

Debating the forming of a nation

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Direct and parliamentary democracy in the constitutional debates of the Dáil Éireann

1922

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Abstract – Tiivistelmä <p>Tämä maisterintutkielma tarkastelee Irlannin perustuslaillisia väittelyitä vuonna 1922 maan parlamentin alahuoneessa, Dáil Éireannissa, tutkien kuinka tulevan Irlannin vapaavaltion demokratian muodostamisesta väiteltiin. Nämä Irlannin itsenäistymisen demokratian pyrkimykset yhdistyvät tutkielmassa laajempaan eurooppalaiseen parlamentarismiin ja demokratian kontekstiin aiempaa parlamentarismiin ja demokratian tutkimusta hyödyntämällä. Tarkastellut perustuslailliset väittelyt ajoittuvat aikavälille 9.9.1922–25.10.1922. Tutkielma hyödyntää käsitehistorian ja diskurssianalyysin metodeja ottaen selvää, miten kansan, parlamentin ja hallituksen välisistä valtasuhteista perustuslaillisissa väittelyissä väiteltiin, millaisia käsitteitä demokratiaan yhdistettiin, miten suora ja parlamentaarista demokratia asetettiin rinnakkain ja vastakkain sekä millaisia yhtäläisyyksiä ja eroja Irlannin ja muiden eurooppalaisten demokratioiden käsitteellistämisten välillä voidaan Dáilin väittelyissä nähdä. Väittelyitä tarkastellessa niistä on lähiluvun avulla etsitty demokratian ja parlamentarismiin yleisiä aikalaiskäsitteitä ja analysoitu niiden käyttöä Dáilin toimijoiden välisessä vuorovaikutuksessa yhteydessä demokratian muodostamiseen. Digitalisoituja väittelyitä on tarkasteltu myös hakutermejä hyödyntäen. Tutkielman kokoonpanossa on hyödynnetty aiemman tutkimuksen laatimia parlamentaarisen demokratian olennaisia käsitteitä, jotka osoitetaan pätevän myös Irlantiin. Nämä käsitteet ovat suvereniteetti, representaatio, parlamentaarinen vastuu ja deliberaatio. Myös esimerkiksi osallisuus yhdistyi väittelyissä demokratiaan. Tutkielmassa osoitetaan muun muassa, että vaikka Irlannin vapaavaltion perustavaksi periaatteeksi määritettiin kansan suvereniteetti, perustuslaillisissa väittelyissä ilmeni myös parlamentin suvereniteettia korostavia ajatuksia. Valtion ja parlamentin valta sekä suvereniteetti yhdistettiin voimakkaasti Britannian vaikutusvallasta eroamiseen, kun taas kansan suvereniteetti liittyi useammin ajatuksiin siitä, että Irlannin kansalle oli saatava uusia tapoja vaikuttaa valtionsa asioihin. Demokratian käsitteet toimivat väittelyissä välineinä erilaisissa tarkoituksissa eri osapuolilla, mikä osoitti niiden olleen paitsi arvostettuja myös tulkinnallisia. Niin parlamentaariseen kuin suoraan demokratiaan väittelyissä yhdistettyjä erilaisia hyviä ja huonoja puolia tuodaan tutkielmassa esiin. Esimerkiksi suoraan demokratiaan väittelyissä yhdistettiin usein kansan oikeutettu vallankäyttö, yleinen kasvanut poliittinen tietoisuus ja osallisuus, kun taas parlamentarismia puolustettiin käytännöllisenä, ammattitietoisena ja tehokkaana. Väittelyissä ilmeni myös erilaisia vaihtoehtoisia malleja ja tavoitteita esimerkiksi ammatilliseen edustukseen ja puolueiden roolin vähentämiseen liittyen. Demokratian käsitteissä oli yhtäläisyyksiä esimerkiksi Weimarin tasavallassa esitettyihin ajatuksiin sekä muihin demokratian malleihin muun muassa Ranskassa, Sveitsissä, Kanadassa ja Yhdysvalloissa.</p>	
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1. Introduction

In 1921 the Irish War of Independence ended with the signing of the Anglo-Irish Treaty. The Treaty entailed that Ireland would receive an autonomous political system by the creation of the Irish Free State, being a turning point for the island that had been a under British rule from the 17th century at that point. This new state of course needed a constitution, which following many of the time period's popular lines was to be based on democracy. The Constitution of the Irish Free State contained ideas of both parliamentary and direct democracy, offering this way models of democracy that could be seen to both complement and rival each other.

This master's thesis examines the constitutional debates of the lower house of the Irish parliament concerning the 1922 Constitution of the Irish Free State with the objective of establishing how the democratic division of power between the people, the parliament and the government was debated and formed in these debates, what concepts were connected to democracy there, and how were these concepts and ideals positioned and used in the debates. Comparisons to other European states will also be made on the basis of previous research to find similarities and differences regarding the formation of democracy in Ireland to fit it into a larger contemporary context.

To complete its objective this thesis uses a combination of historical discourse analysis and conceptual history's methods in an analysis of the Dáil Éireann's, the lower house of the Irish Parliament, debates regarding the constitution between the dates of 9/9/1922 to 25/10/1922. This analysis has been conducted by close reading through the said debates and examining their contents by looking for concepts connected to this division of power and examining their use, along with forming analyses of the interaction between the Dáil's actors concerning these concepts and ideals of democracy. Searches within the Oireachtas database for direct mentions of concepts previous research has established to be key for parliamentary democracy have also been done to better find relevant information from the constitutional debates.

The structure of this thesis is based on the results of the research as concepts that previous research has seen as key for parliamentary democracies turned out to apply in Ireland's case as well. These concepts are parliamentary sovereignty, representation, parliamentary responsibility and deliberation¹. These large key concepts of parliamentarism were then used here to form a structure that allowed an examination of the views debating different aspects of parliamentary democracy,

¹ Ihalainen, Ilie & Palonen 2016, 1.

possible problems with it and suggestions for some alternative solutions within the system that was still being formed. An addition to these concepts was then given by the contemporary Irish emphasis on direct democracy, which for parliamentarism posed both a competitor and an addition, as it was to give the Irish people direct ways to influence their nation, taking some steps into the area of the parliamentarians. As such, the concepts and topics that surrounded this different type of democracy in the Dáil's debates get their own part in the latter part of this thesis, analyzing how this form of democracy was debated to function, what areas of the state's politics was it connected to, on what grounds did the Dáil's members argue for it to function or not, and what kinds of concepts were connected to it as well.

1.1 Background and topic

Ireland's desires for independence were strong throughout the 1800s. Independence had been politically sought after with proposed Home Rule Bills in 1886, 1893 and 1912, which sought to give power on the island of Ireland to the Irish parliament. The last of these bills, the Third Home Rule Bill, was accepted in 1914 but its implementation was suspended due to WWI². As the war was still raging, the thoughts of nationalism created desires for new nations throughout Europe. Nations such as Finland, Estonia, Lithuania and Poland became independent from under the rule of large empires, such as the Russian empire these nations had been a part of. These new states but also older ones saw great desires for democracy and many constitutions included it in some form or the other. One example of a nation turning into a democracy was the turning of German Empire into the Weimar Republic with the German Revolution of 1918–1919. Ireland also saw a new spike in the hopes for a state of their own. A key political party which had sought after an independent Irish republic was the Sinn Féin, which was founded in 1905. It became a huge actor on the stage of Irish politics after the Easter Rising of 1916, during which the proponents of an independent Irish state organized an uprising in Dublin to take over Dublin Castle, which was seen as the base for British rule in Ireland.

The Easter Rising however failed to seize Dublin Castle and afterwards the leaders of the uprising were sentenced with many of them given the death penalty. This caused an even greater outrage against the British rule in Ireland and the Sinn Féin, as the leading party of Irish nationalism and republicanism, gained a massive boost in its popularity gathering more support than any of the other

² Larkin 2014, 201.

Irish political parties around the time of 1916–1918³. Some Brits were sceptic of the motives behind the movement for Irish independence and suggested that due to the raging war the German Empire was supporting the movement to damage the British war effort, perhaps leading to even more unapproving attitudes towards the Irish attempts⁴. After the Sinn Féin’s electoral victory at the 1918 Irish general elections the party’s members however rejected to take their places in the British Parliament but instead chose to sit in the Dáil Éireann, creating the first Dáil of the Irish parliament,⁵ as a protest against British rule. Through this the revolutionary state of the Irish Republic was also formed.

The movement of Irish nationalism gained new and unforeseen momentum. It soon led to clashes and violence against the Royal Irish Constabulary, the RIC, which was viewed by a great deal of the Irish to be a police that guarded only British interests. One of the most notable cases of violence took place in 1919 in Soloheadbeg when the newly founded Irish Republican Army, the IRA, killed two constables of the RIC. This event is also often seen as the starting point of the Irish War of Independence which lasted from 1919 to 1921⁶. This period saw an estimated 2000 deaths in total along with the destruction of properties, both public and private⁷. The conflict came to an end with the Anglo-Irish Treaty on the 6th of December 1921 when the United Kingdom granted Ireland the permission to draft itself a constitution as the Irish Free State. However, not all terms of the signed treaty received acceptance by the people and the new state soon became divided while the process of drafting the new constitution and debating it were taking place.

The constitutional articles the Dáil debated were from a draft that was one of three suggested ones⁸. The draft was formed by a committee in Ireland, formed of nine members who were desired to be as neutral and accomplished as possible⁹, and then given to the British for their consideration. The drafting committee’s acting chairman was Darrell Figgis, who also functioned in the third Dáil’s constitutional debates. The draft of the Constitution of the Irish Free State was published on the 16th of June 1922¹⁰ after British considerations, which many among the Irish population were unhappy

³ McGarry 2010, 277, The Sinn Féin’s electoral victory in December 1918 with nearly 70% of the seats reserved for Ireland.

⁴ White 2000, 83–84, Germany did seek to support independence and secularist movements within opposing nations during WWI.

⁵ Bew 2007, 393; McGarry 2010, 287.

⁶ Larkin 2014, 238; Pelling 2003, 71.

⁷ Laffan 1999, 416.

⁸ Cahillane 2016, 16–17.

⁹ Cahillane 2016, 4–6, The committee had five lawyers and four lay persons, including a professor, a businessman, a writer and a former British civil servant.

¹⁰ Cahillane 2016, 66–67.

about as they did not get a chance to examine the drafts before the British. After its publication the chosen draft progressed into the third Dáil to be amended and accepted.

The Anglo-Irish Treaty allowed Ireland to exercise a parliamentary system of its own along with the ability for the Dáil to make its amendments to the constitution, but this was with certain restrictions that some were concerned would hamper the just forming of the state, as will be examined later. The draft constitution also contained a decision-making tool new for the island. This tool was direct democracy, which was present in the constitution via referendums and other tools that sought to bypass parliamentary decision-making on certain occasions, this way rivalling them. Elsewhere in Europe the Weimar Republic and Estonia for example had implemented similar practices into their constitutions, with the first being referred to in the Dáil as well. Direct democracy could be viewed as another way of completing legitimate democracy, giving parliamentary democracy a formidable rival as a state's people concretely make decisions by themselves but also functioning as an addition to democratic practice, and as such it will be the other analyzed form of democracy.

The Anglo-Irish Treaty however had strong critics some of whom also disagreed with a lot of the Constitution's contents. Many were upset about the Treaty, as it contained controversial topics such as an oath that required deputies in the Oireachtas, the Irish Parliament, to swear faithfulness to the King of Britain and a possibility for Northern Ireland to opt out of the Irish Free State¹¹, which it did after the constitution was accepted. The draft Constitution also contained a term that Ireland was to remain a part of the British Commonwealth, which many did not like either.

The strong but differing views of Irish nationalism were a key catalyst for the new conflict the state was to come to face. Questions related to British influence over the Irish Free State, the looming partition of Ireland into Northern- and Southern-Ireland, and what some saw as a pitting of Catholicism against Protestantism led to the division of the Sinn Féin -party into an Anti-Treaty and a Pro-Treaty side¹². At the same time the IRA had a similar split into Anti- and Pro-Treaty forces. The Pro-Treaty Sinn Féin became the government and the Pro-Treaty IRA the governmental forces¹³ while the Anti-Treaty side soon detached itself from the government and refused to acknowledge political institutions such as the Dáil as legitimate¹⁴. This setting soon led to the start of the Irish Civil War on the 28th of June 1922. On this date Michael Collins, the then acting prime minister of the Irish Free State as the chairman of the provisional government, authorized an artillery barrage on the Anti-

¹¹ Bew 2007, 439–440.

¹² Kearney 2007, 191.

¹³ Laffan 1999, 374–375.

¹⁴ Laffan 1999, 360; Pelling 2003, 74, in particular the oath that made Dáil's members swear allegiance to the King; Ranelagh 2012, 235.

Treaty forces in Dublin after they had seized the Four Courts building¹⁵. It has been suggested that Collins was pressured into this by the British¹⁶. Two months later Collins himself was assassinated in an ambush by the Anti-Treaty IRA on the 22nd of August 1922, just a few weeks before the period this thesis focuses on¹⁷.

The most influential leader on the Anti-Treaty side was Eamon de Valera who had been the president of the self-proclaimed Irish Republic of 1921-1922 but resigned from his position when he did not accept the Anglo-Irish Treaty. Another prominent figure on the Anti-Treaty side was Liam Lynch, the leader of the Anti-Treaty IRA. These figures were hardly referred to by name in the constitutional debates despite them holding a lot of influence over many Irish people and having their own views about what was best for Ireland. The Anti-Treaty side still was not completely left out as they were in a few cases referred to as a side which demands had weight even over some proposals of those who had been accepted to the Dáil and agreed to arrive. Thus, a level of desire for compromise and cohesion existed and the Anti-Treaty side was not completely cast aside despite their large refusal to take part in the Dáil.

The Pro-Treaty Sinn Féin was the dominant actor in the Dáil and thus in the constituent assembly. The party formed the Irish cabinet, or the Provisional Executive Council as it was called, in 1922 as it had been the most popular party in the last parliamentary elections. In the Dáil's constitutional debates analyzed in this thesis the most prevalent members of the Irish cabinet were William Cosgrave, Kevin O'Higgins and Ernest Blythe. Cosgrave was the President of the Dáil and the Chairman of the Provisional Government, which made him the Prime Minister of Southern Ireland, and he was also the Minister for Finance¹⁸. O'Higgins in turn was the Minister of Home Affairs and Blythe was the Minister for Local Government. Out of the cabinet's members O'Higgins took part in the debates most often, partly already because he was appointed to introduce the constitutional articles to the rest of the Dáil.

The Labour Party was one of the other influential political parties present in the Dáil. The party often expressed concerns about the rights of people of Ireland. Its politics were left on the political spectrum with an emphasis on the Irish people being in charge and the state guaranteeing wellbeing and equality for the people. One of the most visible members of the Labour Party were Thomas Johnson, the

¹⁵ Carroll 2002, 32; Ranelagh 2012, 236–237.

¹⁶ Killeen 2003, 94, "Collins -, was pressurized by the British into rooting them out".

¹⁷ Fraser 2000, 7.

¹⁸ This combination of titles was result of the provisional government established by the Anglo-Irish Treaty and the revolutionary Irish Republic's systems existing at the same time and the possibility in the Irish Free State for the prime minister to hold another ministry, often that of finance as it was seen as particularly important.

chairman of the party, and Cathal O'Shannon. Another party present in the Dáil was the Farmer's Party¹⁹ but its representatives' presence in the constitutional debates was quite minimal. The Oireachtas, the Irish parliament, also allowed independent deputies in the Dáil. Of these independents the most visible one was Darrell Figgis, who as mentioned had been the chairman of the drafting committee of the constitution.

The upper house of the Irish parliament was known as the Seanad or the Senate. It was not yet formed as it was to come to force after the Dáil's and Britain's acceptance of the amended constitution, but instead it was the subject of some debates regarding effective and just democratic procedure, the house's composition and its position in the political arrangement of the nation, making it visible in this thesis.

This is the background behind the setting of this thesis as it examines how the third Dáil debated the constitution concerning the two different democratic practices, the concepts around them and what it all was argued to mean for the forming of the state's political order. Ireland can be seen to have been a part of a large change in Europe and the forming of European parliamentarism when ideals of democracy were put into effect through constitutions after WWI, which in many cases in the long run turned out to be more difficult than perhaps anticipated. After the debates the Dáil accepted the Constitution as amended by them on the 25th of October 1922, leading towards a future that did not turn out to contain many of the desired characteristics, such as small or even non-existent political parties, referendums of any kind for many years or ministers who were not members of the Oireachtas and this way free from political pressure. The problematics of what constructs should be used to organize the many opinions that should be given a chance to be heard, how political solutions should be arrived at in a parliamentary democracy, how popular sovereignty is in practice fulfilled in a system that is greatly based on parliamentary democracy, what kinds of issues are related to both parliamentary and direct democracy, and what does direct democracy mean for parliamentarism were common topics in post-WWI Europe and they can be debated even today. Thus, this examination of a smaller example ties into the much broader question of how democracies are or should be formed.

¹⁹ Cahillane 2016, 66.

1.2 Research questions

The aim of this thesis is to create an analysis of the political debates of the Chamber of the Parliament of Ireland, the Dáil Eireann concerning the constitutional debates of the 3rd Dáil in 1922. The focus of this thesis will be on how democratic relations of power were debated and conceptualized in the constitutional debates between the 9th of September and the 25th of October 1922. As such the research questions this thesis sets out to answer are:

1. How were the power relations between the Irish people, the Irish Parliament and the Government of Ireland debated in the Dáil's constitutional debates?
2. What concepts were connected to democracy and the discussion around it and how were they used?
3. How were the concepts and ideals of parliamentary and direct democracy positioned and weighed against each other in the Dáil's debates?
4. What kinds of similarities and differences can be viewed between the Irish concepts of democracy and how can they be compared with other European democracies?

During the research it became visible how the four long-term trends of European parliamentarisms characterized in *Parliament and Parliamentarism : A Comparative History of a European Concept* (2016)²⁰ fit along Ireland's trends to a great extent. These trends include how the people were emphasized to be represented by a sovereign parliament, how the government was seen as responsible to the parliament, how the constitutional debates included models and ideas from other European countries and how deliberation was valued. As these lines proved to be true in the Irish context, these four concepts of sovereignty, representation, responsibility and deliberation were utilized to construct the first parts of this work, then progressing to handling direct democracy and its concepts.

²⁰ Ihalainen, Ilie & Palonen 2016, 25.

1.3 Material and methods

As mentioned, this thesis will analyze the debates of the lower house of the Irish Parliament, called the Dáil Eireann and often referred to as the Dáil in this work, between the dates of 9/9/1922, the last forming of the cabinet, to 10/25/1922, when the third Dáil accepted the Constitution of the Irish Free State as amended by them. This period has also provided an adequate amount of material, so it was practical. The final Constitution will also be referred to as shows some of the Dáil's efforts' results, or the intended ones.

The methods used in this thesis are a combination of conceptual history and historical discourse analysis. Conceptual history is used to analyze the concepts in their historical contexts with constantly growing knowledge concerning how the concepts were understood, creating a broader understanding of what exactly was meant with whatever concept was used. Concepts carry a great deal of meaning with them which are often tied to other contemporary ideas and values. This also means that different people can use the same concepts with different meanings and connotations. Thus, when analyzing the use of language concerning past events, conceptual history and the knowledge a focus on it can bring have a lot to offer.

Conceptual history can be split into at least two different main schools of thought. One follows along the thoughts of the Cambridge School or intellectual history, with Quentin Skinner as one of its most known members, and the other follows more along the lines made by Reinhart Koselleck. Both these types gather around the idea that concepts have very different types of meanings depending on their users and contexts, but the Cambridge School way of analysis focuses more on thoughts that the different types of uses are intentional and function as rhetorical solutions in singular speech acts, while Koselleck's analysis examines the collective concept-usage of a group that makes up that group's meaning for that concept²¹. The method of conceptual history used here draws slightly closer to that of Koselleck in the sense that this thesis will analyze the use of concepts in the Dáil and what seemed to be the final agreements, but especially through discourse analysis the uses of singular actors at times also are analyzed as they function both as examples of larger usage but as rhetorical means on some occasions.

²¹ Jordheim 2017, 54–55; Skinner 2002, 200, “However, I have again paid little attention to the longterm social transformations that cause such appraisive terms to lose – or to alter the direction of – their evaluative force. This lack of interest again contrasts strongly with Koselleck's approach”.

Discourse analysis is compiled of many different types of analysis-types. Generally discourse analysis however agrees that language is a social practice that produces meaning and that using it means that one is doing something, that discourse can be distinguished according to its subject, special institutional setting or a context, and that discourse represents interpretations²². It draws attention to both what kinds of circumstances surround the analyzed language and what kinds of conventions are linked to language. This way discourse analysis can examine, for example, people's use of language looking for well-arguable signs of attitudes, ideas, political affiliations and other possible ties to the context of the analyzed piece of language. In this thesis discourse analysis is used with the support of established historical facts and previous research, making it historical discourse analysis. This is slightly different from ordinary discourse analysis as it also emphasizes previous events and other types of historical context surrounding the analyzed language. In this thesis historical discourse analysis will be used to analyze the Dáil's actors' attitudes and opinions concerning democracy, taking note of the speakers' political party backgrounds, the political situation in Ireland at the time, and the parliament's nature as an institution that is also greatly directed outwards of itself towards the general public.

The combination of the methods conceptual history and historical discourse analysis create a type of linguistic political analysis as mentioned and characterized in "Integrating a Nexus: the History of Political Discourse and Language Policy Research"²³. This combination creates an analysis which has some linguistic focus points by searching and examining used concepts and their contemporary meanings but it also ties in other ways language is used by examining the attitudes, arguments and points of view political actors brought up in the Dáil concerning the formation of power relations in the state while also linking these topics to the larger contemporary world.

²² Wiesner, Haapala & Palonen 2017, 68–70.

²³ Ihalainen & Saarinen 2019, 4, "With *linguistic textual analysis of politics* at which we aim, we mean a linguistically and textually oriented discourse and policy analysis that pays attention to historical agency and continuities, material realities and the dialogical relationship between discourses and the actions and objects they describe. Our emphasis on time, space and the physical nature of discourses-as-action distinguishes our approach from general discourse analytical approaches which often lack historical sensitiveness".

