^{43 44} Later, following a split amongst the 'Official' and 'Provisional' IRA groups, the Provisionals were bolstered by the endorsement of Tom Maguire (a member of the Second Dáil), which was seen as the final legitimate political authority by rigid Republicans.⁴⁵

In 1939, Mary MacSwiney contended that the First Dáil, formed in January 1919 by the elected representatives of the Irish populace, had been the sole legitimate government of the revolutionary Irish Republic. She dismissed the validity of the State formed following the Anglo-Irish Treaty, characterising it as a UK-created institution possessing an assembly that wrongly assumed the title "Dáil Éireann." She also

⁴² 'When Mulcahy Waded in Blood: Facts About the War of 1922-23' *An Phoblacht* (28 May 1932).

⁴³ 'I.R.A. Take over Government of the Republic' *Wolfe Tone Weekly* (17 December 1938).

⁴⁴ LW White, 'Stockley, William Frederick Paul' (Dictionary of Irish Biography 2009) <<https://www.dib.ie/biography/stockley-william-frederick-paul-a8321>> accessed 25 June 2026.

⁴⁵ Darren Colbourne, 'Troubling Rhetoric: Discourse Theory and Irish Republican Army Narratives (1962-1972)' (2023) 39 *Irish Political Studies* 1.

acknowledged apprehensions among Republican supporters regarding the Executive Council's decision to cede its authority to the IRA Army Council. MacSwiney asserted that the Second Dáil Éireann had never been dissolved, and that its remaining members who "remained faithful to their oath" aimed to uphold its constitutional continuity until it could be legitimately succeeded by a Third Dáil of the revolutionary Republic. She clarified that the delegation of authority to the Army Council was not a novel occurrence, but rather the execution of an emergency protocol that had been previously sanctioned during the War of 1919-21. The mechanism was devised to guarantee the republican government could persist in operation, should arrests or military actions incapacitate the Executive Council. MacSwiney asserted that this provision was initially endorsed by Cathal Brugha, in his capacity as Minister for Defence, representing the Army Council, and was subsequently reiterated prior to the 1921 Treaty negotiations in anticipation of a potential impasse in discussions. As an elected member of the Second Dáil, the article again encapsulated MacSwiney's staunch anti-Treaty republican conviction that the Irish Republic, founded in 1916 and first assembled in 1919, constituted the sole legitimate state in Ireland, deeming Éire illegitimate, and asserting that the republican government's constitutional authority was maintained via the emergency delegation of powers to the IRA Army Council.⁴⁶

CONTEMPORARY ANALYSIS

It is clear that, from the beginning, hardline Republicans have argued that the Irish Republic of 1916 existed as a parallel and separate entity to the State established by a UK statute in 1922. Those involved in Fianna Fáil would seek to reform from within the State nonetheless, and soften their arguments through a calculated, accommodationist approach by partaking in and governing the State. In none of the three commemorative speeches delivered by de Valera in 1936 did he reference the 1916 Rising, the proclamation of a Republic in 1919, or the legitimacy of the Second Dáil. The historical legitimacy that could be inferred from the revolutionary period had minimal impact on the ordinary electorate, and only the matter of the oath was pertinent in the election campaigns from 1926 to 1933. Considering the tumultuous inception of the state, the party's preoccupation with cultivating a constitutional self-image may appear unexpected; yet, it is noteworthy that to the average voter, as de Valera (being a politician) acknowledged, predominantly adhered to a stable, constitutionalist perspective - and not more technical, legal debates.⁴⁷

⁴⁶ Mary MacSwiney, 'Dáil Éireann - A Review' *Wolfe Tone Weekly* (21 January 1939).

⁴⁷ Bill Kissane, *The Politics of the Irish Civil War* (Oxford University Press 2005).