1.4 Previous research

Ireland's revolutionary period has gathered a good deal of research, which has provided this thesis good ground to build upon. However it seems a good deal of said research has been conducted quite some time ago as finding works from the 2010s has proven difficult. Nevertheless, the specific topics and points of view in the previous research still however differ from the ones chosen here, making this something slightly new. In this thesis the focus on the Dáil's debates regarding the formation of the state's political system and the allocation of power within it, connect through an analysis of democracy's contemporary concepts and the Dáil's discourse the debates to the larger development of democracies and democracy's problematics. The methodology for examining the parliamentary debates with an emphasis on how political power within the state was to be distributed amongst the people and the political institutions forms a stand that has connections to previous research regarding Ireland's case but differs from their selected viewpoints that have analyzed for example what the constitution was sought to establish for Irish independence.

A few works will be worth mentioning as they provided this thesis excellent information and points to compare itself to. One of these is Laura Cahillane's *Drafting the Irish Free State Constitution* (2016) which analyzed the drafting process of the constitution. Cahillane's work has references and analysis concerning some of the Dáil debates, but it does not for example have a similar focus on parliamentary concepts and discourse in the Dáil. The concepts of and ideals of anti-party politics, external ministers, vocational representation are for example examined in Cahillane's work, but that examination revolves more around the ideas of the original drafting committee and then the final result of the acted constitution, than the Dáil's constitutional debates this thesis analyzes. The work's clear and broad construct around the formation of the constitution however gives a great amount of supportive information and looks into aspects that are very easily connected to the work here.

The doctoral thesis of Ossi Päärnilä named *Race, religion and history in the One-Ireland and partition arguments, 1833-1932* (1998) is also worth mentioning. As its name implies, Päärnilä's work examines how race, religion and history were used in the arguments vouching for both a united Ireland and a partitioned Ireland. Päärnilä makes use of the methods conceptual history but differing from this thesis, the work does not focus on parliamentary debates as it instead has an emphasis on the contemporary historians' and researchers' texts and the arguments visible in them.

Michael Laffan's *The resurrection of Ireland: the Sinn Féin Party, 1916-1923* (1999) offered some insight into the key political actor of the analyzed era, the Sinn Féin Party, which was arguably the strongest proponent of Irish nationalism. Katy Hayward's *Irish nationalism and European integration: the official redefinition of the island of Ireland* (2009) also provides knowledge concerning Irish nationalism as a whole. Both of these works create a broader understanding of contemporary Irish politics and they contain interesting analysis of the divisions within the contemporary Irish nationalism.

The civil service and the revolution in Ireland 1912-1938: Shaking the blood-stained hand of Mr Collins (2008) by Martin Maguire is also an example of research that deepens into the construction of the civil service system, contemporary concepts and the role of the revolution in Ireland partly during the same period this thesis will analyze too. Hugh Kearney's *Ireland: contested ideas of nationalism and history* (2007) also takes a look at how the concept of nationalism was divided and contested within Ireland along with the understandings of the nation's own history.

Francis Carroll's *Money for Ireland: finance, diplomacy, politics, and the first Dáil Éireann loans, 1919-1936* (2002) takes a closer look at the Dáil's monetary decisions and a few political questions which will be analyzed briefly in this thesis too. Hillary Larkin's *A History of Ireland, 1800-1922: Theatres of Disorder?* (2013) provides useful information for explaining some of the key events behind the situation of 1922 Ireland. Also the work by Fearghal McGarry *The rising: Easter: 1916* (2010) provides a closer look at the important event of the Easter Rising, a catalyst and one of the first signs of the Irish revolutionary period.

In her 2009 work *Irish nationalism and European integration : The official redefinition of the island of Ireland* Katy Hayward describes Irish nationalism to have been split into three different forms of nationalisms during the late nineteenth and early twentieth centuries; the unionists, constitutionalists and republicans. These types of nationalisms could be seen in the background of this research too and they can explain the Irish political landscape of the time. The unionist nationalists wanted at the very least Northern Ireland to remain as a part of the United Kingdom, while the constitutional nationalists desired independent political institutions to be set up via a constitution. The constitutionalists did not necessarily always want an independent state however, differing from the republican nationalists who desired the whole of Ireland to be a nation²⁴. After the Easter Rising of 1916 the republican nationalism gained strong support that was still visible in the Dáil in 1922 with the Sinn Féin being the most popular party.

²⁴ Hayward 2009, 65-70.

This thesis will next progress to examine the mentioned parliamentarism's four key concepts of sovereignty, representation, responsibility and deliberation, following with an analysis regarding the articles of direct democracy and the concepts connected to that differing form of democracy. The chapters will be divided between a few distinctions within each concept that arose from the Dáil's debates, such as differences in parliamentary and popular sovereignty and their usage, representation via differing entities, responsibility of the cabinet to the parliament and the cabinet's collective responsibility, how deliberation was visible in practice and how its use and fulfillment was debated, and how direct democracy was debated to function the best, what topics was it connected to, what kinds of concepts were related to it, and what were seen as possible problems regarding both parliamentary and direct democracy. Through this the thesis will with conceptual history's and historical discourse analysis' methods construct an examination of how the third Dáil in 1922 debated the state's formation and democracy in the constitutional debates with comparisons to other democracies.

2. Debating sovereignty in parliamentary practice

Sovereignty means that a political entity is not a subject of power but its keeper. This way the sovereign then describes the holder of power in a given entity and as such it is a key part in defining the function of any political system²⁵. In the Dáil's debates sovereignty as a concept was used to refer to the sovereignty of the state, parliamentary sovereignty and popular sovereignty. As a word, "sovereignty" was mentioned 27 times during the period this thesis examines in the Dáil,²⁶ but sovereignty was referred to much more often than that by indirect means. All the mentioned sides of sovereignty saw debate, with heavy emphasis on the sovereignty of the state in the first constitutional debates. Popular sovereignty was heavily weighed by the sides present in the Dáil but disagreements regarding certain aspects of it took place and on occasions parliamentary sovereignty was in effect stressed over solutions that would have more closely followed popular sovereignty, which was most evident with the articles handling direct democracy as will be handled in Chapter 6. Although the concepts were not seen as entirely opposing, as representation was also often seen to keep the people as the supreme authority, certain questions saw more emphases on just one of these concepts being the right solution for the state's democracy. The emphases on popular sovereignty displayed a difference from British ideals of parliamentary sovereignty²⁷. This chapter will analyze how sovereignty was connected to parliamentary practice and how it was connected to the division of power through different topics regarding the parliamentary system.

2.1 Leaving behind British control – The sovereignty of the state and the parliament debated

Many Irish people had felt oppressed while under British control²⁸, so it was not much of a surprise that the topic of establishing and guaranteeing independence and making a difference from the long

²⁵ Bourke 2016, 2–3, following along the lines described by Jean Bodin.

²⁶ Searching the Oireachtas database for the word "sovereignty" brings 27 results from the period of 9/9/1922 to 25/10/1922. Note: a few occasions are outside the constituent assembly and the constitutional debates.

²⁷ Haaparinne & Ihalainen 2020, The interpretation of parliamentary sovereignty in the British model was created through rhetorical changes as a counter-force to models of popular sovereignty shaped during the French Revolution.

²⁸ Hayward 2009, 71–73, Many of the Irish nationalists felt that Ireland had a separate history and culture from the United Kingdom and that British rule had suppressed their rights in an attempt to keep Ireland a part of an empire;

period of British rule was one of the larger sources for debate in the Dáil. As Maguire has brought up in his work, some civil servants from the British Dublin Castle rule found places in the political system of the new state, which might have brought stability from these members' experience but unfortunately also could have strengthened the doubts many had about the new state's sovereignty and independence from British rule²⁹. The area of questions around the state's independence from British rule was also one of the ones that sparked the Irish Civil War, as the Anti-Treaty Sinn Féin along with other actors were heavily opposed to implications of British influence to the Constitution in the Anglo-Irish Treaty, so the question of the state's sovereignty was definitely very important in the constitutional debates too. This part of the chapter will look into how state's sovereignty and parliamentary sovereignty were debated in the first constitutional debates that were concerned with how independently the Dáil could function, and then look into how later constitutional articles that were linked to British power or symbolism, such as the oath swearing loyalty to the ruler of the UK and the King's veto, were debated regarding sovereignty.

The sovereignty of the nation was one of the most debated topics during the first constitutional debates of the third Dáil. The state's sovereignty was referred to when the members of the Dáil debated how independent Ireland was from British rule. In the first debates questionings of the Dáil's actual legitimacy and rights to amend the constitutional articles were brought up in the concerns over how independent their new state in fact was and how much the Dáil could affect it. Through this a level of confusion, disbelief and critique over what the Anglo-Irish Treaty and other agreements made before the then assembled Dáil in fact contained and meant for Ireland's future was brought forward. This part of the chapter will also analyze how parliamentary sovereignty was used concerning the state's sovereignty and British influence.

When the bill to enact the constitution was debated on the 18th of September 1922, many critical attitudes toward Ireland's actual political position and the state's sovereignty became quite apparent and the debate focused heavily on this topic. During the introduction of this bill, before the Dáil could begin its debates, both William Cosgrave, the President of the Dáil and the Minister for Finance, and the Minister for Home Affairs Kevin O'Higgins stressed their view that Ireland had not been victorious in the fight in against the British at least to the point of driving out the British and that they have had to agree to terms that they would not have not done under different circumstances³⁰. A

Päärnilä 1998, 69–73, Many of the British in turn had thought of themselves as superior in a racial sense for example, justifying leaving the Irish small chances to influence their own affairs.

²⁹ Maguire 2008, 135–138, 158.

³⁰O'Higgins, Dáil Éireann, 18/9/1922, Bill to enact constitution, "We did not drive the British out of the country; we were not able, and there was no great prospect that we ever would be able. Many would have liked to do with the British what we read that Brian Boru did with the Danes, not far from here. But we did not do it. We were not able to do

distinction was made between three parts of the constitution, with one part of the articles being things the Treaty required them to have, then another part being those concerned with the agreements of the previous Provisional Government and those between them and the Southern Unionists³¹. These two parts both were described by the ministers to be out of the Dáil's ability to fully and freely amend, with the third part of the constitution then being the articles that the Dáil could freely amend. These restrictions regarding the constitutional debates and amendments provoked quite a bit of criticism in this first constitutional debate of the Dáil.

From the way Cosgrave and O'Higgins began introducing the bill to enact the constitution, it could be argued that they knew certain aspects of the constitution were going to be controversial, especially relating to British rule³². This way before the members of the Dáil could begin taking turns debating the constitution, the cabinet had already proposed a number of arguments to support the constitution, drawing special attention to parts a deal of the Irish population would have found irritable. Deputies of the Dáil who supported the treaty and the constitution also visibly acknowledged that they were faced with a difficult and unfavorable task in this manner, as was put by Sinn Féin member Sean Milroy, "What we are asked to do here is to initiate of our own volition something which the country will despise us for in another generation."³³ O'Higgins similarly acknowledged in a speech by saying that "I know that there will be many in this Dáil to say that they died soft with the British; that we brought home a Constitution dictated by the British."³⁴ He, along the cabinet's lines, however argued strongly that this was not the case and that they had done their best and succeeded given the situation Ireland was in³⁵ stating that,

The Constitution is one which I hold to be a strict but-fair interpretation of the Treaty. Had circumstances here been other than what they were, I do believe that we could have got a more

it. If we had been able to do it, the things that are in the Treaty and that are in the Constitution, that many here find irksome, would not be there".

³¹Cosgrave, Dáil Éireann, 18/9/1922, Bill to enact constitution, "- there are, first of all, the sections or articles of the Constitution which are vital to the Treaty or Articles of Agreement which have been entered into with the British Government. There are, secondly, those articles which concern the Agreement entered into by the late President and the late Commander-in-Chief, on the one hand, and those who represent what are described as the Southern Unionists. And the third part would refer to recommendations that have been put up, in connection with the Constitution, by the Government, which are not vital to the instrument itself, so that the Dáil would have a perfectly free hand with regard to these precise Articles".

³² Previous research has also agreed that the politicians behind the Constitution knew this. For example, Cahillane 2016, 83, "They had associated politics with corruption and subjugation for so long that trust in any political system, Irish or not, simply would not be guaranteed. That the politicians and architects of the 1922 Constitution were aware of this is obvious in the language used to convince the people that this new Constitution would be their Constitution-".

³³ Milroy, Dáil Éireann, 18/9/1922, Bill to enact constitution, Milroy referred to the terms the Dáil was to agree to in order to proceed with the constitution and the articles the Dáil was urged not to amend.

³⁴ Kevin O'Higgins, Dáil Éireann, 18/9/1922.

³⁵ Cahillane 2016, 67, The ministers of the Provisional Government demonstrated agreement that the Constitution gave the power to the Irish.

pleasantly worded Constitution; but I do not believe that in any important point of substance we could have got a better Constitution than we in fact have got. It was our duty— it was the duty of those who went to represent the Provisional Government and the Irish people—to see that the broadest possible Constitution, within the limits of the Treaty, was secured. I think we have got that.³⁶

As mentioned, when the turns for the Dáil’s members to participate in the debate began, the critical views towards the constitution became apparent. The chairman of the Labour Party, Thomas Johnson, stated that the constitution they were faced with was not as good as the Anglo-Irish Treaty arguing that it contained articles which no elected assembly could voluntarily accept³⁷. He then added, “I make a great distinction between proposing an enactment in the form of a Constitution initiated from the Irish people or from the Dáil, and accepting or abiding by something which has been forced by excessive power over comparative weakness of this country”³⁸. This way the use of force or a threat of it was seen as an element that would hamper the legitimacy of the constitution as the will of the people or the state would not be the sole factor deciding the outcome. This was a criticism toward British pressure to entail parts into the Constitution of the Irish Free State without the Dáil’s approval and it carried a notion that the state would not be fully sovereign under such conditions.

The view that outside pressure made a constitution invalid was opposed by the independent deputy Darrell Figgis who stated the constitutions of Poland, Czecho-Slovakia and Germany were all created as a result and following the contents of a peace treaty³⁹, similar thus to Ireland’s situation. This way a comparison to contemporary politics and constitutions in Europe was used to argue that Ireland’s constitution was valid and could be implemented⁴⁰. The sovereignty of a nation was argued to not be critically hampered by a treaty that gave it orders or restrictions regarding that nation’s constitution. The emphasis on absolute and pure will of the people and the parliament apart from other nations’ power to form a sovereign state that was present in Johnson’s view was resisted this way by arguing it to not be fully true outside of Ireland.

³⁶ Kevin O’Higgins, Dáil Éireann, 18/9/1922, Bill to enact constitution.

³⁷ Thomas Johnson, Dáil Éireann, 18/9/1922, Bill to enact constitution, “The Constitution, as drafted, is not as good a thing for Ireland as the Treaty itself was. It is much less valuable for Ireland than the Treaty itself, and we are asked here to enact a Constitution which contains clauses which no assembly elected as this has been, and as its predecessors were, could enact as a voluntary effort-on their part”.

³⁸ Thomas Johnson, Dáil Éireann, 18/9/1922, Bill to enact constitution.

³⁹ Figgis, Dáil Éireann, 9/18/1922 Bill to enact constitution, “Poland passed and prescribed a Constitution for the Polish people. They elected what was a Constituent Assembly specially for the purpose, but that Constituent Assembly was restricted by a document known as the Treaty of Versailles. The same is true of Czecho-Slovakia and Germany”.

⁴⁰ Cahillane 2016, Also showcased how other nations’ constitutions were used during the drafting process.

Another member of the Labour Party Cathal O’Shannon argued that the examples by Figgis were not valid as Ireland according to him was not in a similar position of having been harshly beaten⁴¹, also stating the Polish were able to make their constitution in a more independent manner⁴², and adding that Ireland’s treaty considered only one other nation besides itself⁴³. Here a view of Ireland as a more unique case was present while the Labour Party’s views concerning the so-far expressed legitimacy- and sovereignty-deficits were argued to be correct at the same time. O’Shannon defended Ireland to be at least to some extent undefeated from the war. This line highlighted the idea that Ireland was a unique case separate from others which could have tied to the views about Irish history and culture along with those connected to war time efforts⁴⁴.

The sovereignty of the state was also argued by the Labour Party’s members to have been better secured had Ireland joined the League of Nations. O’Shannon for example said that, “My friends and myself have no cause at all to be proud or fond of the League of Nations. It is far from perfect, but in this particular it would have furnished a test of the status of this State of ours.”⁴⁵. According to this view, Ireland’s position as an independent state was a little less secure without a membership in the League. An international institution was this way argued to defend the new state’s sovereignty as well.

During the first debate the Labour Party was the most visible opponent against the constitution’s establishment in the form it was in. The Labour Party’s chairman Thomas Johnson argued that not adopting a written constitution at all was a better approach at the time, suggesting that Ireland could follow the UK in their practice of allowing their constitution “develop by custom and usage”⁴⁶. In Johnson’s latter words a vision of a possible danger regarding the written constitution was brought forward as an additional argument in a slightly indirect yet visible manner. It was argued that the

⁴¹ O’Shannon, Dáil Éireann, 18/9/1922, Bill to enact constitution,”- in the case of Germany it was the case of a State beaten to the ropes that was down in the dust, smashed almost into one thousand fragments. Ireland even yet is not smashed into one thousand fragments”.

⁴² O’Shannon, Dáil Éireann, 18/9/1922, Bill to enact constitution, ”There is no parallel between Poland and Germany and Ireland. If there were a parallel between the case of Poland and Ireland, then the President of Poland would have gone to Moscow to draw up certain clauses which he would have brought back and which he would explain, as the President explained to-day we must have. The President of the Polish Republic did not do anything of the kind. The Poles drew up the Constitution within the four walls of the International Treaty; -”.

⁴³ O’Shannon, Dáil Éireann, 18/9/1922, Bill to enact constitution, ”- although they were bound by the infamous Treaty of Versailles, that in the first case was an International Treaty. It was not a Treaty between one big State and a little State,-”.

⁴⁴ There were many views concerning Irish uniqueness that as mentioned previously has been analyzed by Hayward 2009, 71–73.

⁴⁵ O’Shannon, Dáil Éireann, 18/9/1922, Bill to enact constitution.

⁴⁶ Johnson, Dáil Éireann, 18/9/1922, Bill to enact constitution, ” re-enact, re-affirm, or ratify—whichever phrase you like—the Treaty itself, and let the Constitution grow out from that and thereby flatter our neighbours by following their own practice, in allowing the Constitution to develop by custom and usage.”.

written constitution had faced and possibly could continue to face heavy amendments from the British, making the constitution quickly unfavorable for the Irish⁴⁷. In this argument a reference was made to a view expressed in Irish Times according to which there had been previously attempts to change Irish legislation that were then nullified in the UK⁴⁸, and he stated that the ministers had admitted to such a thing having taken place again, referring seemingly to their statements that certain parts could not be amended because of their ties to the Anglo-Irish Treaty and the agreements with the Southern Unionists. Having the constitution unwritten and formed through practice was this way argued to better fulfill the sovereignty of the state as it could not then be changed by the British or cause any other binding effects, being instead created by the Irish parliament or the people themselves.

Irish politics saw some anti-party views regarding the formation of the state's politics, as many members hoped to and did express views that despite party memberships the representatives could express views against the party lines⁴⁹. At times this made some matters related to the Sinn Féin's split creep into view quite well concerning the debate on the sovereignty of the state and the Dáil's actual political position as some members of the ruling party made rather heavy accusations concerning the legitimacy of the institution. One such statement was by Sinn Féin member Patrick McCartan who said, "We can change, perhaps, the number of buttons on Dick Mulcahy's coat or on the uniforms of the Civic Guard, but we cannot change a vital part of this Constitution"⁵⁰.

Quite obviously the views expressed here were not in support of the government despite the speaker having been in the same party the government was formed of⁵¹. It was implied that the Dáil has to be allowed to change every part of the constitution, or otherwise its members were not genuinely drawing up the constitution themselves. This way the sovereignty of the state and the parliament was heavily questioned. Dick Mulcahy referred to Richard Mulcahy, the then head of the Pro-Treaty IRA

⁴⁷ Johnson, Dáil Éireann, 18/9/1922, Bill to enact constitution, "I think it is common knowledge that that procedure is the procedure that is being adopted in regard to this Constitution. It is admitted by the Minister for Home Affairs that it was submitted to the British Government and that in consultation with them it was radically altered."

⁴⁸ Johnson, Dáil Éireann, 18/9/1922, Bill to enact constitution, "In Saturday's issue of the Irish Time a very illuminating passage occurred in an article by Mr. Michael MacDonagh. 'In "Poynings's Law," he said, 'only such Bills could be passed as had been submitted to the King and Council of England and approved by them before the Irish Parliament was even summoned.'"; Note: Poynings' law was named after former Lord Deputy of Ireland, Sir Edward Poynings and it entailed that the Irish Parliament could not meet until its proposed legislation had been approved by the Lord Deputy, Ireland's Privy Council and the ruler of England. In effect it was in fact used to halt Irish legislation.

⁴⁹ O'Higgins K., Dáil Éireann, 20/9/1922, "- it is very desirable there should be as much freedom as possible for individual members of the Dáil – that it should not be always a matter of Party Whips and people voting contrary, perhaps, to their own particular ideas and particular feelings on certain matters"; These anti-party characteristics have similarly been pointed out by Cahillane 2016, 75.

⁵⁰ McCartan, Dáil Éireann, 18/9/1922, Bill to enact constitution.

⁵¹ Pro-Treaty Sinn Féin held 58 of the 90 seats in the Dáil after the Anti-Treaty Sinn Féin refused to take theirs. The government was formed of the Pro-Treaty Sinn Féin according to the then legislation.

forces and the minister for defence⁵², with changes to his buttons suggesting that the Dáil could only make insignificant changes. It was also again argued that having an unwritten constitution would serve Ireland better by not binding the Irish Free State into any contracts that would be unbeneficial for it⁵³. This way a good deal of the opposition had a line in these first debates that an unwritten constitution was better than having a written one at the time because a written one could be altered by the British, even by some within the Sinn Féin party.

Another critic from the opposition was Cathal O'Shannon from the Labour Party, who also questioned whether or not the Dáil was truly a sovereign authority. He stated for example that "This is the Constitutional Authority, and if it is not, better then put an end to the farce, walk out and make an end of the pretence of being the authority, the supreme authority, the sovereign authority, representative of the people's will"⁵⁴. Like the others, he suggested that if the Dáil was not actually able to amend the constitution according to its desires, it was not actually a genuine authority considering the constitution. O'Shannon also emphasized that "an Irish interpretation of the Treaty" should "give the constitution its widest possible limits"⁵⁵. With this statement he positioned Irish sovereignty against British influence again and stated that English interpretations would restrict Irish independence. These remarks quite probably went well among the other sceptics of the constitution who believed or feared British influence to be too great and the Dáil not truly sovereign.

Direct mentions of the sovereignty of the state were also made in this first constitutional debate. Cathal O'Shannon for example quoted a doctor E. Duncan Hall, saying "'By a Sovereign State is meant a community or number of persons permanently organized under a Sovereign Government of their own, and by a Sovereign Government is meant a Government, however constituted, which exercises the powers of making and enforcing the law within the community and is not itself subject to any superior Government.' That is a question which we want resolved by this Dáil in the enactment of this Constitution, whether in the enacting of this Constitution we are to act as a Sovereign Parliament or whether we are to act as an inferior to a superior Parliament"⁵⁶.

This way O'Shannon made use of a type of expertise to argue for his viewpoint, following at the same

⁵² Dáil Éireann, 9/9/1922, Minister for defence, Mulcahy was nominated by the Dáil's president Cosgrave to be the minister for defence and was accepted.

⁵³ McCartan, Dáil Éireann, 18/9/1922, Bill to enact constitution, McCartan replied to Sean Milroy's words "The English have an unwritten Constitution." by saying "So can we."

⁵⁴ O'Shannon, Dáil Éireann, 18/9/1922, Bill to enact constitution.

⁵⁵ O'Shannon, Dáil Éireann, 18/9/1922, Bill to enact constitution. "The British, we see, are confining it to the narrowest limits and are making it, I think, narrower than the ordinary common English interpretation, by squeezing it into this draft Constitution, minimising it."

⁵⁶ O'Shannon, Dáil Éireann, 18/9/1922, Bill to enact constitution.

time a form of deliberation. Through these types of expressions the opposition brought forward desire to get an answer on whether or not the Dáil was functioning as a sovereign authority, and the state as a sovereign one. This was a desire mostly aimed at the cabinet, functioning also as a political tool to question them. The opposition suggested that the role of the British Parliament had concerning the Constitution of the Irish Free State was greater than what the Irish Parliament had, which would have made the Dáil an inferior parliament.

The ministers present in the Dáil had to take a stand to defend the Dáil as a sovereign assembly and the state as a sovereign one after the heavy accusations from the oppositions, before the articles of the constitution itself could be proceeded into, since otherwise the legitimacy of the whole system could have been in danger. Kevin O'Higgins, the Minister for Home Affairs, for example took part by saying,

- it has been suggested that the Dáil has not a free hand in regard to this Constitution. That is not so. The Dáil has an absolutely free hand, but we also have a free hand, and we can decide what things we will take responsibility for and what things we will not take responsibility for, and knowing the position as we do, we cannot advise the Dáil to reject certain clauses in the Constitution, and if the Dáil rejects them we have a free hand to decline to take further responsibility for the direction of the political affairs in this country⁵⁷.

With this part it was argued that the Dáil had a free hand regarding at least most of the constitution. From later research Cahillane has also agreed with statements that the Dáil did have a good chance to amend the constitutional articles⁵⁸, which is supported by the fact that the amendments made by the Dáil held when compared to the finished constitution even when it still had to go to the British Parliament⁵⁹. O'Higgins had added that if the Dáil was to reject some parts that the cabinet advised them not to, the cabinet could state that it was not responsible for the consequences. This referred to possible reactions from the British and the Anti-Treaty making an interesting connection to responsibility. This statement suggested that the Dáil could be making a bad decision if it wanted to change one of the articles connected to previous agreements and that the cabinet would not consider itself to be responsible to the people in such a case, hinting that the consequences would in their mind be negative and that the blame would be on the Dáil instead if such an event were to take place. This

⁵⁷ O'Higgins, Dáil Éireann, 18/9/1922, Bill to enact constitution.

⁵⁸ Cahillane 2016, 65, 75, Many of the ideas of the original drafting committee held and the Dáil allowed free debate to a great extent despite the turbulent circumstances in the state.

⁵⁹ Feel free to compare the finished Constitution of the Irish Free State and the constitutional debates of the third Dáil, all available online.

could then be seen as a way of putting pressure back on the opposition by making them carry the responsibility for their suggestions that were said to enhance the state's sovereignty.

In the debates some argued that the parts of the Constitution that referred to the UK contained nothing more than symbols. Because of this it was pledged that the nation's population should not be too offended by these mentions, but instead focus on taking care of what Sean Milroy from the Sinn Féin referred to as vital matters⁶⁰. Milroy advocated heavily for the acceptance of the Constitution of the Irish Free State by stressing thoughts that it would allow Ireland to move on and gave, following along to the cabinet's line, actual sovereignty to the state⁶¹. With these views it was argued by the Pro-Treaty side and those in favor of the constitution that they were legitimate documents and the state a sovereign one, despite the admitted influences and demands. The cabinet and others in favor of the constitution and the treaty seemed to believe that their way was the best way to proceed with the creation of a sovereign Ireland, while the Anti-Treaty side and critics of the constitution believed a lot more could have been achieved through other means.

As the analyzed first debates on the constitution showed, many felt concerns over how sovereign the Irish Free State was. Thus, the term in the Anglo-Irish Treaty which made it mandatory the members of the Oireachtas swear faithfulness to the United Kingdom's ruler perhaps unsurprisingly sparked debate when it was brought forward in Article 17. This article was introduced by the minister of home affairs O'Higgins with the oath being,

I,..... do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established, and that I will be faithful to H.M. King George V., his heirs and successors by law in virtue of the common citizenship of Ireland with Great Britain and her adherence to the membership of the group of nations forming the British Commonwealth of Nations.⁶²

This article was defended by the Minister for Home Affairs O'Higgins as he stated that the article would have the members of Oireachtas swearing loyalty to Ireland and its constitution first followed

⁶⁰ Milroy, Dáil Éireann, 18/9/1922, Bill to enact constitution, "Are we going to reject that vital power of life and death and the future of the Irish Nation rather than allow these symbols which are really nothing more than symbols to remain? Are we going to reject these vital matters in the future of the Irish Nation because of the presence of these symbols?"

⁶¹ Milroy, Dáil Éireann, 18/9/1922, Bill to enact constitution, "We have got to plough along strenuously the path before us, but we will never make a start on that road unless we build on what we consider the sure ground of realising the fact that this Constitution gives the Irish Nation power over life and death within its own shores.", This is easily comparable to the cabinet's other statements that stressed the importance of the Constitution.

⁶² O'Higgins, Dáil Éireann, 3/10/1922, Article 17.

then by the king⁶³, which could be viewed as an attempt to calm the discussion around this article. It also highlighted an idea of the constitution being an achievement for the Irish and the parliament as an institution for the Irish people. This way the parliament was argued to be an element that was a part of the nation's sovereignty, a view which was seemingly shared by the opposition as they had criticized British influence in the Oireachtas so heavily, as analyzed previously. Here the thoughts and preferences of the Irish people were a point of focus as the oath was wanted to be seen as an acceptable piece of the peace agreement by the Pro-Treaty side. The sovereignty of the parliament was this way a key part of the larger question of the sovereignty of the state.

The introduction speech here itself showed a bit of how controversial the topic of this oath was as O'Higgins defended the article heavily and referred to the Irish War of Independence and the still ongoing Irish Civil War as a "five year grim struggle" while pleading that the acceptance of this article could function as a way of ensuring that these crises have not taken place in vain⁶⁴. This article and the debate around it showed somewhat of a consensus that the Irish Parliament was to have a great role and that it is desired by the great majority of Irish people to be distant from the British and their king.

The opponents and critics of Article 17 in the form it was brought to the Dáil, plead that it should be not mandatory for the members of the Parliament⁶⁵. Deputies Duffy and Johnson gave amendment proposals to omit the king from this article. To support this it was argued for example that the mandatory form of swearing allegiance would deter many from the Dáil and that the King symbolizes monarchic and undesirable values of obedience to one person⁶⁶. This way Duffy and Johnson portrayed values linked to democratic procedures and equality, demanding the role of the King to be minimized or mentions of him in the parliament to be at the least optional.

Another member of the Labour Party William Davin however opposed Johnson's view despite Johnson being the chairman of the party. Davin stated that he viewed the members of the Dáil to have

⁶³ O'Higgins, Dáil Éireann, 3/10/1922, Article 17, "we have an oath which gives the first allegiance of the Irish citizens to the Constitution of their own State, and which subsequently promises faithfulness to King George V., his heirs and successors".

⁶⁴ O'Higgins, Dáil Éireann, 3/10/1922, Article 17, "– facing the fact that the necessity exists, and facing the fact that as we believe any tampering with this Article and other Articles in the Constitution means the throwing away of the harvest of five years' grim struggle, we stand for these Articles -".

⁶⁵ Duffy, Dáil Éireann, 3/10/1922, Article 17, "You will observe that Article 4 of the Treaty uses the words: 'The Oath to be taken by Members of the Parliament/Oireachtas shall be in the following form,' and then comes the form. It does not say 'the Oath to be taken by every Member of Parliament.' The question is whether that is implied." ; Johnson, same debate, "- that the clause that is sought to be deleted, if it is inserted will inevitably have the effect of depriving this country of the services of quite a number of very estimable and very capable men and women".

⁶⁶ Johnson, Dáil Éireann, 3/10/1922, Article 17, "The King of England represents an idea in society—that one person or one family is above all others entitled to draw upon the obeisance of all those people who are called his subjects".

already in essence accepted the Treaty and that he for example had been accepted into the Dáil by the people who believed him to follow the Treaty⁶⁷. This way he diverted from his own party's leader's views, stressing responsibility to follow the views of the people who elected the representatives. He stressed democratic views like Johnson and Figgis but from a different perspective, seeing the previous elections as a more pressing factor regarding people's will.

Some members of the Sinn Féin stressed that this particular article was key for the treaty. For example Eamonn Duggan stated that, "I am fully prepared to take the oath myself, and it would be well that every member of this Dáil should realise that any quibbling on the oath means the tearing up of the Treaty"⁶⁸. The oath was also defended by describing it to be a formal requirement for the Oireachtas with little actual meaning⁶⁹, similarly to how remnants of British influence had been described to be symbolic before. Another member of the Sinn Féin, Walter Cole, followed these arguments when he talked about the king's position, "-he is a link binding the associated Sovereign Dominions overseas. These Sovereign Dominions are practically independent States.", later adding "Britain will have no Sovereignty over us."⁷⁰. Here Cole used the concept sovereignty to express the Commonwealth's nations to govern themselves, thus stressing Ireland's sovereignty too. The cabinet also stressed that the presence of Britain in the constitution was merely symbolic⁷¹. The amendments to omit the king from the article were voted on but did not pass. This debate showed the felt need by many that British rule was to put as far aside as possible, but that others argued the influence by British to have already been minimal so that making changes would have perhaps caused risks.

The topic of the King's power in Irish legislation was further characterized regarding what was to be Article 41 in the finished Constitution, as it entailed that the King could withhold assent on a bill only similarly to the procedures regarding Canada. This was referred to as the King's veto. During this article's presentation, the Minister for Home Affairs O'Higgins described the king's veto to be nominal and theoretical, saying that it actually would not be used⁷². The debate around this article

⁶⁷ Davin, Dáil Éireann, 3/10/1922, Article 17, "Unless I am greatly mistaken, practically every member in this assembly has already indicated in one form or another, acceptance of the Treaty." ; " Personally I gave a clear and emphatic promise to my constituents that I was prepared to make the best of the Treaty. I was elected to this Dáil by a very emphatic majority, and I am not going now, for the sake of any display or to satisfy any sentimentality, to defend a course that would be tantamount to antagonism to the policy on which I was elected".

⁶⁸ Duggan, Dáil Éireann, 3/10/1922, Article 17.

⁶⁹ Figgis, Dáil Éireann, 3/10/1922, Article 17, " We know that in Monarchical parliaments there are Republican parties who take the Monarchical Oath, yet who believe that the Republican is the right form of Government for that country. But they consider themselves bound in their services in that particular parliament to serve it, having regard to the form of Government established by the majority of the people".

⁷⁰ Cole, Dáil Éireann, 3/10/1922, Article 17.

⁷¹ As was mentioned by O'Higgins in the same debate 10/3/1922, Article 17, "We are dealing with a particular symbol or link which holds this whole Commonwealth of Nations together".

⁷² O'Higgins, Dáil Éireann, 4/10/1922, Article 40, "- there may be no real fear of this Veto. This is a nominal and theoretical veto, and there need be no tendency to take what is set out here in this Article at its literal or face value".

then proceeded to focus greatly how the monarch could affect Irish legislation. Many of the arguments were defensive in nature as they were quite possibly aimed at the audience outside the parliament, but some deputies did criticize this article. The debate around this article showed again that the articles handling continuing British influence in Ireland were not passed quickly, even when the Anti-Treaty Sinn Féin itself was not officially present in the Dáil.

The debate on the king's veto circled around questions of how powerful it would be and how it would impact Ireland's right to govern itself. Ireland's situation was not seen as completely separate from other areas which had been detached from the United Kingdom or the British Empire, and this was visible in the debates for example as references to these nations' situations and constitutions. Canada's position was used as a reference with the veto right of the United Kingdom's ruler in Canada's affairs being called "dead"⁷³. Various views were however present in the Dáil regarding this thought. Some members such as the independent deputy Darrell Figgis and Gavan Duffy from the Sinn Féin desired the irrelevancy of the UK's veto to be put in the article in question here to make sure that the UK cannot intervene in Ireland's legislature⁷⁴ while others like professor Magennis and O'Higgins argued that the veto is not going to take place in Ireland's case and that making an amendment in such a way might not help in any way and that it can create restrictions or tensions with the UK⁷⁵.

Tying the Constitution of the Irish Free State to the constitution of Canada was seen by the ministers to help guarantee Ireland's political position. O'Higgins stated that with the article's unamended form a threat to Irish legislation via a veto would be a threat to Canada's constitution as well by saying that, "England could not claim to assert a right of veto here that would not be a deliberate and cold-blooded challenge to the Canadian Constitutional position."⁷⁶. This way it was argued that the Commonwealth and its nations' constitutions, especially Canada's, would function as constitutional

⁷³ Figgis, Dáil Éireann, 4/10/1922, Article 40, quoted Robert Borden, a previous Canadian premier saying, "The power of disallowance has not been exercised by the British Government for more than fifty years, and while it still has a legal existence, it may be regarded as constitutionally dead.", with the power of disallowance meaning the power of the British king to veto a bill in Canadian legislation.

Likewise, O'Higgins mentioned in the same debate, "The veto is as dead in the Dominions as it is in England, where ordinary domestic legislation is concerned".

⁷⁴ Figgis, Dáil Éireann, 4/10/1922, Article 40, "If we had it exactly in these words which define the usage in Canada today it would not be possible that an urgent question of that kind could be held up while negotiations were proceeding across the Atlantic to discover what was the usage"; Duffy, same debate, "My motion suggests, if you must put down the law, at least tell us the law is dead".

⁷⁵ Magennis, Dáil Éireann, 4/10/1922, Article 40, "-in the words of Deputy Darrell Figgis they are merely a declaration on the part of this Dáil, apparently detached, speaking for itself, and with no authority, but an authority that the British Cabinet in Downing Street would not recognise."; O'Higgins, same debate, "- any point that was considered of importance here was pushed as far and as hard in our relations with the British as we deemed it in the interests of this country to push it".

⁷⁶ O'Higgins, Dáil Éireann, 4/10/1922, Article 40.

protection for Ireland's legislation as well. Ireland's situation continued to be affected by the UK's views and the new nation was not able to fully detach itself from its larger neighbor's interests even when many of its citizens desired complete and immediate independence. Protection for Ireland's sovereignty was argued by the minister of home affairs to come from an international organization, similar to how the opposition had previously argued the League of Nations to function.

Regarding the now examined parts where the sovereignty of the state was debated, a setting differing from actual popular sovereignty often took place when the Dáil was described as the supreme and sovereign authority. These expressions would have meant that in a sense the people were not the supreme authority but the Dáil, through its role as a representative of the people. This model of the parliamentary sovereignty was prevalent in the UK⁷⁷, which many of those who criticized the Constitution probably wanted to be distinguished from. Due to their subtle differences these expressed attitudes could quite easily be missed but they are distinguishable from another, as this way the Dáil had attitudes leaning towards the parliamentary sovereignty instead of actual popular sovereignty.

Incorporating the Irish language into the Constitution of the Irish Free State had been argued before the third Dáil to strengthen the state's status as an independent one, as by de Valera in 1918 when he stated that, the Irish language was "the most distinctive symbol of their nationality"⁷⁸. However, the Dáil's debates were mostly in English and the amount of population that spoke Irish was actually quite low, with only two hundred thousand native speakers of it in 1920⁷⁹. In his work from 2000 Tony Crowley has composed texts that show some Irish people from the 1800s and 1900s were very concerned with this development, with contemporary Irish writers having given their texts titles like "Practical hints towards preventing the decay of Irish in Irish-speaking districts", "The necessity of de-anglicising Ireland", "Ireland's defence – Her language" and "What is the use of reviving Irish?"

The role of Irish language regarding the state's sovereignty was left quite minimal in the constitutional debates, as both English and Irish were established to be official languages and the debates were almost completely in English and nearly all of the parts in Irish were also translated into English later by their speakers. Only on one occasion was language used by McGoldrick who argued that all

⁷⁷ Cahillane 2016, 98, "In the UK, it is the 'Crown in Parliament' which is sovereign. This is a fundamental doctrine of UK constitutional law and it means that Parliament is 'the supreme legal authority in the UK-'"

⁷⁸ Kearney 2007, 139.

⁷⁹ Kearney 2007, 140, "In 1891 the census figures for the 32 counties indicated that 855 in every 1000 were unable to speak Irish"; "Within the truncated 26 -county state, the proportion was no doubt somewhat better but in 1920 there were only about 200 000 native speakers of Gaelic".

participants in the Oireachtas should understand the Irish language⁸⁰. This suggestion however went quite unnoted, as no other deputy or minister seemed to even respond to McGoldrick with the debate proceeding around a question of could the Governor-General be called something else due to unfavorable opinions linked with that particular term. In previous research Coleman has noted that even the Irish nationalist movements functioned mostly in English by separating the Irish language from requirements for national identity, often seeing English as a practical solution⁸¹. In establishing a gap from the British rule the Dáil did not refer to religion that much either. The Constitution contained the freedom of religion and Catholicism itself was not directly brought up in the debates⁸². This way the emphasises during the revolution that stressed Catholicism to be one of the differences between the Irish and the British, as observed by Päärnilä⁸³, had changed slightly by stressing freedom of religion instead of Catholicism per se.

Stressing the Dáil as the sovereign and legitimate authority could have also brought legitimacy for the government, which was key during the civil war. This way these stresses could have also served the purpose of legitimizing the legislative and administrative systems against their opposition in the conflict. The Anti-Treaty Sinn Féin contested the Pro-Treaty side even by claiming rights to funds the previous Dáils had loaned⁸⁴, so the need to establish legitimacy and sovereignty was connected securing even funding.

The role of the people in decision-making was left a bit more aside as instead the position of the Oireachtas was emphasized concerning the questions related to the UK's power. This is a sign that there was to an extent focus on the building of an independent nation where the parliamentary system was powerful. This way the Oireachtas was a key instrument in showing institutional independence from the British which perhaps the articles vouching for direct democracy were not viewed to achieve as effectively.

⁸⁰ Goldrick, Dáil Éireann, 12/10/1922, Article 58, "- I think some of our Deputies here, who are so eloquent and make plenty of speeches, should know as much about the language as the subject we are talking about. I think we should lay it down definitely that that should be an essential qualification", as he referred to the Irish language ; "It must be laid down distinctly, if he is coming here, that he must know the Irish language, that he must be a native Irish speaker, so as to properly deal with people here in that language", by "he", Goldrick here referred to an English representative who was fashioned to be the Governor-General of the Irish Free State.

⁸¹ Coleman 2009, 54–56.

⁸² Constitution of the Irish Free State 1922, Article 8, "Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen-"; Searching the Oireachtas database for the words "catholic" or "catholicism" brings no direct mentions from the constitutional debates.

⁸³ Päärnilä 1998, 187, "Divinity was introduced as a loyal supporter of 'our movement' – not the other way round".

⁸⁴ Carroll 2002, 36–45, The Anti-Treaty questioned for example questioned the legitimacy of the third Dáil when trying to win rights to use previously granted loan money.

British power and building mechanisms against it were not brought up as directly in the articles and debates leaning towards creating direct democracy as they were with articles that were creating Irish parliamentarism. The research of Hayward with the notions that constitutional and republican nationalists in Ireland wanted to create institutions separate from the United Kingdom would also follow this⁸⁵, as these nationalisms emphasized a form of parliamentarism. Laffan has made similar remarks in his work drawing lines between the different types of nationalism that desired independence with the revolution and then through political organization⁸⁶. In the Dáil's debates attitudes that followed more along parliamentary sovereignty were more emphasized concerning the sovereignty of the state than attitudes following direct popular sovereignty. Thus parliamentary democracy was more often argued to be a tool against British influence, even when popular sovereignty was described to be the main principle behind the Irish Free State. This way in the debates popular sovereignty, despite having been pronounced to be the main principle of the state, took a back seat regarding some even quite fundamental aspects of the forming of the state's democracy. Direct democracy was argued to be more for guaranteeing Irish people's power in a new way as will be analyzed in Chapter 6.

2.2 Agreements and disagreements on the sovereignty of the people in parliamentary action

“I say in five or ten years the Irish people will not only despise us, but condemn us, if we do not take steps to get the Treaty into operation and give the Irish people the management of their own affairs and the entire resources of the nation. If you reject this Constitution you imperil that stage being reached.” – Sean Milroy, Dáil Éireann, 18/9/1922

Popular sovereignty was described in the Constitution of the Irish Free State to be the basic principle the Irish Free State was going to be built on, despite the fact that many actors in the Dáil referred more closely to parliamentary sovereignty regarding certain questions by describing the Dáil to

⁸⁵ Hayward 2009, 67–70.

⁸⁶ Laffan 1999, 4–5.

represent popular will⁸⁷. The sovereignty of the people played a key part in the constitutional debates as different types of threats to it were assessed and its ideals were used to argue even for very opposing views prioritizing either direct or indirect democracy. This showed that the concept was seen as or at least wanted to be seen as something that was worth protecting and valued by all the Dáil's members and the ministers. What then precisely was a threat to sovereignty was debated along with how true popular sovereignty was to be formed. This meant that what was truly democratic was being debated in the constitutional debates, which was and still can be a topic of many political questions. The anthology compiled by Kurunmäki, Nevers and Velde (2018) for example has examined the many definitions of the concept of democracy and its variable utilizations throughout European history, pointing out that even during the historical periods it became very popular, such as around 1848, after WWI and then after WWII, it did not have a unitary meaning or a single story but that different actors emphasized democracy in varied ways, often seeking to serve their own purposes⁸⁸. With the many differing views regarding popular sovereignty, this diversity of the concept of democracy and its use as a political tool was also visible in the Dáil.