Numerous historians have elucidated that the realm of “dissident republicanism” is inherently fissiparous and fragmented - a trait that adversaries use to discredit the numerous 'micro organisations' as devoid of support and lacking a coherent strategy for attaining their goal. It's evident that, although these individuals may lack broader backing, they frequently compensate for this deficiency with their profound sense of conviction. In a significant study, Marisa McGlinchey emphasises how such republicans are influenced by their adherence to several shared, non-negotiable, and interconnected ideological tenets: the perception of the British presence in Northern Ireland as colonial; opposition to the 'consent principle' regarding the territory's future (the assurance, as outlined in the Good Friday Agreement, that no alteration to its status will occur without the populace's consent); a conviction in the moral legitimacy of 'armed struggle'; a distinct narrative regarding the purported betrayal of Irish republicanism by 'Provisional' Sinn Féin; and a focus on history, particularly the Easter Rising of 1916, as providing a lasting mandate for the 'unfinished business' of militant Irish republicanism. McGlinchey's observation regarding the presence of a collective, pan-dissident identity and similar ideological reference points is reflected in the works of Andrew Sanders and Paddy Hoey. Sanders emphasised the historically contextualised legitimism that offers numerous dissenters a feeling of identity and purpose. Hoey, in contrast, examined the dissidents via their online presence and broader 'repertoires of action.' Utilising the Marxist Antonio Gramsci's theories and those of popular culture scholars such as Stuart Hall, he posited that dissidents have established 'counter publics' that exist independently of the mainstream media framework; he contended that they employ this to challenge Sinn Féin's dominance within the broader Irish republican sphere.⁴⁸

It has been observed that (Provisional) Sinn Féin's later conflation of constitutional nationalism and physical-force republicanism would enhance the party's electoral support. Yet, their broad metaphors failed to encompass those republicans who had officially rejected conventional electoralism and constitutionalism. Hardline republicans who opposed the constitutional shift in the party derided Gerry Adams' representations of a unified republican “family.” Opponents countered such assertions of representing mainstream republican sentiment, characterising Adams' party as merely one divergent faction within an increasingly diverse movement. During a radio interview in April 1995, Republican Sinn Féin leader Ruairí Ó Brádaigh contested Adams's assertions of representing a unified republican movement. In this

⁴⁸ Martyn Frampton, 'Keeping the Faith, or Old Wine in New Bottles? The Republican Network for Unity and the Dilemmas of Dissident Irish Republicanism' (2025) 39 *Contemporary British History* 653.

framework, Adams and his allies sought to reconstitute and dominate republicanism as a distinctive amalgamation of electoralism, constitutionalism, and, to a lesser degree, militarism. Furthermore, Ó Brádaigh and his associates contended that the Provisionals had relinquished their authority to define republican legitimacy.⁴⁹

CONCLUSION

The theory of republican legitimism remains one of the most fascinating philosophical streams in contemporary Irish history. By insisting the Republic declared in 1916 and institutionalised by the First and Second Dáils continues to exist as a de jure sovereign entity, parallel and separate to the state founded in 1922, and raising serious and often overlooked questions about constitutional continuity, the validity of the Anglo-Irish Treaty and the limits of majoritarian democracy in moments of revolutionary transition, legitimists raise issues that have profound implications for Irish political culture. There is a strong internal logic to their arguments, with real issues raised - based on close readings of oaths, parliamentary process and the undissolved nature of the Second Dáil - that cannot be lightly dismissed as simple romanticism.

Legitimism has not, however, succeeded in winning broad political support, in spite of its intellectual rigour. Its highly technical, legal-historical character appeals strongly to a dedicated minority, but remains largely inaccessible to the wider populace which has consistently prioritised pragmatic state-building, economic stability and constitutional normality over abstract questions of revolutionary purity. In the field of 'realpolitik,' de facto institutions and lived experience have vastly trumped de jure claims.

Limitations of space prevent a more exhaustive analysis of the legal and political dimensions of this doctrine, its developments and context of operation, but this article sought to provide a broad overview to the general reader. The 'parallel republic' remains, a century and more after the Treaty, not as a viable alternative government, but as a potent ideological critique, a reminder of the unsolved contradictions between revolutionary aspirations and the compromises built into state formation. In this respect, republican legitimism remains both a historical curiosity and an ongoing challenge to Ireland's official national narrative.

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