The question of whether or not representative democracy can truly follow a sovereign people's will is an old question, which has been looked into for example in the work by Haaparinne and Ihalainen (2020) which sees that this question has been visible at least since the French Revolution. To answer to the problem of how representation could be arranged without aristocracy Maximilien Robespierre combined the concepts of representation and democratic rule to create a model of representative democracy where the sovereign people were the source of power through representation⁸⁹. This concept still leaves open how precisely popular sovereignty can be followed in parliamentary practice, which was debated by some state theorists in the 1800s⁹⁰, and to an extent still in the Dáil's constitutional debates.

In the Dáil's debates the cabinet's expressed view of the constitution was much more positive than that of the opposition, and for example the fact that Ireland was bound by the treaty to be a part of the British Commonwealth, was argued by the cabinet to be a good thing. The Minister for Home Affairs, Kevin O'Higgins stated for example,

⁸⁷ As was handled in Chapter 2.1.

⁸⁸ Kurunmäki, Nevers, Velde, 2018, 9, "Theorists from Tocqueville and Guizot to Kelsen, Bryce and Carl Schmitt have on many occasions announced the definitive victory of (some sort of) democracy. Every time this announcement has proved to be premature. Political debates over voting rights, the principle and practice of parliamentarism, constitutional design, industrial relations and so forth demonstrated the disputed nature of democracy more than anything else." ; "They helped democracy gain legitimacy or fortify democracy when it had become the name of the regime, or they were used by different parties as an additional argument for their specific interpretation of what democracy was".

⁸⁹ Haaparinne & Ihalainen 2020.

⁹⁰ Kelly 2016 analyzes popular sovereignty in state theories during the 19th century.

“Article I states: ‘The Irish Free State (Saorstát Éireann) is a co-equal member of the community of Nations forming the British Commonwealth of Nations.’ That is to say that the administration of Ireland, the making and moulding and amending of its laws, the shaping of its destiny, is as much in the hands of the Irish people as those matters with regard to England are in the hands of the English people”⁹¹.

This way it was argued that Irish people were to receive power similar to the other states of the Commonwealth. The membership in the Commonwealth was according to the Pro-Treaty side’s view a positive development and a guarantee of legitimate political rights for the people in addition to giving the state sovereign recognition as was pointed out in the previous part of this chapter. Here the British model was interestingly argued to some provide popular sovereignty as well, slightly differing from previous research’s characterizations where the Irish model has sometimes been described to have been a clearer distinction from British parliamentarism⁹². The thoughts that British influence in the Constitution was symbolism was also briefly used to argue that Irish people were in power in the Irish Free State⁹³, showing a need to argue that the people had rights to govern their nation, along with the institutions expressing power.

In the Dáil some expressed desires to leave British control behind more strongly, suggesting that the Commonwealth was not a construct that would help Ireland. The Anglo-Irish Treaty’s first article entailed that Ireland was to have a status as a part of the “Community of Nations known as the British Empire”⁹⁴ and similarly the draft constitution’s first article was “The Irish Free State/Saorstát Éireann is a co-equal member of the Community of Nations forming the British Commonwealth of Nations.”⁹⁵ Some however thought that establishing a more independent stance for the Irish Free State would have been better, most visibly the independent deputy Darrell Figgis and the Labour Party’s Cathal O’Shannon. Figgis stated for example that the Commonwealth contained judicial methods that are

⁹¹ O’Higgins, Dáil Éireann, 18/9/1922, Bill to enact constitution, referred to the Anglo-Irish Treaty.

⁹² As Cahillane 2016 had mentioned the British model to be based on parliamentary sovereignty at least according to contemporary Irish desires, 97–98, “In the UK, it is the ‘Crown in Parliament’ which is sovereign. This is a fundamental doctrine of UK constitutional law and it means that Parliament is ‘the supreme legal authority in the UK, which can create or end any law’”; “In complete contrast to the British idea, the Irish Constitution Committee decided on the idea of popular sovereignty for the Irish Free State Constitution”.

⁹³ Milroy, Dáil Éireann, 18/9/1922, Bill to enact constitution, “I have looked through the Constitution, and these parts which are symbols of the relations between, the two countries do not in my judgment diminish in the slightest degree the effective control and power of the Irish people over the resources within the Irish Nation”.

⁹⁴ Anglo-Irish Treaty 1921, Article 1, 1. Ireland shall have the same constitutional status in the Community of Nations known as the British Empire as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa, with a Parliament having powers to make laws for the peace, order and good government of Ireland, and an Executive responsible to that Parliament, and shall be styled and known as the Irish Free State”.

⁹⁵ O’Higgins, Dáil Éireann, 25/9/1922, Constitution of the Saorstát Éireann Bill, introduction of the first article.

unhelpful⁹⁶, perhaps referring to imperial statutes, while O'Shannon more starkly suggested that the original Article 1 of the Constitution be removed and replaced by a "more Irish, more natural, more national and a more correct" position that has no mention of the Commonwealth, this way not imposing what was described as its duties and responsibilities.⁹⁷ The suggested replacement by O'Shannon also stressed that the people are in power through the established organizations of the Irish Free State⁹⁸, expressing ideals of popular sovereignty but through actually parliamentary institutions. These opposing stances demonstrated that the Commonwealth was not received by all as a institution that would help Ireland's interests but instead as something that would negatively affect the sovereignty of both the state and the people.

In previous research Mohr (2010) has examined the role of imperial statutes influencing the Irish Free State as threats to the state's sovereignty. The state was characterized as a Dominion of the Commonwealth, but this was disputed by many Irish people to not have been legally the case. Especially after the constitutional debates those who were against the idea of the Irish Free State being a Dominion stated that the state was rather a successor state to the United Kingdom, which was desired to alter the state's legislative positioning⁹⁹. The reason for the resistance of a Dominion status was caused by fears of imperial statutes issued by the United Kingdom influencing the legislation of the Irish Free State, thus hampering its sovereignty, in addition to pre-independence imperial statutes being in force in the state¹⁰⁰. The controversy over these statutes was lessened after 1929, when the overriding force of imperial statutes was removed due to pressure from the Irish Free State, Canada and South Africa¹⁰¹. The question of sovereignty regarding the role of Commonwealth had this way continued outside the constitutional debates as well.

⁹⁶ Figgis, Dáil Éireann, 20/9/1922, Constitution of the Saorstát Éireann Bill, "There is a right of judicial appeal that does not reside in this country and is not susceptible to the Irish people and the co-equal members of the Community of Nations we have joined have also agreed that this is an exasperating, an irritating, and an unhelpful method of Judicial procedure".

⁹⁷ O'Shannon, Dáil Éireann, 25/9/1922, Constitution of the Saorstát Éireann Bill, "I want to ask the deputies to dwell upon that—"not only the dignities, not only the rights, but also the duties and the responsibilities to the community of nations known as the British Commonwealth," because of these things I ask the Dáil not to take your Article 1 as the Ministry puts it before us, but to take the more Irish, the more natural and national, the more correct position, and accept our amendment".

⁹⁸ ⁹⁸ O'Shannon, Dáil Éireann, 25/9/1922, Constitution of the Saorstát Éireann Bill, "All powers of Government and all authority, legislative, executive and judicial, are derived from the people, and the same shall be exercised through the organisations established by or under and in accord with this Constitution".

⁹⁹ Mohr 2010, 312.

¹⁰⁰ Mohr 2010, 305–307, For example, "There were widespread fears among Irish lawyers and politicians that Imperial statutes could be used to ensure that the parliament at Westminster retained a substantial level of control over the infant Irish Free State".

¹⁰¹ Mohr 2010, 317–318.

During the Dáil's constitutional debates the cabinet seemed to acknowledge that there was going to be resistance and distrust among the Irish population that they were in fact in power in the nation. The minister of home affairs Kevin O'Higgins stated, "It will take time, it will take actual examination of this Constitution in working, to convince the people that they are, in fact, the authority here."¹⁰². Another similar pledge by him was,

That is the thing-we are fighting for—that the Irish people may be the sovereign authority here a really as the people of England are the sovereign authority in England, or the people of Canada are the sovereign authority in Canada; that the will of the people may rule; that at any time the people may change the law or change their administration; that in reality they are the supreme authority in the land.¹⁰³

As will be visible, however, these statements did not mean that the cabinet was going to agree to all amendment propositions that were argued by others to enhance the sovereignty of the people and give them more power. These statements however differed from the statements describing the Dáil to be the supreme authority with their emphasizes on the power of the people, thus following along popular sovereignty.

The cabinet had to defend the restrictions regarding the constitution as the opposition, as analyzed in the previous part of this chapter, suggested that sovereignty was not fully in the hands of the Irish. The cabinet seemed to want to make it clear that they saw the reasoning behind the controversial agreements that bound certain parts of the constitution to be legitimate and reasonable given the situation the state was in. The president of the Dáil, William Cosgrave referred to these parts in the early debates by saying that, "All these matters are the subject of deliberate agreement between the Irish Government representatives and the representatives of Southern Unionists and the British Government; and the Irish Government is accordingly bound to pass all these provisions as Government provisions"¹⁰⁴. This way he highlighted a view that these parts were not terms given by any one side of the situation, but instead mutual agreements. Stating that they were subjects of deliberate agreement also referred to the concept of deliberation, which will be more closely analyzed in the later Chapter 5.1.

Popular sovereignty in the Constitution of the Irish Free State has been described by previous research as an attempt to convince the Irish population of their right to govern the new state. As Cahillane

¹⁰² O'Higgins, Dáil Éireann, 18/9/1922, Bill to enact constitution.

¹⁰³ O'Higgins, Dáil Éireann, 18/9/1922, Bill to enact constitution.

¹⁰⁴ Cosgrave, Dáil Éireann, 18/9/1922, Bill to enact constitution.

writes on page 99 of her work, popular sovereignty was viewed by some to be a tool against the parliament as many among the Irish population were skeptical of it. This was also evident in the Dáil's debates, although as mentioned, the Dáil was also emphasized by some as the sovereign authority.

The opposition vouched for popular sovereignty as did the government present in the Dáil but the sides had disagreements on what were the models the state ought to take to fulfill popular sovereignty and what were threats to popular sovereignty. The third Dáil's very first debate concerning the constitution on the 18th of September 1922 contained criticisms from the opposition regarding the fact that the Anglo-Irish Treaty and other agreements made by the previous Provisional Government made some aspects of the constitution topics which "the government would stand or fall by" as was put by the Minister of Home Affairs Kevin O'Higgins¹⁰⁵. Many of the deputies took this quite heavily and very accusative tones took place in the debates. For example, William Davin from the Labour Party said,

Now I want the people of Ireland to understand that the Members of this Dáil have now learned for the first time that we are going to enact a Constitution which is limited by certain agreements that have been come to without the people or the Members of this Dáil having been consulted.¹⁰⁶

Davin's criticism made the cabinet and the constitution-in-debate look more illegitimate as according to his view the Dáil was not as free in debating and shaping the draft constitution as he and the Irish people had previously understood. By addressing his discontent towards the public, he also followed along the ideas his interpretation of the people's sovereignty, as he reported to those who they all were responsible to according to the concept.

The requirements for voting are a very key part of democracy and thus it is probably not surprising that they were debated in the Dáil as well. One area of questions concerned the setting of age restrictions for voting for the members of the Dáil and the Seanad. The debate on this topic was connected to ideas of sovereignty and guaranteeing the people's power. According to the original Article 14 these age restrictions meant that all Irish citizens could vote in the Dáil's elections at the age of 21 and at the age of 30 they could vote in the Seanad's elections. The model of direct elections for memberships in the upper house of a parliament was a stark contrast against the British House of Lords, where a great number of hereditary peers existed at the time. Direct elections for an upper

¹⁰⁵ O'Higgins, Dáil Éireann, 18/9/1922, Bill to enact constitution, "We will go through it clause by clause; much of it is an open matter for the Dáil; much of it will be dealt with with the whips off, and no party divisions; but certain parts of it, as the President has explained, must be regarded as matter on which the Government stands or falls".

¹⁰⁶ Davin, Dáil Éireann. 18/9/1922, Bill to enact constitution.

house's representatives were idealized and used in the United States for example after the Seventeenth Amendment in 1913, which might have offered a model for Ireland as well. The age restrictions received an amendment proposal by Hugh Colohan from the Labour Party who expressed that he desired the age restrictions concerning both of the elections to be at the age of 21¹⁰⁷.

The term of sovereignty along with the concepts of the will of the people and democracy were referred to in the amendment proposal for lower voting age restrictions. Colohan said that he believed the Irish people were already confused by the complexities of the constitutional articles and that having this difference concerning the age restrictions would add to this confusion¹⁰⁸. This way a criticism towards the previously accepted articles was expressed as well, and this criticism can be seen as an expression of concern about the people becoming distanced from their own political institutions and laws, which would be detrimental to popular sovereignty. A quite heavy statement was also made by Colohan when he stated,

So, give them a chance of electing all the Members to both Houses, so that there would be some semblance of real democratic rule in this country.¹⁰⁹

This sentence implied an idea that without the acceptance of lower voting age restrictions Ireland would not have real democracy or even a semblance of it, thus questioning very harshly the current political formation and the institutions of the new state. This proposition had heavy emphasis on equality concerning the voting ages, stressing a view that the Irish people were to have power to decide the members of both houses at the same age. This way sovereignty of the people and full democracy was seen to be tied to the right to vote in all the institutions at the same given age. Colohan coupled popular sovereignty more strongly to Ireland's inner political organization, insisting on having the people more directly involved. This was different from the debates concerned with British influence, as there the sovereignty of the parliament had been emphasized to a larger extent.

The Labour Party not only in Ireland but also the labor parties and many other political parties on the left in Europe often desired lower age restrictions concerning voting in their nations' elections¹¹⁰. This way this part of constitutional debates could be seen to tie into other common topics around parliamentarism. Colohan could have acted partly along some of the common goals and desires of

¹⁰⁷ Colohan, Dáil Éireann, 26/9/1922, Article 14, "Mr. Chairman, we heard a lot about the sovereign will of the people here for the last fortnight, and now there is a chance of giving the people the opportunity of registering their sovereign will, and therefore I think that the age of 21 years should qualify any voter to vote for a Member of the Senate".

¹⁰⁸ Colohan, Dáil Éireann, 26/9/1922, Article 14, "We have an opportunity now of showing we are democratic enough, and, goodness knows, as far as we went in this Constitution the people are tied up enough with the Articles we have already passed".

¹⁰⁹ Colohan, Dáil Éireann, 26/9/1922, Article 14.

¹¹⁰ Eley 2002.

his party. Here the terms used by him could also be quite effective to catch the attention of a broader audience and perhaps gather support for his views. The way of using commonly appreciated concepts from the general contemporary discourse to garner more support was thus visible here too.

While not explicitly disagreeing on the sovereignty of the people, the opposing side to Colohan's proposition referred to different factors concerning Ireland's politics on this occasion. William Cosgrave, the president of the Dáil and the minister for finance, stated that the terms present in this article were the result of discussions with the "Southern Unionists"¹¹¹, which referred to the anti-treaty side of the Sinn Féin as well. This way Cosgrave used the contemporary political situation and a sought-after resolution to the on-going conflict as a practical question to argue against Colohan's criticism. The claim that the people were "tied up" with the previous agreements was also disputed¹¹², as Cosgrave inquired where precisely the people's democratic rights were intruded, and it was also added by O'Higgins that he believed those Sinn Féin members in the Dáil who had stayed on the Pro-Treaty side had already committed to this agreement¹¹³. This way a form of political pressure from previously accepted terms became apparent and even a slight use of party power as a member of the party in the cabinet discouraged other members from disagreeing on basis of the party's commonly accepted line, while O'Higgins himself also spoke against too strong parties on other occasions¹¹⁴. The use of practicalities and previous agreements as arguments against the calling for fully equal voting age restrictions can be seen as an example of an idealistic view being confronted with arguments that stressed the adaptation to be impossible.

An independent deputy, William Magennis also spoke against Colohan's amendment proposition by stating that having the same age restriction in the elections of both houses would make the Seanad seem less significant than what it in his eyes ought to or deserved to be¹¹⁵. Magennis demonstrated a thought the Seanad deserved respect through the form of higher age restrictions, making the Houses of the Oireachtas more separate from one another. This way the roles and powers of the houses of the Oireachtas were connected to the question of equal voting with thoughts that a difference in the age

¹¹¹ Cosgrave, Dáil Éireann, 26/9/1922, Article 14. "it is one of a number of agreements that were come to with the Southern Unionists, or the representatives of the people called 'Southern Unionists'— between the late President and, I think, the Minister for Home Affairs. We are going to honour that as far as we are concerned".

¹¹² Cosgrave, Dáil Éireann, 26/9/1922, Article 14. "We are waiting here for the last week or fortnight to hear where is the democratic intrusion on the people's rights. I have not heard it. I would like to know one single line that interferes with the fullest expression of the most extended democratic thought in the country".

¹¹³ Cosgrave, Dáil Éireann, 26/9/1922, Article 14. "I want to make it perfectly clear to our own supporters in this Dáil—those who stood with us for the Treaty in the late Dáil—that I believe they are committed with us in this agreement—they are bound by the late President's agreement".

¹¹⁴ As will be analyzed in Chapter 5.

¹¹⁵ Magennis, Dáil Éireann, 26/9/1922, Article 14, "Now, we are to create the belief that the Second Chamber has a value, that it is a respectable thing. If you put obstacles in the way of electing candidates to this Cooling Chamber the people will regard it as a respectable thing".

restrictions would express the houses' differences more explicitly. According to these ideas parliamentary sovereignty could be viewed to have been suggested to be slightly more important than popular sovereignty with the institutions roles being characterized as more important factors than equal voting between them. The inner workings and distribution of power within the Oireachtas were seen by some to be reflected in the age restrictions.

The chairman of the Labour Party Thomas Johnson said that a difference in age restrictions between the houses of the Irish Parliament would indicate that the Seanad should be above the Dáil which he was against¹¹⁶. This way concerns about the equality between the houses of the Oireachtas was expressed criticizing at the very least the expressed logic behind Magennis' statement but also seemingly supporting to some extent Colohan's critique. However, making the age restrictions between the houses of the parliament equal did not gather enough support despite Colohan's insistence that it was the way to fulfill democracy¹¹⁷. Other members of the Oireachtas argued that such an arrangement was not possible because of other agreements and practicalities but also because they did not see the sovereignty to be violated in the same manner as Colohan did. The arrangement of the Houses of the Irish Parliament was thus slightly connected to popular sovereignty and democracy, but many viewed the differences between the Houses to be legitimate.

Age restrictions being debated based on whether or not they followed equality was stressed in the Dáil by the Labour Party, which followed along common lines around the rest of Europe. This has been established previously by Pilon (2013) who noted that especially the left vouched for inclusion of a large part of the population in voting on the grounds that it was to help with the working class' economic and social concerns¹¹⁸. Opposition against these ideals often stemmed from concerns that it would damage the interests of large industry, hamper the ability of knowledgeable political and economic elites to function effectively, and give too much decision-making power into the hands of the majority, similarly to as would be argued in the Dáil.

This chapter has looked into sovereignty, both popular and parliamentary, regarding the Dáil's debates on the formation and actions of the Irish Parliament. It has been now established and shown through examples that in the Dáil's constitutional debates sovereignty was integrated into the discussion around how parliamentary democracy was to be formed, how the people were to have

¹¹⁶ Johnson, Dáil Éireann, 26/9/1922, Article 14, "The great objection we have to this differentiation is that it appears to be an attempt to make the Second Chamber a superior chamber, wiser, because older people select them." ; "We must record our protest against this attempt to make differentiation between one House of Parliament and the other, on the basis of the constituents".

¹¹⁷ The amendment proposition by Colohan was declared lost and was not brought to the Dáil again.

¹¹⁸ Pilon 2013, 230, "Left parties championed democracy as a means of turning the state towards the economic and social concerns of the working class".

power, what kinds of threats it met, and how the Irish Free State was to be separated from British rule. As a result of the findings it is argued that regarding the desires to set the Irish Free State concretely apart from the UK, parliamentary sovereignty was referred to more than popular sovereignty. The establishment of the parliamentary institution to partly oppose British rule and the emphases that the Dáil was the sovereign and supreme authority, as opposed to the people, spoke of this attitude. Thus, despite popular sovereignty having been described to be the founding principle the Irish Free State was to be built upon, attitudes that slightly differed from this were present in the constitutional debates.

The interests and benefits of the Irish people were argued to be key points which followed along popular sovereignty, yet the actors present in the Dáil saw the things that follow along this will or allow its following very differently. The emphases on popular sovereignty have been suggested to have been partly an attempt to also get the Irish people to trust their new state and its governing, as previous research has also suggested, but many in the Dáil quite likely truly desired to fulfill this concept as far as they could as many of the concept's core ideas received appreciation and were used as arguments by the politicians to support their own views. On a larger European spectrum Ireland shared similarities in the desires to incorporate democracy and the people's will concretely in their constitution, especially by the left, as argued by for example Pilon (2013) and Eley (2002), which was strong through both the Sinn Féin and the Labour Party. Direct democracy is of course very connected to popular sovereignty as it allows direct involvement and decisions by the people, and as such it will be visible again in Chapter 6, when this thesis looks into the debates around direct democracy.

3. Representation in the Dáil's constitutional debates

This chapter will examine how the concept of representation was present and used in the constitutional debates of the Dáil Éireann. With the Irish parliament having been established by the Anglo-Irish Treaty, it was to an extent clear that representation was going to play a role in the Irish Free State's politics but finding the path for the new state's parliamentary representation remained unclear on many aspects. As a word representation was referred to 117 times during the analyzed time period¹¹⁹.

Representation has often been debated on the basis of whether or not it adequately follows differences among the represented people, how can the representatives truly affect the nation, how corporate interests affect representation and can it include the people in politics enough¹²⁰. Another key part is of course the question of whether or not representation can truly follow popular sovereignty¹²¹, which was also a question visible in the Dáil. In previous research Garrard has for example argued that Ireland had during the 1800s and the early 1900s provided both innovation for democratic representation's practices by providing the English working class with leaders and showcasing a model of the mass party through the Irish National League, but that it also posed challenges through failures to include the Catholic population during British rule and the more recent failures to respond to the Home Rule movement in a way that would have satisfied the population without war¹²². Thus, representation was in a way familiar in the contemporary Irish context but despite this it remained a topic of debate. This chapter will demonstrate how the concept was debated in the Dáil by suggestions and arguments for representation of people directly or through interests, and how the strong opinions for anti-party politics along with the different proposed practical solutions such as the external ministers scheme affected the ideals and solutions concerning representation.

¹¹⁹ Searching the Oireachtas database for the word "representation" brings 117 results from the examined time period. Note: some instances are outside the constitutional debates.

¹²⁰ Laycock 2004, viii ;

¹²¹ Haaparinne & Ihalainen 2020, "- the inherent tensions between representation and democracy in the realization of popular sovereignty have contributed to the contestability of representation".

¹²² Garrard 2000, 33–34.

3.1 Models for representation - vocational or territorial constituencies

Parliamentary democracy and parliamentarism fundamentally include the thought that a small group of representatives speak for the aspirations and benefits of a larger group. How this larger group is composed or what exactly it represents has been a source of debate which can be brought up even today. The represented entity in parliamentarism can be for example the people or the economic interests. The latter of these could work via the establishment of vocational councils that emphasize the benefits of the economic groups they represent, or by basing elections on vocational constituencies. This is sometimes called a form of corporatism, as it makes corporations and business more prevalent in decision-making¹²³. This alternative also became mildly apparent in the analyzed debates. This part of the chapter will look into the two suggested ways in the Dáil's constitutional debates to fulfill the concept of representation.

Proportional representation, a practice that was at the time becoming more adapted internationally, was included in all the drafts of the Constitution of the Irish Free State¹²⁴. Proportional representation in a state means that the elected body is to reflect divisions in the electorate, meaning the divisions among the voters. The Irish Free State adopted the single transferable vote model of proportional representation which meant that during elections of the Dáil each voter was to rank the candidates they desired to vote for according to their own preferences, with their vote first going to the most preferred one and in the case that candidate was eliminated, the vote would move to the next one. This system also allowed votes for candidates going over the electoral threshold to be moved to support other candidates. The system was desired by the drafting committee of the Constitution to make the move away from Britain more pronounced and help lessen the power of political parties creating instead a Dáil more diverse in its interests¹²⁵.

Proportional representation was seen to mean that the interests of even small portions of the nation's population could be represented. These views were emphasized by the ministers present in the Dáil, such as by the president of the Dáil and the minister for finance Cosgrave, when he stated, "It is therefore a special safeguard for the representation of minorities, in what is known or called Proportional Representation."¹²⁶. Giving adequate voice even to smaller parts of the electorate was also connected to the ideas of popular sovereignty since it stressed representation of the people.

¹²³ Palonen 2016a, 219–220.

¹²⁴ Cahillane 2016, 23.

¹²⁵ Cahillane 2016, 124.

¹²⁶ Cosgrave, Dáil Éireann, 18/9/1922, Bill to enact constitution.

Representation of the people was at the time the adopted model, as the Dáil's elections and the seats were based on constituencies derived from locations. In addition to being a contrast to the British model, proportional representation was becoming very popular around Europe as in 1920 every country on the mainland continent used some form of it¹²⁷. Previous research has suggested that in addition to being a result of strong and broadly shared hopes for democracy during the period, this development was also a response to fears of revolutions so as to please the public within these nations¹²⁸.

As mentioned, another believed result from proportional representation especially via the single transferable vote model was that large parties would not be formed as easily, creating more independent political groups and a more diverse political ground. These ideas were manifested by, for example, Minister O'Higgins with him stating, "Under Proportional Representation you will have not so many great solid parties like in England, which make the party system a fairly good working arrangement, but you will have rather a lot of groups in this Dáil not bound together particularly but voting independently on the different issues that may arise"¹²⁹. Here the need to establish a difference from the British system was also evidently clear. Adequate representation of the Irish people was seen as an important goal but the means to achieve this representation were slightly disagreed on, as the ways to lessen parties' effects were not easily agreed on. The effects of and debates on anti-party politics concerning representation will also be examined in the next part of this chapter.

Debate around what was going to be Article 30 in the final Constitution contained an amendment proposal by the Labour Party's chairman Johnson that set out to make vocations have a far greater role in representation concerning the Seanad. According to this view the Seanad would be split into different parts based on vocations in the nation, and when matters were brought to the Seanad, the representatives of the vocation the topic touched upon were to have most power¹³⁰. Johnson described his amendment to change the Seanad into an active chamber, thus opposing previous ideas that the Seanad would function as an institution that monitored and gave suggestions on the Dáil's legislation, saying,

¹²⁷ Pilon 2013, 127.

¹²⁸ For example, Pilon 2013, 127, "But the key reason for the dramatic surge of voting system reform was fear. Across Europe and the British dominions, the war's end provoked a social upheaval that traditional elites had never seen before. The makings of revolution suddenly appeared evident in locales as different as Stockholm, Berlin, Turin, and Winnipeg".

¹²⁹ O'Higgins, Dáil Éireann, 5/10/1922, Article 50.

¹³⁰ Johnson, Dáil Éireann, 4/10/1922, Article 29, "If such a Seanad were elected, it would naturally follow that when agriculture, say, was being discussed, the members elected by the agricultural constituency would have a special voice in the discussion of that particular subject", Johnson also introduced the industrial or service

The proposition is that, instead of having a small correctional Chamber, or a cooling Chamber, as the Minister described it, we should have an active Second Chamber selected by the whole of the electorate on vocational lines. The suggestion is that all voters should be qualified to vote not only for representation of their locality—territorial representation—but should also be qualified to vote for the representation of their particular vocations or occupations.¹³¹

It was argued that this different setting would create a stronger connection between the parliament and the represented communities and that it would make the Seanad clearer through more easily followable economic interests than political ones¹³², meaning that representation was argued to be better achieved through the vocation-based Seanad. This amendment proposition contained the idea that representation could be fulfilled by following the interests and the representation of vocational groups as instead of individual people, following the ideas of a type of corporatism¹³³. Corporatism was liked by some actors in the left as it was seen as a way to bring power to the working class. The amendment proposition introduced the industrial or service constituencies the Seanad was to be based upon, which included for example Agriculture, Horticulture, and other Land-working Industries; Domestic and Personal Services; Land-transport and Communications; Food Preparation Industries; Public Administrative Services; Law and Religion; Miscellaneous Industries; Miscellaneous Services. The Seanad was not based on location-based constituencies even in the original article, as opposed to the Dáil, but this proposal sought to make a large difference by having vocations as the basis of the Seanad's structure, as opposed to those "who have done honour to the Nation by reason of useful public service, or who, because of special qualifications or attainments, represent important aspects of the Nation's life"¹³⁴.

The Labour Party in the Dáil could be suggested to have emphasized the benefits of the laboring force of Ireland and sought to create its unification through the vocational Seanad. This would match quite well with the common views of labor parties elsewhere in the contemporary Europe¹³⁵, but as such an ideal was not explicitly mentioned regarding this article, it is hard to say for certainty.

¹³¹ Johnson, Dáil Éireann, 4/10/1922, Article 29.

¹³² Johnson, Dáil Éireann, 4/10/1922, Article 29, "I believe by frankly accepting this principle we would be going a long way to obviating very many difficulties that will arise in the future, and we would make the Legislature very much more influential in the actual social life of the people. It will then become a thing closely associated with the living organism called the community." ; O'Shannon, same debate, "the political differences have been largely artificial, but the economic common interest is not artificial but is a deep and inevitable thing in nature."

¹³³ Palonen 2016a, 219–220, In corporatism a society is arranged by corporate groups, like on the basis of agreed sectors of the economic life.

¹³⁴ O'Higgins, Dáil Éireann, 4/10/1922, Article 29, Introduction of the original article concerning the composition of the Seanad.

¹³⁵ Eley 2002.

Johnson's proposition was met with criticism by the Minister for Local Government Blythe, who stated that it contained ideas he believed had not yet been thoroughly discussed in the Dáil, leading to him suggest that it could be handled later as a constitutional amendment before the people¹³⁶ and that because such a model was not according to his knowledge present anywhere it should not be adopted too quickly¹³⁷. To complete the model of vocational representation in the Seanad, the minister for local government Blythe also stated that, "It seems to me, to make this scheme work, it would be necessary to abolish Proportional Representation in the first Chamber."¹³⁸ This way he argued against this model of vocational representation, stating that it would require too big changes and unwanted ones. The cabinet argued strongly for proportional representation but for example O'Shannon from the Labour Party stated that, "I do not think that, and I do not agree with him, that under Proportional Representation we get representation in an indirect kind of way."¹³⁹, arguing that proportional representation did not in some way function as well as the minister thought.

Members of the Labour Party expressed regret over the fact that the model of a vocation-based Seanad might not be adopted but also stated to think that it needed more thought¹⁴⁰. The composition of the Seanad was this way one of the areas where vocations were sought at least by the Labour Party to be made a more powerful part of the Irish representative democracy. Johnson withdrew his amendment proposal, but this would not remain the only instance the Labour Party sought to make vocations a more integral part of the representative system while vouching for its democratic justifiability.

In this debate the Labour Party's two members O'Shannon and Johnson had also stressed that vocational representation would make the Seanad detached from undesirable party representation¹⁴¹. This undesirability was described to stem from a perceived tendency of the people to vote based on a candidate's membership in a party a voter desired to vote for, so that the qualifications of the candidate for the position would not be taken into account. On another occasion independent deputy William Magennis stated that,

¹³⁶ Blythe, Dáil Éireann, 4/10/1922, Article 29, "This is the sort of amendment which, I think, might come on in a year or two as a constitutional amendment to go before the people", There still was the belief that constitutional amendments would be voted on by the people after the Constitution's acceptance.

¹³⁷ Blythe, Dáil Éireann, 4/10/1922, Article 29, "I think that nowhere has there really been a scheme worked out yet. The whole matter is rather in the germ stage, but I think it was a very good thing that it should, at least, be mentioned".

¹³⁸ Blythe, Dáil Éireann, 4/10/1922, Article 29.

¹³⁹ O'Shannon, Dáil Éireann, 4/10/1922, Article 29.

¹⁴⁰ Johnson, Dáil Éireann, 4/10/1922, Article 29, "It is a very sad thing that so momentous a document is being passed through this Chamber without having an adequate discussion in the country." ; O'Shannon, same debate, "Perhaps it is premature at the present stage to look for the complete abolition of the territorial or political representation,-".

¹⁴¹ O'Shannon, Dáil Éireann, 4/10/1922, Article 29, "This would do away with it in the second Chamber. In your second Chamber, as outlined in the Constitution, you would have the same thing. People will not vote because of occupational or professional qualifications or anything like that. They will vote because a particular candidate stands for a particular body of political thought. We want to get away from that thing."

in some of the Bolshevik pronouncements you have a claim made for vocational representation. That draws attention to one of the weaknesses of the system of getting Parliamentary representation, merely by counting heads or looking at topographical areas. If a man happens to live at one side of a street his vote becomes inoperative, he is in a hopeless minority. If he lived on the other side of the street his vote would have carried into Parliament some great reformer.¹⁴²

This way Magennis referred to ideas of vocational constituencies as bolshevist while introducing the idea's suggested thought to allow better representation for the people than through territorial constituencies. Some challenge to party politics was introduced in the arguments that vouched for vocational representation. The anti-party views concerning representation will be analyzed more in depth in the next part of this chapter.

What was Article 44 on its first introduction in the constitutional debates¹⁴³ entailed that the Oireachtas may provide means for the establishment of Functional or Vocational Councils to represent branches of the social and economic life in Ireland. This article followed an idea that civilians could create councils that are tied to the nation and that these councils would be tied to vocations. This article could be viewed as a more active way of fulfilling parliamentary democracy as citizens could form councils of their own, but these councils would also function mainly on a representative basis. Comparing the debate on Johnson's amendment proposition regarding the composition of the Seanad, the similarities relating to the larger role of vocations in the political system makes it perhaps unsurprising that the Labour Party was in favor of this article.

The proposal for vocational councils was met with a level of acceptance and even suggestions for making them more prevalent. Thomas Johnson, the chairman Labour Party suggested an amendment to change the wording from "may provide" to "shall provide", which he argued change would make the establishment of such councils imperative instead of optional¹⁴⁴. The article along with its support showed that there was desire for institutions that could bring the Irish people closer to the parliament and the decision-making system¹⁴⁵. This way a form of participation, which as a concept often connected to democracy and the forming of power and interaction in a state, was also connected to

¹⁴² Magennis, Dáil Éireann, Debates on adjournment. – Principle of university representation.

¹⁴³ In the final Constitution this was Article 45.

¹⁴⁴ Johnson, Dáil Éireann, 4/10/1922, Article 44, "It seems to me if we are satisfied that there is a place in the national life for Functional Councils we ought to lay down now that such councils should be set up rather than make them optional."

¹⁴⁵ Dáil Éireann, 4/10/1922, Acceptance was visible from the fact that the article as an idea was not greatly debated and proceeded to be accepted. Statements that vouched for participation and the importance of political education were also made by virtually all sides, as will be later brought up.

the representative system with ideas that vocations would make politics more concrete and easier for the greater public. Participation was in later debates connected especially to direct democracy.

Darrell Figgis, an Independent actor, replied to Johnson by saying that this suggestion does not mean much as the article's contents could be postponed continuously no matter which of the suggested words were chosen¹⁴⁶ adding,

"I can give Deputy Johnson a list of a large number of cases in Europe where such words have been put into a Constitution; in one case eighty years ago, and the majority of the provisions have not yet been given effect to."¹⁴⁷

One of the countries Figgis might have possibly referred to might be for example Germany where in 1849 a revolution made attempts at creating parliamentarism, but these came to be used only after the First World War¹⁴⁸. Whatever the nations Figgis talked about might be, this quote showed that the situations of parliamentarism elsewhere in Europe or at least the views about them were used as arguments in Irish constitutional debates. This follows along the lines of notions that European parliaments did not form in separate vacuums, but instead vast interaction took place between different nations¹⁴⁹.

Arguments that pressed failure in political systems on mainland Europe could also have reflected a thinking that the British Isles, including Ireland, were different, secluded from it and better. These ideas were quite common in the British Parliament and discourse there as well¹⁵⁰. They could have been adopted into the Irish Parliament and mentality in some respects too. Using harsh views about other nations' ways and perhaps mistakes or other unfortunate events can function as arguments to back up one's own views and gather support from voters. These interpretations of other nations' actions and events were not always necessarily even meant to be neutral or objective statements by their speakers.

The idea that the whole parliamentary system could allow postponing bills over generations had great pessimism to it, and it could be seen to contain a criticism for certain types of parliamentarism. It carried with it a concern that laws established via representation could be bypassed. Interestingly

¹⁴⁶ Darrell Figgis, Dáil Éireann, 4/10/1922, Article 44," it does not make much difference in regard to the obligatory sense by using the word 'shall' or by saying it 'may,' because it could still be postponed from Oireachtas to Oireachtas and from Dáil to Dáil".

¹⁴⁷ Darrell Figgis, Dáil Éireann, 4/10/1922, Article 44.

¹⁴⁸ Biefang & Schulz, 2016, 65–69,

¹⁴⁹ As handled in previous works such as Ihalainen, Ilie & Palonen 2016; Kurunmäki, Nevers & Velde 2018.

¹⁵⁰ As stated for example by Velde 2018, The British model competed against the French Revolution's model that emphasized popular sovereignty. After the fall of Napoleon the British model was admired by many and the confidence of the British in their model was very high, 45–46.

Figgis did not carry on with this concern but instead moved on. Thus his reply could have been more of a retort against Johnson's amendment proposal, seeking to make its contents seem futile. Figgis then did later on add his own amendment proposal to this article which could perhaps partly explain why he discredited Johnson's proposal this way¹⁵¹. This would then also be an example of how a representative's own goals could affect their rhetoric towards others but in this case these amendments in their contents did not directly oppose each other.

The minister of home affairs, O'Higgins, replied to the concerns of this article's contents being skippable by stating that he or the government do not consider it wise to demand the Dáil now or later on to create these councils as their contents were unclear at the moment of introducing this article. This way practicality and currently available information were used as arguments for making this article rather open than closed and effective immediately. It referred to a concern that the Dáil would be forced to create something that they did not yet know the precise requirements for¹⁵². Making the proceedings of the Dáil too difficult was this way stressed to be a bigger problem than forming concrete lines for vocational councils.

The draft of the Constitution of the Irish Free State originally contained an article that entailed that Irish universities would receive representation in the Seanad but this was amended in the Dáil's debates. It was argued having universities represented there would be more suitable and beneficial¹⁵³, as it was seen to offer the universities' takes on the state's affairs and likewise, allow the universities to see others' views. This way representation was seen to be augmented through this addition of universities into the system.

Guaranteeing the involvement of the Irish people in politics seemed to be problematic at times and on occasions the most eager propositions had to take a back seat when alternatives and additions to the representation of the people was debated. The people as the represented entity through territorial constituencies in the Dáil was not challenged by suggestions of other entities although a few strongly

¹⁵¹ Dáil Éireann, 4/10/1922, Article 44, Figgis continued to bring forward Amendment 23, which sought to establish extra territorial rights for the laws of the Oireachtas, so that they would apply to Irish citizens outside Irish borders as well.

¹⁵² O'Higgins, Dáil Éireann, 4/10/1922, Article 44, "- there does not seem to be any definite crystallised thought or any definite schemes evolved. In the event of such schemes being evolved, this Article clears the way".

¹⁵³ Magennis, Dáil Éireann, 4/10/1922, Debates on adjournment, Principle of university representation, "Higher education, it is now admitted, is the great condition to the attainment of the fullest stature of liberty, and many social problems that exist would have been solved long ago if it were not for the fetters of ignorance that lay so heavily on those responsible for the existence of the problem,-"; Magennis, same debate, "I think if you have an agency for putting the professors as representatives of the University into close and continuous contact with the representatives of other activities of the Nation it will improve the Universities through their representatives."

argued suggestions for vocational representation elsewhere, such as in the Seanad, did occur as was introduced in this part.

3.2 Anti-party politics and representation

“We have been pressed here frequently since we began our deliberations in favour of the rejection of the Party system. We were told it is British, and therefore bad.”¹⁵⁴ – Magennis, Dáil Éireann, 12/10/1922

There were a lot of desires in the Irish Free State to shape the state’s politics differently compared to the UK, with one way to do this being the single transferable vote proportional representation system, as handled previously. This system of representation was also connected to ideals and wishes that the Irish Free State was going to have numerous smaller political parties and less significant binding lines within those parties, as will be brought up in this part of the chapter. These ideals were connected to desires that the state would even end up growing out of political parties that were argued by some to have a strongly negative effect on the state’s politics¹⁵⁵. In the Dáil’s constitutional debates these desires and ideals were manifested through arguments vouching for deputies’ freedom of expression regardless of party lines and actual voting against party lines. Anti-party politics were also manifested by the external ministers scheme and the debate around it, which will also be examined in this part.

Anti-party ideals were visible in the interaction between the Dáil’s members, as on many occasions members of the same party disagreed with each other, both within the Sinn Féin and the Labour Party¹⁵⁶. A few times split of the Sinn Féin could be seen to have been manifested through these instances as despite the Anti-Treaty’s proclamation to not take part in the Dáil, some of the Pro-Treaty side’s members present in the Dáil expressed views similar to the Anti-Treaty’s ones. Liam de Roiste was one such actor since he despite his membership in the Sinn Féin, the same party the ministers were from at the time, had a very critical attitude towards many of the things the government sought

¹⁵⁴ Magennis, Dáil Éireann, 12/10/1922, The Dáil in committee – New article.

¹⁵⁵ O’Higgins clearly advocated for the abolishment of political parties stating for example, “then this Dáil will, no doubt, face the fact and avail of the power in Article 49 by wiping out this Executive System and returning to the Party System of Government, with all its errors and anomalies and men voting constantly against what their judgment dictates, simply at the crack of the Party whip”, Dáil Éireann, 5/10/1922, Article 50.

¹⁵⁶ As is evident from the cases pointed out within this thesis, for example regarding deliberative practice in Chapter 5.

to support. During one debate de Roiste seemed frustrated at the acting government's actions by stating,

So much has been said already on the last clause with regard to the interpretation of this Constitution, that I feel it is practically useless to try and insert this amendment in the preamble. I feel that it will not be accepted by the Ministry on the usual ground on which they have resisted other amendments to certain Articles of the Constitution.¹⁵⁷

These clauses were related to de Roiste's own amendment proposal and they told of a cynicism towards how the Dáil could accept amendments in general. According to de Roiste here, the cabinet could prevent too much of the Dáil's constitutional amendments. This gave a negative view concerning the desired model of responsibility, as the Dáil was meant to be a higher authority than the government regarding legislation. As is often the case with parliamentary statements, these expressions could have also been directed towards the public, in this case to possibly represent the views of those in opposition of the Dáil and the government. The questioning of the official representative system's actual functionality could have functioned to gather support from those in opposition of that system. Party lines as a part of the representative system were this way questioned even in practice.

Many actors in the Dáil expressed views that entailed a desire for a smaller role of political parties or at the very least smaller and multiple parties present in the Dáil's assembly. Both ministers and deputies in the opposition talked about an ideal situation where members in the Dáil would be able to follow their own views and debate freely or be rid of parties¹⁵⁸. These types of ideals of anti-party politics connect to representation as they characterize a setting where parties play a smaller role. The desired effects for the smaller role of political parties or even their abolition will be discussed after the introduction of the external ministers scheme later in this part of the chapter.

In addition to the single transferable vote model for the Dáil's elections, another practice was argued to function against party politics, and this was the scheme of external ministers. This model however turned out to be very controversial in the Dáil. The scheme was desired to allow citizens eligible to the Dáil, although not actually members in the Oireachtas, to be ministers by nominations of a special

¹⁵⁷ Liam de Roiste, Dáil Éireann, 11/10/1922, Preamble to constitution.

¹⁵⁸ Example: O'Higgins, Dáil Éireann, 19/10/1922, Amendments to Article 50, "that we would have here not a Dáil composed of two or three large and solid parties, but rather a Dáil composed of a great many groups, and groups that would not be stereotyped, that would not vote on all matters, but would vote together perhaps to-day and differently tomorrow, according as their opinions or their interest changed"; Magennis, Dáil Éireann, 12/10/1922, The Dáil in committee – New article, "I am much indebted for the support Deputy Duffy has given to my amendment, for he has made it clear that the amendment is aimed at the destruction of the Party system".

committee of the Dáil, as opposed to internal ministers which were to be nominated by the president of the Dáil, the functioning prime minister. According to the scheme, the executive council was to be composed of twelve ministers at most, with at least four of these being internal ministers. Up to eight of the executive council's members could have thus been external ministers, who could not vote in the Dáil but speak and be responsible to their departments instead of being a part of the cabinet's collective responsibility¹⁵⁹. Collective responsibility itself will be examined in the next chapter of this thesis, while here the focus will be on how the scheme was debated regarding representation.

The external ministers were desired to be able to carry out their duties free of political pressure, as they were not to be members of either the Dáil or the Seanad and did not have to align to government policy¹⁶⁰. This way they were desired to follow the state's interests to their fullest extent being only responsible to the Dáil for their own departments, as to not be under the influence of the cabinet's collective responsibility¹⁶¹. In the Dáil a worry arose over how the external ministers would represent the people, due to the fact that they were to be elected by the Dáil and not by the people¹⁶². The elections and the people as the represented entity were stressed in these views as vital for legitimate procedures.

In the debates having external ministers was seen by the cabinet and many others as a very valued part of the idea of forming a new type of way of fulfilling parliamentary democracy and its representation. Minister O'Higgins argued that, "There is nothing admirable in the Party system of Government. There is much that is evil and open to criticism. If we can find, or think we can find, a better system, we ought to try"¹⁶³, highlighting the thought that for governing the state something else was a better way. This something else was the external ministers scheme, which was believed in co-operation with smaller roles for parties to lead to further decline in the parties' influence.

¹⁵⁹ O'Higgins, Dáil Éireann, 5/10/1922, Article 50, as mentioned in the introduction of the external minister scheme and its contents.

¹⁶⁰ O'Higgins, Dáil Éireann, 5/10/1922, Article 50, "The intention of the whole scheme is to forestall the party system of government"; "It would be very important and very valuable if it became possible to select Ministers solely on the basis of their peculiar fitness for their office, and not on the basis of political service or perfervid rhetoric that they may have poured out on the platform, or anything else".

¹⁶¹ O'Higgins, Dáil Éireann, 5/10/1922, Article 50, "would not go out of office on defeat of the President-", referring to the external ministers; "would not be removed from office during his term unless on a report by a Committee of the Dáil that he had been guilty of malfeasance in Office, incompetence and unsatisfactory performance of his duties and failure to carry out the expressed will of Parliament."

¹⁶² For example Milroy, Dáil Éireann, 5/10/1922, Article 50, "That, to my mind, would lead to a peculiar situation; if, upon an adverse vote, four of the elected Ministers resign, the eight unelected were left in possession of the reins of Government"; "I see considerable danger, on the other hand, if the reins of Government fall into the hands of non-elected persons, who might possibly be rejected by the electors if they went up before them".

¹⁶³ O'Higgins, Dáil Éireann, 5/10/1922, Article 50 Executive authority.

The scheme for external ministers was greatly changed in the Dáil, affecting the original proposal's effects on representation and responsibility. The external ministers were decided to be outside the executive council, creating what could be labelled a two-tier ministry¹⁶⁴. This meant that these representatives were slightly in a lesser position and that parties were to have a larger influence on those representatives in the executive council. The cabinet present in the Dáil expressed dissatisfaction over this outcome, "We considered that government should be in the interests of the people, and that State services should be run with an eye to the maximum of efficiency for the people. So we brought these proposals before the Dáil, and this Dáil, with certain emphasis, rejected them"¹⁶⁵. This way the loss of this part of the scheme was portrayed by the cabinet especially to have been a loss considering broad representation and fulfillment of the people's will as it was seen to lessen the odds of getting as competent ministers as possible, even from outside the Oireachtas.

Direct democracy opposes parliamentary and representative democracy in the sense that it leaves out the representors or the parliamentarians. This happens when the people make the decision themselves for example via a referendum as is common when a form of direct democracy is taking place. As mentioned in the introduction, the Constitution of the Irish Free State in the form it was submitted to the third Dáil contained articles which established a legal role for constitutional referendums to fulfill direct democracy in addition to the previously agreed parliamentary democracy. As will be introduced and analyzed in Chapter 6 the constitutional referendums and other ideas from the area of direct democracy in the Constitution of the Irish Free State took steps into the area and decisions of the Oireachtas, by for example allowing the people to vote on the constitutional amendments made by the Dáil, making it so that direct democracy meant a level of opposition or at the very least a degree of balancing against the powers of the Parliament and the cabinet by the direct choices of the people as they were to be able to vote out the Dáil's constitutional amendments.

This chapter has now analyzed the Dáil's constitutional debates around the concept of representation by examining the suggestions to create a senate based on vocational constituencies, the establishment of vocational councils, possible problems within the representative system and the meaning of the desired anti-party politics for representation. Labour Party especially vouched for vocational representation with arguments that it was to bring the Irish people closer to their representatives and also lessen party politics, which was a very shared desire in the Dáil. The executive council present favored the external ministers scheme especially by tying it to the process of eventually even abolishing the role of political parties in the representational system. The idea of small parties or non-

¹⁶⁴ Cahillane 2016, 133.

¹⁶⁵ O'Higgins, Dáil Éireann, 19/10/1922, Amendments to Article 50.

existent parties was tied to ideas that the politicians would then be able to conduct the state's governing free of party pressure, which has a connection to ideas of deliberation through a stress on lessening outside pressure on the parliamentarians and allowing as free debate as possible.

4. Responsibility – Debating parliamentary positions of power and their justification

“The Executive Council carries out the orders and wishes of the general body of the Dáil. It is part of the Dáil and the sense of the Dáil directs the Executive Council in whatever it does. Do not think of the Executive Council as if it were an institution outside eternally declaring war on the liberties of the Dáil.” – Cosgrave, Dáil Éireann, 25/9/1922

This chapter examines parliamentary responsibility, how it was connected to the state's inner power relations, what things were seen as possibly detrimental to it and how collective and individual responsibility was debated. Responsibility as a word was referred to in the Dáil on a total of 342 cases¹⁶⁶, being connected for example the Dáil's duty to monitor the executive council and the executive council's collective responsibility along with the changes the external ministers scheme posed for it.

The Irish parliament, or the Oireachtas, was composed of the Dáil and in the future the Seanad was to be created as the upper house of the Parliament. The Dáil at the time was thus the key element of parliamentary politics and the Dáil's elections were what determined the acting prime minister of the state. One of the traditional parts of parliamentarism is the idea that the parliament monitors and has the right to disband the acting cabinet should it in some apparent way violate its duties and exceed its rights¹⁶⁷. At the time of the constitutional debates, parliamentary responsibility was already in action

¹⁶⁶ Searching the word "responsibility" on the Oireachtas web page during the time period of 9/9/1922 to 10/25/1922, Note: some instances would not be in the Constituent Assembly and some not connected to parliamentary responsibility.

¹⁶⁷ Bayley 2004, x.

in the sense that the cabinet was formed through the elections of the Dáil and the Dáil had to right to disband the cabinet, but just before the assembly of third Dáil the Provisional Executive Council in Ireland peculiarly had for a period no parliament it was responsible to, as the second Dáil had been dismantled as a part of the revolutionary assembly of the Irish Republic.

The cabinet's responsibility to the Dáil was visible in the routine procedures and the rhetoric used in the constitutional debates. The cabinet was continuously in a role of needing to explain and defend its actions and views in front of the Dáil's deputies, as was visible with for example the questions over the sovereignty of the state and the people¹⁶⁸. The need to defend and argue for the cabinet's and the government's actions and views expressed that they were not in a position of highest authority, but instead responsible to others.

The establishment of the Oireachtas was included in the Anglo-Irish Treaty, although it was yet to be named as such in the document. The words in the first article of the Treaty read,

“1. Ireland shall have the same constitutional status in the Community of Nations known as the British Empire as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa, with a Parliament having powers to make laws for the peace, order and good government of Ireland, and an Executive responsible to that Parliament, and shall be styled and known as the Irish Free State.”¹⁶⁹

Here the word “responsible” was used to describe the relation between the Executive and the Parliament. Thus the concept was understood in a similar manner in the Treaty as it was introduced in the beginning of this chapter. On a general level, the idea that the cabinet was to be responsible to the parliament was not really disputed in the Dáil's constitutional debates by suggesting something to oppose or replace this responsibility but the notions on how responsibility was to be fulfilled or what could be a threat to it were debated.

4.1 Threats to the Dáil's legitimacy as a watchman

The constitutional debates touched upon possible problems that would hamper parliamentary responsibility and this way distort legitimate political practice. These debated problems ranged from

¹⁶⁸ As analyzed in Chapter 1.

¹⁶⁹ Anglo-Irish Treaty 1921.

corruption of the Dáil's deputies to a too strong government presence in the Dáil. These topics were connected to how the power relations in the nation were to be formed and what were possible threats or problems regarding this formation.

One of the discussed possible threats of parliamentary democracy visible in the debates were the concerns about corruption in the Oireachtas. These were theorized to be possible on different levels of the system and were seen as a serious threat to the desired goal of creating a nation that follows the will of the people. On some occasions these concerns also functioned as criticisms of the parliamentary system as a whole. Representatives being able to take advantage of their positions for personal gain was something that was seen as a problem.

Inserting constitutional amendments to prevent corruption and abuse of political power for personal gain was something different actors seemed to want to do. Deputy Cathal O'Shannon, a member of the Labour Party, sought to add an article to the constitution that would give requirements the deputies of the Dáil and the senators of the Seanad would have to follow in order to remain as members, focusing around this question of abuse of power. The amendment contained numerous different conditions that the members were not to violate, such as

No member of the Executive Council may be a member of the management or board of directors, or be a representative of any joint stock or limited liability company carrying on business for profit.

No Deputy or Senator may be a member or representative or agent of any company or undertaking which shall secure a contract for the supply of material to any Government Department.

No Deputy or Senator shall perform the duties or receive any remuneration from any other office or position of profit under the State¹⁷⁰

The requirements proposed by O'Shannon were met with both understanding and criticism. The Labour Party's chairman Thomas Johnson for example stated that the matter might be more of a legislative nature than constitutional, yet he added that he likes the idea and thinks that something of the type could be added into the constitution¹⁷¹. The Dáil's President William Cosgrave rose against the amendment, saying that it was not put together carefully enough leaving too much to be interpreted. The article was criticized because it was viewed to be interpreted to limit what a person can do before coming a minister, as being a shop owner or a stock owner could be seen as unallowable

¹⁷⁰ O'Higgins, Dáil Éireann, 10/10/1922. Article 62, read O'Shannon's amendment due to his absence.

¹⁷¹ Johnson, Dáil Éireann, 10/10/1922, Article 62, "I am not standing over every sentence of this Clause, but I would rather invite the Ministry to indicate their willingness to agree to the principle and to see if it is possible to insert some clause of this nature in the Constitution".

actions via this amendment according one interpretation of the article¹⁷². This way this idea was rejected by arguments against its form and a possibility that it could be interpreted it many ways, while some of the Labour Party's members viewed its ideas to follow good practice and help against power and wealth gathering on to the same people by posing limits on what kinds of positions the representatives in the Dáil could hold outside.

It was added that the matter could be settled by legislation where the issue could be given more careful consideration¹⁷³. This way this specific topic's contents were suggested to be handled later on perhaps to also give out an impression that the ministers agreed the topic to need time and legislation. This suggestion also carried forward an example of deliberation.

Regarding this article, the cabinet stressed the same values as the Labour Party to some extent as Cosgrave pled that the article should not be accepted in the form it was in at the time as in his eyes there were steps required to "prevent it being abused or at some time an infringement of the rights of individuals"¹⁷⁴. With this and the previous examples he can be seen drawing support for his statement that the article could function as a threat to common values and rights. This way Cosgrave used the original proposal's arguments concerning the protection of people's rights and keeping the Dáil's actions honest against the proposal, by pointing towards an idea that the proposal in fact allowed these rights and Dáil's guarding to be broken in a different manner.

The matter of not allowing corrupting conflicts of interest to take place in legislative institutions had been and were being brought up elsewhere in the world around the same time as these constitutional debates were being held. Public servants and politicians using their position for financial gain has been used as a criticism of parliamentarism at times with statements that the system allows these kinds of situations to take place too often¹⁷⁵. This way it also ties into the contest and co-operation between parliamentarism and direct democracy. The Dáil seemed to agree very keenly that corruption, as experienced to have taken place under British rule, was to be avoided. Byrne for example has noted that impartial recruitment and the principle of meritocracy were valued in the Free State and during its forming so that abuses of authority were combated against with, for example, introductions of institutions that were disconnected political institutional interests¹⁷⁶.

¹⁷² Cosgrave, Dáil Éireann, 10/10/1922, Article 62, "Take that particular one. If through some mischance a man had shares in a Company, what would his position be? Would he be disqualified from being a Senator?"

¹⁷³ Cosgrave, Dáil Éireann, 10/10/1922, Article 62 "- but generally speaking there is agreement in regard to the principle involved, and we consider it would be best effected by legislation, where it might get more consideration-".

¹⁷⁴ Cosgrave, Dáil Éireann, 10/10/1922, Article 62.

¹⁷⁵ Gijsenbergh 2015, examines these criticisms in the interwar period Europe.

¹⁷⁶ Byrne 2012, 31-33.

In parliamentary democracy it is often seen as important that the parliament's members are able to conduct their duties free from outside pressure. Article 18 of the Constitution of the Irish Free State stated that the members of the Parliament may be exempt from arrest in certain cases while going to or leaving the parliament for their duties in addition to the members being unamenable to any action by law for their utterances in the Dáil¹⁷⁷. This article created protection for the members of the Oireachtas, including from possible threats by the government if somehow laws that would limit free speech were viewed to have been passed. This particular article is also connected to deliberation and as such will be examined more in depth in the next chapter.

Possible government influence on the Dáil was also connected to the debates regarding parties. Having parties and their chairmen present in the system, especially in the cabinet, was theorized to possibly lessen the freedom of the deputies in the Dáil as was handled in the previous chapter. Many of the arguments there connected to representation can be further linked to the danger on parliamentary responsibility here. For example de Roiste's critique on the cabinet discarding his and others' amendment propositions expressed a thought that the cabinet had a too great role in forming the constitution. Government influence and power in the parliament was not a new topic by any means, as it had been discussed in the British parliament in the 1700s¹⁷⁸. Similar thoughts were also visible in the constitutional debates that examined the already examined debates the government expressed it would stand or fall by and have the Dáil bear responsibility for the consequences.

The thoughts mentioned above were well expressed by Gavan Duffy from the Sinn Féin when he stated, "It is due to that policy that the Dáil is to be presented with a Government "Puffing Billy," with a steam roller driven by Engine-driver Dan McCarthy to smother all opposition in the mud. It is due to the same policy that the Government have attempted to withhold from this Dáil the draft Constitution prepared by their own experts and adopted by themselves, as complying with the Treaty, which was good enough to show to London, but not good enough to show to us"¹⁷⁹.

With this quote Duffy referred to the Parliamentary Secretary to the President Dan McCarthy, also from the Sinn Féin, calling him the driver of the government's steam roller. This was due to the fact that in his position McCarthy acted as the party's Chief Whip in essence, thus being the person whose task it was to keep the party in line on key topics. This was an example of criticizing heavy party

¹⁷⁷ Constitution of the Irish Free State, Article 18, "Every member of the Parliament/Oireachtas shall, except in case of treason, felony, or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of either House, and shall not be amenable to any action or proceeding at law in respect of any utterance in either House".

¹⁷⁸ Ihalainen & Seaward, 2016, 39–40, "-- the threat of government influence continued to be a preoccupation of opposition parties and 'patriots' well beyond the eighteenth century", referring to British parliament.

¹⁷⁹ Duffy, Dáil Éireann, 21/9/1922, Constitution debates resumed.

politics that some at the time expressed to shape the Dáil. It also criticized that the Dáil had not been presented with the constitution's draft before, again questioning if due processes of responsibility were followed and the Dáil's authority respected.

One key change made into what was Article 53 in the final constitution was inserted to fight against the concerns that the president of the executive council, the acting prime minister, would have too much power regarding the formation of the council. This change was done by putting down in writing that after the Dáil's elections the president would appoint the other ministers by nominating them on the assent of the Dáil¹⁸⁰, which concretely gave the Dáil a greater role in this part of cabinet-forming and emphasized the cabinet's responsibility to it even while the Dáil's acceptance was to a degree been accepted earlier.

The role of the King of the UK and the governor general was slightly connected to parliamentary responsibility, as some deputies wondered what their position would be regarding executive power in Ireland. As handled in Chapter 1, the state's sovereignty was an important topic especially in the first constitutional debates of this Dáil and many were opposed to the King being mentioned in the Constitution of the Irish Free State. At later stages too there were pledges to remove the King from the articles handling the executive council, such as by Gavan Duffy who stated that, "the insertion of the King in the Executive is much more clearly a violation of our Treaty rights than its insertion elsewhere."¹⁸¹ Many others however stressed regarding this matter that the king would not have actual executive power and that thus the executive council was solely responsible to the Dáil¹⁸², and as such the king remained mentioned in the final constitution as a giver of assent to legislature passed by the Dáil and the Seanad¹⁸³.

This part has brought forward the different theorized threats to parliamentary responsibility as they were mentioned in the Dáil's constitutional debates. Perceived threats included corruption in the Dáil, too strong government influence, blocking of free speech in the Dáil and too strong political parties. These topics played a role in how parliamentary democracy was debated and shaped in the

¹⁸⁰ Magennis, Dáil Éireann, 12/10/1922, Article 51, "I wish to move as an amendment to the President's amendment that, 'The other Ministers who are to hold office as members of the Executive Council shall be members of An Dáil and shall be appointed on the nomination of the President with the approval of An Dáil,' and then the rest as it stands".

¹⁸¹ Duffy, Dáil Éireann 5/10/1922, Article 50.

¹⁸² For example, Magennis, Dáil Éireann, 5/10/1922, Article 50, "There is nothing in the wording of this clause which is antagonistic to the doctrine, 'the King reigns, but does not govern.' You must have the executive authority vested somewhere. The exercise of it is another thing".

¹⁸³ Constitution of the Irish Free State, Article 41, "So soon as any Bill shall have been passed or deemed to have been passed by both Houses, the Executive Council shall present the same to the Representative of the Crown for the signification by him, in the King's name, of the King's assent, and such Representative may withhold the King's assent or reserve the Bill for the signification of the King's pleasure: - "

constitutional debates to better uphold the desired concept of parliamentary responsibility, and how the organization of power in the state was to be finalized.

4.2 Collective and individual responsibility

Cabinet collective responsibility was closely connected to the scheme of external ministers which was introduced in the previous chapter. One of the reasons why the original scheme was changed to exclude the external ministers from the executive council was because most deputies and ministers in the Dáil felt that adequate collective responsibility was needed to form a functional system. This part will examine more in depth this area of the concept of responsibility.

As the scheme for external ministers was introduced on the 5th of October its meaning for collective responsibility and the responsibility of the ministers was heavily debated. Those in favor of the article in the form it was introduced in argued that it would lessen the role of parties by making it possible for the Dáil to appoint and monitor ministers from outside the Oireachtas¹⁸⁴. The idea was that these external ministers would be responsible individually to the Dáil for their own respective departments, while internal ministers, those nominated by the President of the Executive Council after the Dáil's elections, would be under collective responsibility and would resign together should one minister be ousted by the Dáil¹⁸⁵. Those who opposed the article argued that realistically finding people from outside the Oireachtas to be external ministers would be too difficult and that removing external ministers from their positions could be too hard.

The external minister scheme was supported by arguments that it would offer new ways of fulfilling politics, such as through the lessened role of political parties and a separation of some ministers from collective responsibility. Still a majority those who advocated for this model believed that the internal ministers needed collective responsibility. In addition to allowing party lines to be broken and competent civil servants being brought in from outside the Oireachtas individual responsibility was

¹⁸⁴ As was handled in Chapter 3.2.

¹⁸⁵ O'Higgins, Dáil Éireann, 20/9/1922, Constitution of Saorstát Éireann Bill, "The proposal visualises a President and a small Council of Ministers — four or five Ministers—who would be responsible to the Dáil for all the broader matters of policy on which the Government would stand or fall, and outside that, Ministers or Heads of Departments, who, as long as they ran their own particular Departments efficiently, and in a manner to hold the approval of the Dáil, would not go out in the event of a Government defeat".

characterized to lessen the protection of incompetent ministers and make voting against the executive council's lines from within the ministries easier¹⁸⁶. This way the supporters of the scheme stressed its potential to serve the public good in a better way than stronger collective responsibility.

The external minister scheme had a few very vocal critics, for example Gavan Duffy, Sean Milroy, Walter Cole and Darrell Figgis, all of whom except for Figgis were members of the Sinn Féin. They along with others argued that the scheme would for example not successfully guarantee that ministers would be selected from outside the Oireachtas since it was not mandatory¹⁸⁷, that the external ministers would not be in reality separate from the internal ones but instead were even more under their control than the Dáil's due to the ministry of finance having been labelled an internal ministry¹⁸⁸. Thus according to this view finance at the very least would tie external ministers under the cabinet's power. Others stressed views that it did not follow due democratic processes by allowing the Irish people to vote¹⁸⁹, "taking the power from the people of Ireland, and giving it to a future President or future Dáil"¹⁹⁰. One suggested scenario was that a minister defeated at an election could be given an external minister seat by the Dáil's committee, for example through the winning party's influence¹⁹¹. The concept of popular sovereignty was thus visibly connected to these concerns regarding individual responsibility, as according to them it would have distorted just governing and allowed loopholes around popular will.

The external minister scheme was changed to entail the ministers appointed by the Dáil committee would not be included in the executive council. These changes meant that the Dáil was able to appoint

¹⁸⁶ For example Connell, Dáil Éireann, 6/10/1922, Dáil in committee, "- that all the Ministers must hang together, and no matter how inefficiently any individual member of the Ministry carries on his business, all the other Ministers—efficient Ministers—consider it their duty to stand up for him and defend him. I believe, by adopting this principle of individual responsibility, we will get away from that." ; O'Higgins, same debate, " It will ensure that men will not vote for a particular measure that they think will have evil results for the country, simply to save that particular Administration."

¹⁸⁷ Duffy, Dáil Éireann, 6/10/1922, Dáil in committee, "- in the best-run Governments and Parliaments in the world, the President, the Parliament, or whoever may be the appointing authority to appoint Ministers will, if you fail to make mandatory upon him the duty of taking some men from outside, find himself up against vested interests every time, will find it impossible on account of interests of Party or machine, will find it impossible to choose the best men."

¹⁸⁸ Figgis, Dáil Éireann, 12/10/1922, Report of committee on executive articles of Constitution of Saorstát Éireann Bill – terms of reference, "He cannot conduct his Department apart from finance, and so really he will become in the nature of an Administrative Officer dependent not directly on the will of the Dáil, but dependent far more directly on the will of the Executive Council."

¹⁸⁹ McBride, Dáil Éireann, 12/10/1922, Report of committee on executive articles of Constitution of Saorstát Éireann Bill – terms of reference, " This old-time Nation, now resuming its onward march, must not be shackled by anything hung on to it such as this—a proposal to elect gentlemen to be Ministers who have not been elected by any constituency in Ireland"

¹⁹⁰ Rooney, Dáil Éireann, 12/10/1922, Report of committee on executive articles of Constitution of Saorstát Éireann Bill – terms of reference.

¹⁹¹ Cole, Dáil Éireann, 6/10/1922, Dáil in committee, "It is quite possible that under this system a Minister defeated at an election could be reappointed by the Dáil or by the Government through the Committee of the Dáil, and he might be reappointed, although he might have been defeated at an election and rejected by his constituents".

ministers without the executive council's president's nominations, which was hoped to lessen party influence in the state's executive while highlighting the Dáil as the entity all ministers were going to be responsible to. What areas then were to be fit to external ministers would later turn out to be more difficult to establish, along with how the Dáil could find people fit to be ministers from outside the Oireachtas amidst desires to establish stability, and a political climate that turned out to not root out large parties.

5. Deliberation - Making well-argued decisions in the Parliament

This chapter will examine the concept of deliberation in the Dáil's constitutional debates. It will seek to establish how deliberation was visible in practice and how it was used to argue for different types of views concerning the constitution, and what these views were. For example Palonen has argued that the act of arguing *pro et contra*, for and against a proposal, is a key part of parliamentary rhetoric and practice, as it allows deliberation to be followed by constructing opposing views from different perspectives before forming a decision¹⁹². Another part of the concept is to construct means for the parliamentarians to be independent from outside pressure and to build a system that allows open and broad debate¹⁹³. These are a few of the key parts of deliberation that also came forward in the Dáil as following it and guaranteeing its role were brought up.

¹⁹² Palonen 2005; Palonen 2008, 82, ”- the confrontation of any proposition with an alternative is the driving force behind the distinctively parliamentary form of politics”.

¹⁹³ Ihalainen & Seaward 2016, 41; Palonen 2016b, 230–234.

5.1 Deliberation in practice and debated

“The great fallacy which many politicians in this country and other countries fall into is that they overemphasise their arguments.” – Sean Milroy. Dáil Éireann, 18/9/1922

The Dáil in its day-to-day actions followed deliberation’s ideas as the whole Oireachtas functioned as a self-proclaimed deliberative and debating assembly. Deliberation often entails the idea that the politicians understand their voter-base to a great extent along with their interests and desires while respecting that the other representatives have their own voter-bases with their respective desires and interests. Thus a common part of deliberation is respecting the complex diversity of the whole voter-base and attempting to find suitable compromises for all sides, as was done in the Dáil too. Other deliberative actions include the practice of being elaborate in speech and examining topics from numerous different points of view¹⁹⁴. Deliberation was directly mentioned in the analyzed constitutional debates of the Dáil 38 times and the word “deliberative” 4 times¹⁹⁵, but many of its core ideas were visible and it seemed to be for many a key part of democratically suitable practice. This part of the chapter examines how deliberation was visible in the Dáil’s practice and how it was argued to function in the state’s parliamentary action on a general level.

Deliberation was visible in the first constitutional debates when the opposition criticized the government for having unchangeable terms in the constitution. Deputy Davin expressed discontent and frustration towards the agreements he saw as binding by saying that, “It appears to me that so far as these particular Clauses are concerned there is little use in this Dáil discussing them when the Party Whips are put on and when discussion will not help to make them better than they are as framed by Members of the Provisional Government”¹⁹⁶. Through this the possible ability of the cabinet to make the Dáil follow them along through the Sinn Féin -party’s influence was criticized. Arguably, this can be seen as a criticism of party politics at the same time while it questioned the Dáil’s actual possibility to follow along its members’ individual ideals. As parties were questioned as a whole in the Dáil as well it should be remembered that on many occasions party members did differ with each other. With certain parts of the constitution being urged by the government to remain unchanged the full extent

¹⁹⁴ Ilie 2016, 133–135.

¹⁹⁵ Searching the word on the Oireachtas database brings 38 results. Note: includes some debates outside the constituent assembly. Searching the word “deliberative” brings 4 results, all from constitutional debates.

¹⁹⁶ Michael Davin, 18/9/1922, Dáil Éireann.

of deliberation was suggested by the opposing sides to remain unfulfilled to a degree along with what these recommendations many felt to mean for sovereignty.

Davin was not the only one from the Labour Party to question the other agreements that bound certain parts of the constitution. As mentioned in the first chapter of this thesis the chairman of the Labour Party, Thomas Johnson, suggested that the creation of the constitution itself should be postponed¹⁹⁷, also adding that Ireland could have an unwritten constitution similar to the UK. These views tied into deliberation as according to them Irish people were not in situation where they could thoroughly enough examine and give thought to the constitution. Instead, the Labour Party's members suggested the constitution to be created through a longer process of using practice to form an unwritten constitution¹⁹⁸. This way agreements were argued to be better formed using a longer deliberative process instead of making faster agreements in the Dáil.

In the debates both the cabinet's members and the Dáil's deputies on the opposition side made references to suitable deliberative practice. This hinted that to an extent deliberate argumentation was seen as a virtue by the sides participating in the Dáil even during the ongoing conflict. This is a core feature of parliamentarism, as it makes it possible or even poses a requirement that the decisions of a parliament are thoroughly examined from different perspectives, similar to how for example Palonen has argued deliberative action to require¹⁹⁹. The cabinet's members however seemed to make these references and pleas to follow deliberative practices more often, perhaps reflecting the government's desires to end the civil conflict threatening their position.

The ministers of the cabinet and many of the Sinn Féin members argued that seeking peaceful ways to influence the state's affairs by negotiating and making compromises was the right way to go in order to establish a balance in the nation. Ernest Blythe, the minister for local government, stated for example that "I believe it should not be possible for anybody to think that by going on kicking up a row that they are going to alter what the Constitution is going to be, or that they are going to get any advantage for their side by continuing their operations against the Government."²⁰⁰ This way it was argued that other than verbal resistance was not going to be an effective way to fulfill political goals concerning the constitution. Another view by Blythe to further stress the thought of the constitution being desirable for Ireland was when he argued that the state would not be properly set up before the

¹⁹⁷ Johnson, Dáil Éireann, 18/9/1922, Bill to enact constitution, "It would be wiser, I suggest, to leave the enactment of a Constitution until there is something like quietude in the country, and time to consider seriously such a very important Act".

¹⁹⁸ As mentioned in Chapter 2.1.

¹⁹⁹ Palonen 2019, 39.

²⁰⁰ Blythe, Dáil Éireann, 18/9/1922, Bill to enact constitution.

constitution was accepted²⁰¹. Reaching agreed-upon conclusions was emphasized by the minister as necessary steps, which followed along deliberation's core ideals of going through extensive debate in order to solve disputes. This could have also been a way for the government to put a degree of blame on the Anti-Treaty side.

The Minister for Home Affairs, O'Higgins referred to deliberation particularly linked to the external minister scheme. He argued on a few occasions during its examination in the Dáil that it would allow better deliberation than what he described to be a British model of large parties and having the cabinet formed around one of those²⁰². This was another addition to how the Oireachtas was desired to be better than the Parliament of the UK. This views were stressed in his statement,

We want to have the Parliament of Saorstát Éireann a deliberative Assembly in the fullest sense of the word, an Assembly endeavouring to do all things for the best advantage of the Irish people, and so we want calm consideration for each measure — we want each measure analysed only on its merits, and we want the maximum of individual liberty for the Deputies in the Dáil. You will not have that by adhering to collective responsibility.²⁰³

Rhetorically here O'Higgins could have used values which he believed the Dáil to hold well in common to try to convince them of the external minister scheme. Nevertheless, it showed that deliberation was appreciated by some and used as an argument for certain constitutional articles, with it being stressed at the same time as a way to follow the nation's interests and the people's will. Seeing the British model as being flawed even in a deliberative sense again stressed the ideal that the Irish Free State was going to establish a far better system that took the Irish people in consideration.

Outside the cabinet the concept of deliberation was also accepted and used as a tool to criticize others. Deputy Milroy from the Sinn Féin stated for example, "The great fallacy which many politicians in this country and other countries fall into is that they overemphasise their arguments"²⁰⁴. This way Milroy stressed an ideal that politicians should keep their arguments truthful and not exaggerate their points. This contained a possible criticism or a suggestion for others present in the Dáil to monitor their behavior but as Milroy mentioned, he saw it taking place elsewhere too. This particular sentence

²⁰¹ Blythe, Dáil Éireann, 18/9/1922, Bill to enact constitution, "We cannot have the Irish Free State firmly set up, we cannot bring a period to this controversy, until we have enacted the Constitution. I believe that one of the means of dealing with the state of affairs in the country, is to put the matters which we are in doubt about, in regard to the Treaty, beyond doubt".

²⁰² For example, O'Higgins, Dáil Éireann, 6/10/1922, Dáil in committee, "These proposals will make the Irish Parliament what the British Parliament is not. It will make it a deliberative Assembly that will weigh carefully on their merits the measures brought before it, and solely with an eye to the results of these measures in the country".

²⁰³ O'Higgins, Dáil Éireann, 12/10/1922, Report of Committee on Executive Articles of Constitution of Saorstát Éireann Bill. - Terms of Reference.

²⁰⁴ Milroy, Dáil Éireann, 18/9/1922, Bill to enact constitution.

followed ideals of deliberation and it tied into large-scale political behavior in democracies especially. With this statement Milroy could have sought support from the public while stressing honest speaking in parliamentary politics.

The opposition in the Dáil had its views concerning deliberation too. O'Shannon from the Labour Party for example, brought forward a statement which emphasized that before genuine agreements could be achieved, the Dáil would need to be in agreement with the words and terms used in the debates too²⁰⁵. This way deliberation was seen as important in order to reach mutually understood and accepted conclusions. O'Shannon's following statement brought forward a criticism using deliberation as an argument,

Now we want to have finished with all this, because we want to get down to business and get things done, and don't want to be debating and arguing the question of the Treaty all over again. But Deputy Milroy and some Ministers on the other side of the Dáil went as far as this: the throwing of bombs—intellectual, verbal bombs, if you will—at people who are outside this Dáil. We should not allow ourselves to be bullied into doing anything in this Dáil by bomb-throwing at other people outside this Dáil.²⁰⁶

O'Shannon argued that the whole Dáil would like to see progress regarding the constitution but that Milroy and the ministers were needlessly putting blame on those outside the Dáil. This was most likely a reference to the previous statements that had some of the Irish public and especially the Anti-Treaty side as violators of good practice and continuers of the conflict. This way the opposition used deliberation and its ideals to criticize the cabinet for its own views and open positioning against other political entities not present in the Dáil. From this point of view, the government was seen as a further agitator of the people because of their “intellectual, verbal bombs”. This way it was argued that the cabinet and the ruling party violated acceptable practice and did not follow deliberation adequately. As has been examined by Ilie (2016), the language that was at least suggested to be insulting would have been used to target the credibility and moral profile of the target and thus had a rhetoric use²⁰⁷, although deemed by O'Shannon to have been in violation of good practice. In this instance the cabinet was criticized by O'Shannon, so the parliamentary positioning of opposition against the cabinet was

²⁰⁵ O'Shannon, Dáil Éireann, 18/9/1922, Bill to enact constitution, ” - you cannot, and nobody not even this Dáil, can deliberate or argue or deal with certain things unless these things are put down in definitions and unless we use words that have a common acceptance”.

²⁰⁶ O'Shannon, Dáil Éireann, 18/9/1922, Bill to enact constitution.

²⁰⁷ Ilie 2016, 138.

also visible. The people outside the Dáil were to be respected in the debates according to O'Shannon's view, which also stressed their importance for the democratic process.

For example Palonen has argued that making agreements and disagreements clear is an important and continuing part of parliamentary politics, since it expresses the desires for both change and continuity and brings forward the problems the represented people and the politicians feel, also bringing the interaction and stances between different actors known²⁰⁸. Showing this, the ministers present in the Dáil often used the word "we" instead of "I" when an individual minister was the only one speaking. This has been used as a tool to implicate that the entire government stood behind their words or in other words the cabinet's collective responsibility²⁰⁹. This type of discourse is very common in politics as it seeks to convey mutual understanding and agreement within the government as well as the expertise of any minister in question.

Cohesion on important matters and basic lines are seen as very important for governments, as was pointed out in the part examining collective responsibility, so the expressions being used is understandable in the third Dáil's constitutional debates. However, with Ireland still having been in a state of civil war, it might even be interpreted to have been a heavier way of setting a line of the government's stance from the opposing side's. This also showed again that the Oireachtas with its different actors were oriented outwards of themselves as well, towards the public and the ministers desired to give out very particular views about themselves and the government's actions in the constitutional debates. Collective responsibility, as discussed in the previous chapter was something the Dáil agreed on concerning the executive council.

In the Dáil's constitutional debates deliberation was both used in practice and debated. Those present stressed the importance of examining the articles thoroughly, negotiating, considering their options and refraining from personal attacks. When deliberation was directly referred to or debated, it was often to argue that others were not following it adequately. Overall its presence as a concept was clear and it had a part in the formation of the state's constitution.

²⁰⁸ Palonen 2019, 46, Palonen labels this as dissensual procedure.

²⁰⁹ As handled in Chapter 4.2.

5.2 The Dáil as a self-guarding institution

Deliberation in parliaments can also be seen as a way of establishing independence from outside pressure and a tool for stressing the parliament's role as separate from the executive²¹⁰. Many things could be seen as factors that can limit this freedom because the members of a parliament can face pressure to follow certain lines either by their party, the general public or some actor higher up in the political organization that has power to influence the members of the parliament, should such an organization exist in the given nation. In the Dáil deliberation was visible in the many cases where the members of the Parliament debated what means would guarantee the Dáil's ability to form good decisions and guard itself against possible threats from outside or from within it.

Protection of free speech in a parliament is often seen as a key factor that allows deputies to state their opinions and desires without fearing that crossing the government's current interests would bring them a punishment²¹¹. This matter was also recognized as an important matter in the Dáil's constitutional debates. The protection of the Parliament's members took very concrete forms in the debates and the constitutional articles. Article 18 for example stated that the members of the Parliament may be exempt from arrest in certain cases while going to or leaving the parliament for their duties in addition to the members being unamenable to any action by law for their utterances in the Dáil²¹². Thus, this particular article focused on guaranteeing some of parliamentarism's key actors means of getting to the parliament and then conveying their thoughts there freely. This idea is known as parliamentary immunity²¹³. With the preventions of arrests for utterances having been one of the focuses of this article, it can be seen as protection of free speech via granting the Parliament's members special privileges. This thought included an idea that the members of the parliament were servants of the public which could in some cases needed to go against the government.

While free speech and rights for the Oireachtas members to attend their respective houses, the houses' rights to protect themselves were also seen as important and suggestions were made to limit the

²¹⁰ Ihalainen & Seaward 2016, 41.

²¹¹ An old parliamentary privilege, introduced as a thought as early as 1563, Palonen 2019, 147.

²¹² O'Higgins, Dáil Éireann, 3/10/1922, Article 18, "Every member of the Parliament/Oireachtas shall, except in case of treason, felony, or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of either House, and shall not be amenable to any action or proceeding at law in respect of any utterance in either House." ; final Article 18 of the Constitution of the Irish Free State, "Every member of the Oireachtas shall, except in case of treason, felony, or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of either House, and shall not, in respect of any utterance in either House, be amenable to any action or proceeding in any Court other than the House itself".

²¹³ Palonen 2019, 12, 147–148.

deputies' and ministers' privileges present there. Edmund Duggan, a member of the Sinn Féin and the former minister of home affairs, suggested an amendment that, according to his words, “reserves to the House the right to deal with any gross breach of that privilege by a Deputy”²¹⁴. This way Duggan could be seen to have worried that the parliamentary system could otherwise have allowed actions that exceed the boundaries of what is acceptable. The proposal showed fear of a scenario where members of the Oireachtas would resort to some types of unnecessary and unacceptable levels of action. Duggan’s view followed a certain type of protective democracy while following deliberation by deeming actions unfavorable to the debate’s progress punishable.

Giving a house of the Oireachtas powers to guard itself did not receive immediate acceptance although it was appreciated. The amendment proposal was met with responses by Thomas Johnson who inquired as to how this amendment would lead to the Dáil or Seanad being positioned in the judicial system. Johnson stated that if the Oireachtas were given such an ability to judge, it would function as a court by saying that,

It seems to me in the way it is phrased one might read it, that the House should constitute itself a court to try a member for anything that may be considered an offence; this phrase does not protect a member in the way I think the Ministry desires.²¹⁵

Johnson raised a concern that the houses of the Oireachtas could become judgmental and able to sentence their members²¹⁶. This type of a situation would have been detrimental to parliamentary democracy. Thus, this type of self-protective parliament was also spoken against by arguing that it could shut members out for differing opinions under certain circumstances. This can also be viewed to tie to concerns over how this type of power for the Oireachtas would impact the traditional separation of powers or how the Oireachtas could become an instrument for a select few. Thus, Johnson suggested that this amendment would lead to the very problem that Duggan suggested it to prevent and perhaps even larger ones.

Those in favor of the amendment stressed that it would only be used in certain situations to protect the general order and the Oireachtas’ members general participation. It was stressed for example that the houses of the parliament required the right to protect themselves²¹⁷. The President of the Dáil and

²¹⁴ Duggan, Dáil Éireann, 3/10/1922, Article 18; Duggan’s amendment proposal changed Article 18 to the form it was in in the final constitution.

²¹⁵ Johnson, Dáil Éireann, 3/10/1922, Article 18.

²¹⁶ Johnson, Dáil Éireann, 3/10/1922, Article 18, “This practically suggests that the House may set itself up as judge and jury for some offence committed by one of its members, not in contravention of any particular law”.

²¹⁷ O’Higgins, Dáil Éireann, 3/10/1922, Article 18, “-power must not be taken away from Parliament to protect itself, and the power must not be taken away from it to commit a member for contempt-“.

the Minister for Finance Cosgrave added that members who would create disorder could be punished but by making use of the House's standing orders so as to not make the house function as a court²¹⁸. This way Cosgrave seemed to acknowledge the possible legislative problems the Dáil could otherwise face, emphasizing that this problem could be circumvented via the use of existing practical means. This practice is quite common in modern parliamentary democracies and a key part of deliberation.

Duggan persisted that his amendment was required as support for this article, leading to it getting accepted and put forward. This debate showed that the protection of the members of the Dáil and their right to participate in the debates were seen as important issues by many actors. The key differences which fueled this debate were concerned over what the right steps were in order to guarantee a protected yet functional and orderly parliament. The need for creating systems that can help prevent parliamentarians' misuses of their free speech had been present when Irish representatives in the British Parliament made obstruction campaigns in the 1870s and 1880s to slow down and halt decision-making in the parliament they considered unjust, while not technically violating that many rules that existed at the time²¹⁹. With Ireland still having been in a state of civil war, the need and desires to establish such means in the Oireachtas is even more understandable, and for example the time a deputy could spend talking in a row was limited to 10 minutes in the Dáil²²⁰.

Parliamentary systems can have institutions which take care of the parliament's duties in cases where the parliament is unable to assemble. A suggestion for such an institution in Ireland was brought in the constitutional debates, but it quickly received harsh criticism. This article proposed the establishment of a committee for public safety, which would take care of the Dáil's duties if it was not assembled between terms or unable to assemble²²¹. Figgis, the independent deputy who brought this proposition forward, argued that such an institution is very useful, for example by allowing constitutional innovations to be put into place, and that such committees have been created elsewhere in Europe²²². This way it was argued by Figgis that this new article would making important decisions

²¹⁸ Cosgrave, Dáil Éireann, 3/10/1922, Article 18, "It was to preserve that right of the House to make such Standing Orders as would enable them to deal with such a member that the alteration is proposed".

²¹⁹ Palonen 2019, 147; Velde 2013.

²²⁰ Dáil Éireann, 3/10/1922, Report of Committee on Standing Orders, "In Committee of the whole Dáil a Teachta shall not speak for longer than ten minutes, nor more than three times on any one matter-".

²²¹ Figgis, Dáil Éireann, 3/10/1922, Proposed new article, "During the period elapsing between the dissolution of the Chamber/Dáil Éireann, or the expiration of its term of office and its re-assembly, and also during any period when the sessions of the Parliament/Oireachtas have been adjourned or terminated, a Committee of twenty-four members shall be setup for the purpose of dealing with urgent matters, even in extreme cases, where legislation would normally be necessary, for supervising the exercise of executive and administrative powers, and for protecting the rights of the representatives of the people".

²²² Figgis, Dáil Éireann, 3/10//1922, Proposed new article.

when the Dáil was not in assembly, following deliberation but outside the Dáil itself. However, the minister for local government, Ernest Blythe, responded to Figgis' proposal with strong criticism.

Blythe started his response towards Figgis' proposition by stating, "I do not suppose it will require many words in opposition to this proposal for the setting up of an oligarchy."²²³ This way Blythe made his critical view of the proposal very clear with the very first statement, continuing to express his thoughts on how Figgis' proposal was destructive against the division of powers by saying for example,

This oligarchy, presumably, may sit in the dark for all this amendment says; in any case the members of the Executive are not allowed to be present. The Committee will sit and pass sentence on the Executive, and the Executive will have no power to vote there.²²⁴

Blythe's expressed view was that the proposal would mean brushing away the normal parliamentary procedures and create a group that would only serve its own interests and rule alone. The concept of oligarchy being mentioned repeatedly in Blythe's first response was a strong discursive approach, as the very notion of having even a possibility for oligarchy would have most likely been seen as great injustice by a great majority of the public. Blythe said that the committee would take the executive power away from he ought to have it²²⁵, thus using the ideals of parliamentary democracy as an additional argument for his criticism. This way it could also be seen to have expressed that Figgis did not desire true democracy or that Figgis had not been precise enough in his amendment proposal. Through these criticisms Blythe gave a view of Figgis being incompetent in one sense or the other.

Figgis responded to Blythe's arguments by saying that he has misunderstood the proposed article for example by expressing that the committee could control national funds and monetary bills, while Figgis said that this was to be prohibited from the committee²²⁶. He also expressed criticism against the cabinet by saying that they counter proposals which they promised not to resist²²⁷. This is an interesting remark hinting that the cabinet is not true to their words in Figgis' eyes. A level of distrust and frustration towards the cabinet could be seen to have taken place here, at the very least from Figgis' part. A disruption of the desired deliberative nature of the Oireachtas together with the strong

²²³ Blythe, Dáil Éireann, 3/10/1922, Proposed new article.

²²⁴ Blythe, Dáil Éireann, 3/10/1922, Proposed new article.

²²⁵ Blythe, Dáil Éireann, 3/10/1922, Proposed new article, "The Committee will sit and pass sentence on the Executive, and the Executive will have no power to vote there. The members of the Executive are expressly excluded from membership".

²²⁶ Figgis, Dáil Éireann, 3/10/1922, Proposed new article, "The amendment definitely says 'Provided always that the Committee of Public Safety shall not have power to deal with any of the following matters:—To impose any new taxes, or to change in any way the financial provisions enacted by the Parliament/Oireachtas'".

²²⁷ Figgis, Dáil Éireann, 3/10/1922, Proposed new article, "it is hardly in keeping with the pledge given us at an earlier stage, that the vital parts of the Constitution were the only parts on which the Government would put on its Whips".

implications for responsibility and parliamentary sovereignty had this debate focused on how the system could be endangered by the suggested committee.

As a part of deliberation, the ability of the Dáil to guard itself against deputies' and ministers' crossing acceptable borders was valued at the same time while free speech was emphasized. Threats to the positions of the houses of the parliament or the executive council were taken seriously as this was argued to focus too much power on a small entity that would not go through the otherwise necessary and valued deliberative processes.

5.3 Seanad's and Dáil's roles and functions in the Parliament

Deliberation as a concept is also connected to how parliamentary democracy is followed in practice, through its emphasize on the need to argue and debate a state's policies thoroughly. In the Dáil's constitutional debates this was visible for example through debates on how the Dáil and the future Seanad were to be constructed and function to create as efficiently as possible while still offering enough time and expertise for the state's needs to be met. These views circulated around topics such as the legislative process and the division of powers and between the houses of the parliament.

An article setting the terms regarding legislation between the houses of the Irish Parliament entailed that the Dáil, also referred to as the Chamber, would send its approved bills forward to the Seanad, which may suggest amendments to the bill but cannot nullify the bill or postpone it indefinitely but by 270 days²²⁸. Ultimately, the Dáil would decide if the suggested amendments by the Seanad were to be accepted. The article also included a point that only the Dáil may make decisions about monetary bills. It was introduced by Minister O'Higgins who stated that "The purpose of this article is to keep the power of the purse absolutely with the Lower Chamber, absolutely with Dáil Eireann.²²⁹", thus stressing the idea that the Dáil was to remain with great legislative power especially concerning monetary bills.

The idea of bills as a privilege of the lower house of a bicameral parliament has roots in European parliamentarism. This idea was for example followed in the British parliament where the characterizations of the lower house being the main legislative entity were also prevalent after the

²²⁸ Dáil Éireann, 4/10/1922, Article 37, in the final constitution this was Article 38.

²²⁹ Kevin O'Higgins, Dáil Éireann, 10/4/1922, Article 37.

1911 Parliamentary Act²³⁰. This role has also been characterized to signal the lower house as the one following people's will, which was also believed in the Dáil as is evident from the members' arguments for this power.

The Seanad was seen to have a special task regarding legislation. O'Higgins argued that having the Seanad check and make recommendations for amendments even for money bills is beneficial for Ireland as he stated the Seanad would have many members who are very experienced with national-level monetary issues²³¹. Here the ideal of the parliament serving the country is thus being referred to with the bicameral system receiving defense from O'Higgins. He could be seen to have expressed a level of appreciation for the Seanad with his words, characterizing it as an advisor with knowledge.

The Seanad's ability to delay a bill for 9 months was seen in a positive light by some. It was suggested to function as a means of preventing too hasty law-making for example²³². It was also stated by O'Higgins that this period would allow a careful inspection of the bill in the cases a controversial or large bill is in question by saying:

an Upper House will be slow to exercise that delaying power and will only exercise it where the matter is a gravely controversial one, and one on which there will be considerable difference of opinion through the country. In cases of that kind nine months' reflection or nine months' controversy may lead to useful amendments or perhaps to wiser counsels; but in any case, if cannot do any very serious harm.²³³

Thus, O'Higgins defended the period with expressions that it would only serve Ireland and not cause serious harm even on the occasions that it is put to use as he described these to take place rarely. The benefit of the whole nation from the two-chamber parliament was emphasized and it could be seen to have been viewed as a way of preventing a tyranny of the majority, which has been said to be a threat in parliamentary democracies as well as direct ones²³⁴. Thoughts similar to these were present elsewhere in Europe too, as two-chamber parliaments were said by many politicians and political scientists to serve this purpose of prevention and guidance²³⁵. In France for example the early half of

²³⁰ Beyen & Velde, 2016, 83.

²³¹ O'Higgins, Dáil Éireann, 4/10/1922, Article 37, "it is agreed that you are likely to have in the Seanad men of considerable capacity and men of financial experience, and the discussion of Money Bills in the Seanad might be of considerable advantage both to the Dáil and the country".

²³² O'Higgins, Dáil Éireann, 4/10/1922, "Seeing that that is the chief purpose of a Second Chamber, it is intended as a check on hasty legislation".

²³³ O'Higgins, Dáil Éireann, 4/10/1922, Article 37.

²³⁴ Madison [1787] 2003, 44; Mill [1859] 2011 9–10.

²³⁵ Donahoe 2002, 48, "Those who favour bicameral systems will say, yes, legislation can be passed more quickly in a unicameral parliament; in fact, too quickly. There is often no time for public awareness to be raised and successful

19th century saw some ideas of restricting the people's ability to influence politics, since a majority of the people were considered too immature by some²³⁶. However, the country established universal male suffrage in 1848, which has often been seen as a milestone in the development of democracy in Europe. The example shows that ideas concerning the possible cons of democracy and the people's right to decide were a part of parliamentary debate in Ireland as well.

Concerning the debate on the already mentioned article on bill-passing, O'Higgins' suggested period of 9 months the Seanad could use to delay a bill was resisted by Gavan Duffy from the Sinn Féin party, who said that it would be too long. Duffy also made a remark that there could be a possibility that the Seanad would not return a bill back to the Dáil if they did not agree with its contents and wanted to prevent it²³⁷. This showed a worry over the functionality of the bill-passing system and it introduced a scenario that would hamper the power of the Dáil and disrupt the order of the deliberative assembly. It was suggested that adding a line would make it compulsory for the Seanad to return the bill to the Dáil²³⁸. A proposal that the deadlines for when a law would be deemed passed by the Dáil should be made clearer in this and other articles too was also brought up²³⁹. This then led to some more debate regarding the forming of legislation, as a concern over possible halting of bills between the houses was raised.

The mentioned suggested possible problems in the legislation system of the Oireachtas received attention in the constitutional debates. With the Dáil wanted to be seen as a tool close to the Irish people and one of the very desired ways to make the nation's decision-making power come from the people via representation, the scenario of the Seanad halting a bill would have been a challenge for justified and functional parliamentary democracy for many. The topic also deals greatly with the practicalities of parliamentarism which ties to the people's power. Here Duffy for example seemed to be on the side of parliamentary democracy as he did not suggest direct democracy or anything else to take its place, but he pointed towards a few possible problems it could have. This idea of making

lobbying against certain measures to convince a government to amend or delay the measure. Sober second thought does not happen, and as a result flawed or unpopular legislation sometimes result".

²³⁶ Anceau & Garrigues 2016, 55.

²³⁷ Duffy, Dáil Éireann, 4/10/1922 Article 37, "You may have a row between both Houses over a particular bill, and a slight change in wording now would make it perfectly clear that the Seanad is not entitled to hold up the passing of a Money Bill by refusing to return it".

²³⁸ Duffy, Dáil Éireann, 4/10/1922, Article 37, "If you provide that the Seanad may retain the Bill for not more than 14 days, whereupon the Dáil shall proceed, or something to that effect, instead of using the words "shall be returned," you get over the difficulty".

²³⁹ Duffy, Dáil Éireann, 4/10/1922 Article 37, "I think it would be desirable to make it perfectly clear exactly at what date a bill is deemed to be passed. Where a bill is deemed to be passed, unless you make your wording quite clear, nobody will know from what precise date the ninety days start running".

the deadlines clearer could also be seen as a sign of worrying about unclarity in the laws and the possible resulting limitation of bills by the Seanad or some other actor elsewhere.

The possible scenarios regarding bills being stuck somewhere in the legislation process could have been drawn from some historical examples from Ireland or abroad. As was done here by Duffy, these instances could be seen as very detrimental to parliamentary democracy and they were used as reasons to both criticize and enhance parliamentary systems. In an earlier debate the chairman of the Labour Party Thomas Johnson had made a reference to Poyning's law, describing it to have been a law that allowed the British to halt legislation attempted by the Irish²⁴⁰, showing that there were felt experiences of such a problem.

The time period Seanad could use to hold monetary bills during an inspection was also discussed from different points of view with deliberation visibly being a sought-after goal. Concerning the Article, the independent Darrell Figgis proposed an amendment which suggested that the period which the Seanad could hold monetary bills for inspection would be extended from 14 days to one month²⁴¹. Figgis argued that with the Seanad containing people that are experienced with national monetary values, the chamber should be allowed more time to carefully examine the bill to give as helpful amendment proposals as possible. Here again the Seanad's role as a guiding and assisting house that helps to deal with the nation's issues and Dáil's bills was brought up. The two-chamber system thus received support from Figgis too as a means of getting knowledgeable and helpful people in a useful position for the whole country's sake.

The means of direct democracy were left out of all the bill-passing debates. This could be partly explained by for example the Anglo-Irish Treaty which already entailed that the Irish Free State would have a parliament to form its laws, as had been vouched for by the Irish side during negotiations²⁴². Yet it can also be seen as an indicator of how direct democracy was seen as an outsider to these questions, perhaps due to practical issues like time and money²⁴³, even while the new state had shown desires for great self-determination directly from the people.

Having adequate time in a parliamentary decision-making was something that the deputies and ministers were worried about. As mentioned, for example Figgis argued that a short deadline might

²⁴⁰ Johnson, Dáil Éireann, 18/9/1922, Bill to enact constitution, "only such Bills could be passed as had been submitted to the King and Council of England and approved by them before the Irish Parliament was even summoned.", as he referenced Michael MacDonagh from *The Irish Times*.

²⁴¹ Figgis, Dáil Éireann, 4/10/1922, Article 37, "- substitute instead of the words 'at a period not longer than fourteen days after it shall have been sent to the Senate' the words 'at a period not longer than one calendar month after it shall have been sent to the Senate'".

²⁴² Anglo-Irish Treaty 1921, Article 1.

²⁴³ More on this in Chapter 6.

in some cases make a decision too rushed and poorly considered by those who could otherwise be knowledgeable about the subject²⁴⁴. This was by Figgis feared to take place in the Senate, the Seanad, which was desired to be a good institution for cooling down the decision and bill-making process. Here the practical and actual functions of the Parliament were seen as a possible weak point of democracy if proper time was not ensured by constitutional legislation.

The Dáil's President and the Minister for Finance William Cosgrave replied to the requests of changing the time period of money bills by stating the Seanad will be able to handle a money bill in 14 days by prioritizing it over other matters if necessary²⁴⁵. He also added that making the period longer could mean that money bills could be delayed unnecessarily²⁴⁶, going in turn against deliberation through breaking the desired effectiveness. This way Cosgrave made an effort to use practical questions to support the original article. These arguments could also have been aimed at calming the raised concerns while also gathering support for the government's work and their stand on the articles.

The concerns over adequate time did receive some support which also helped move this proposition over to later consideration. Gerald Fitzgibbon, an independent actor, took part in the debate by suggesting that Figgis' concerns over the 14-day period not being enough in all cases for the Seanad could be fixed by adding an amendment that this period could be agreed by the Dáil to be extended if such a need ever rose²⁴⁷. This, while still stressing the need for adequate time for deliberation, also was an example of negotiating a form of compromise, which in itself can also be a deliberative action.

It has now been shown that deliberation was valued and followed in the Dáil's constitutional debates. It was demonstrated in practice through the processes the actors took place and it was used in debates regarding for example what was deliberative conduct and what was an obstacle to it. The Oireachtas was expressed directly to be a deliberative assembly and this was visible in the way the Dáil and the Seanad were characterized to function. Deliberation formed another key part of how democracy was formed in Ireland with the attitudes of anti-party politics also fueling this sought-after practice.

²⁴⁴ Figgis, Dáil Éireann, 4/10/1922, Article 37, "A Money Bill might go to the Seanad dealing with some complicated question of finance, where a fortnight would not be adequate for its consideration and discussion".

²⁴⁵ Cosgrave, Dáil Éireann, 4/10/1922, Article 37, "If a Money Bill sent to the Seanad for recommendation does not take precedence of any Bill which may happen to be before them it cannot be of very great importance".

²⁴⁶ Cosgrave, Dáil Éireann, 4/10/1922, Article 37, "- there are other occasions upon which it may be necessary to impose taxation, or something of that sort, immediately, and one loses a fortnight of valuable time".

²⁴⁷ Gerald Fitzgibbon, Dáil Éireann, 4/10/1922, Article 37, "Could you not meet the view of Deputy Figgis by putting in the Bill 'not more than fourteen days, unless the time shall be enlarged by the Dáil'?".

6. The practicalities of parliamentarism vs. ideal direct decisions by the people

The draft of the Constitution of the Irish Free State was based on the idea of popular sovereignty, setting a difference from the British model as examined previously. The legislative and administrative branches of the Free State were nevertheless to be based on parliamentarism through the Oireachtas and the Executive Council, the cabinet. Despite the commonly shared ideas that this would allow popular sovereignty to be followed even without direct decisions by the people in all cases, the Constitution was to include articles that established a form of direct democracy by allowing referendums even on the constitutional amendments made by the Dáil. The constitutional debates contained differing ideas on what kinds of questions could be answered through representative democracy and which should be solved with direct democracy. This chapter will analyze the debates regarding articles that were to establish the means for direct democracy, bringing up how these solutions would have interjected with the authority of the Dáil, why direct democracy was argued to be a good solution and why not regarding the matters brought up in the debates.

Comparisons between parliamentary and direct democracy and their pros and cons became more manifested in the debates regarding the article's of direct democracy. Previous research has described different topics parliamentary democracy has been criticized for, which Gijsenbergh (2015) for example has divided into criticisms of actors and the representative system itself. By critics of parliamentarism, it has been argued for example that the representatives can seek to only serve their own interests and that parties can be too strong influencers in representative politics²⁴⁸. Representative democracy had been discredited by for example the Boulangist movement in late 19th century France, which was concerned about corruption, vain and too long discussions but also theorized that adequate popular sovereignty could not be achieved by representation²⁴⁹. The Dáil's debates can be seen to contain some similar problematizations when the parliamentarians discussed how direct democracy would precisely function in the state. Direct democracy was not to fully take the place of parliamentary democracy by any means, but with certain questions it was seen by some participants as a guarding element against the introduced possible problems regarding parliamentarism. With some other topics parliamentarism was however seen as a better solution.

²⁴⁸ Palonen & Rosales 2015.

²⁴⁹ Vaarakallio 2008.

The constitutional articles which directly established the principles and practicalities of direct democracy were discussed in the later stages of the constitutional debates. The articles were in a numerical order and the ones concerning direct democracy directly started from Article 46 on the 5th of October.

6.1 Constitutional referendums to bring power to the people

The first of the articles establishing direct democracy stated that for seven days after the passing of any bill, two-fifths of the Members of the Dáil or a majority of the members of the Seanad may vote to suspend a bill for ninety days. During this ninety-day period the bill “shall be submitted by referendum to the decision of the people”²⁵⁰ if demanded by an adequate proportion of the Seanad, by a resolution of the Seanad or by a petition signed by one-twentieth of the voters. The decision of the people was then declared to be conclusive²⁵¹. This way the Constitution of the Irish Free State was to include quite detailed ways for the Irish people to directly influence legislation, similarly to for example ideals included in the constitution of the Weimar Republic and ideas brought forward by German leftists²⁵². Ideas against parliamentarism often contain in some form the argument that politicians cannot represent the people well enough, that some better way of representation might exist or that not having representation in between the people and the political decisions is better²⁵³, which also happened in the Dáil’s debates.

Exceptions to the people’s power to influence legislation was determined to be articles regarding monetary issues and matters concerning the “immediate preservation of the public peace, health, or safety”²⁵⁴. As Ireland’s monetary situation was difficult after the Independence War and during the then contemporary Irish Civil War, this distinction became even more understandable in addition to the traditional aspects of it, as monetary issues typically were wanted to be solved by the representative parliament. It also hinted that the parliament was seen as the better way of handling urgent matters.

²⁵⁰ O’Higgins, Dáil Éireann, 5/10/1922, Article 46, Note: in the final constitution this was Article 47.

²⁵¹ O’Higgins, Dáil Éireann, 5/10/1922, Article 46, ”-and the decision of the people on such referendum shall be conclusive”.

²⁵² Biefang & Schulz 2016, 70–71, To resist absolute parliamentarism, the Weimar Republic had possibilities for referendums but also strong presidentialism; Ihalainen 2018, Many radical leftists in Weimar aimed at direct democracy, even demanding “the abolition of distinctions between the governing and the governed”.

²⁵³ Palonen 2016a, 221.

²⁵⁴ O’Higgins, Dáil Éireann, 5/10/1922, Article 46.

In his introduction of this article the Minister for Home Affairs O'Higgins mentioned that articles comparable to this exist in Australia, the United States of America and Switzerland²⁵⁵. He stated that it would be fitting for Ireland as well, stating,

It will impress on the people more forcibly perhaps than would otherwise be the case that henceforth the law of this country is their law, is the creature of their will, is something which they can make, alter, or repeal, as it seems best to them.²⁵⁶

This way it was argued that the participatory element direct democracy would give the people would then have them affecting their nation very visibly and concretely via the referendums, making them see themselves as the users of power. The concept of popular sovereignty with the people as the entity wielding power was very strong in this statement along with ideals that it would perhaps calm the sceptic attitudes towards the government²⁵⁷. Participation in democracy is often seen as very important with the chances and actual fulfillment of it being valuable questions O'Higgins also used here to argue for this article. Thus, here the participatory and ideologically valued sides of direct democracy were used as reasons to utilize it, in addition to ideas that it would help the people see themselves as the actual entity in power.

Many other arguments advocating for direct democracy were introduced by the Minister for Home Affairs O'Higgins too, for example when he stated,

That personal actual contact between the people and the laws by which they are governed is advisable in a country which is passing out of a condition of bondage and a country where the traditional attitude of the people is to be against the law and against the Government. The referendum, we consider, will be a stimulus to political thought and the political education of the people.²⁵⁸

This quote contained a couple different views. Firstly, it seemed to refer to the ongoing situation in Ireland as a "passing out of a condition of bondage" as Ireland was just in the process of establishing itself an independent state from under long British rule. This expression also referred to this rule in negative terms, as the "bondage" expressed feelings of being tied to the British Empire. Secondly, there was the part about what he according to his words perceived to be "traditional attitude against the law and against the government". This does not necessarily mean that O'Higgins was criticizing

²⁵⁵ O'Higgins, Dáil Éireann, 5/10/1922, Article 46, "The referendum is a feature of the Constitutions of Australia, America and Switzerland. It is, we consider, particularly suited to this country, in the circumstances of the time".

²⁵⁶ O'Higgins, Dáil Éireann, 5/10/1922, Article 46.

²⁵⁷ This has also been noted as a possible motive by Cahillane 2016 and Mohr 2010.

²⁵⁸ Kevin O'Higgins, Dáil Éireann, 5/10/1922, Article 46.

the Irish people, as it could be a more neutral-tone or even a sympathetic reference to how the time under the British rule in his eyes has affected the Irish population and made them sceptics of their own governments. This makes the historical context around the debate important. With these points it could be suggested that O'Higgins wanted a positive welcome from the Irish public while arguing for direct democracy as a way for them to influence their new state.

The last sentence of the previous quote contained different forms of benefits that have been suggested to stem from direct democracy. There O'Higgins argued that the possibility of a referendum gets the people more interested, invested and in-the-know of their national politics. The fulfillment of this idea would thus make people more conscious politically and perhaps help the completion of legitimate and thought-out politics. This element of participation was strongly favored by O'Higgins in his speeches, and he would use it to express support for the other articles creating direct democracy as well.

It is interesting that in this Article the Seanad became the more powerful entity, as it along with an adequate amount of the voters demanding a referendum, had the sole possibility to launch a referendum via the second step of the Article, after the initiation of the ninety-day period.

6.2 Mandatory or optional referendums and participation

According to a later article the Irish government had the obligation to allow referendums to create proposal for laws and constitutional amendments or be forced by the people via separate motions to conduct these referendums after a period of two years²⁵⁹. Motions that would force the government to hold referendums were written to require a hundred thousand signatures by Irish voters. Like with the previous article, the minister for home affairs O'Higgins emphasized the implications for democracy this article would bring by stating that, "it keeps contact between the people and their laws, and keeps responsibility and consciousness in the minds of the people that they are the real and ultimate rulers of the country"²⁶⁰. This statement had a direct reference to the concept of popular sovereignty especially with the notion that the people were to be the ultimate rulers of the country,

²⁵⁹ O'Higgins, Dáil Éireann, 5/10/1922, Article 47, "The Parliament/Oireachtas may provide for the initiation by the people of proposals for laws or constitutional amendments. Should the Parliament/ Oireachtas fail to make such provision within two years, it shall, - either make such provisions or submit the question to the people for decision in accordance with the ordinary regulations governing the Referendum".

²⁶⁰ O'Higgins, Dáil Éireann, 5/10/1922, Article 47.

but it also again emphasized participation and the people's own responsibility in politics. This way it seemed to vouch for the Irish people's right to have an effect on their nation's affairs.

The precise requirements for the number of voters needed to begin a referendum was debated to some extent. Criticism was raised by the Labour Party's chairman Thomas Johnson who questioned the idea that after the period of two years the motion of a hundred thousand voters would still be required to amend the constitutional articles²⁶¹. Johnson also added that he believed the requirement of a hundred thousand voters to be too much as he argued that rallying so much support would be too difficult even concerning matters that are important for many of the Irish population²⁶². This way he could be seen to have emphasized the importance or desirability of the constitutional referendums as mandatory parts of the Irish constitutional legislation. These proposals could have been viewed as protection of direct democracy and as a prioritization of the people's power. Whether these views were connected to fears over possibly "bourgeoise" parliaments as many socialist and other parties on the left in Europe feared is difficult to say but it is one possibility²⁶³. His arguments, similar to O'Higgins', were also shaped as to appear to the Irish people as a whole, vouching for their power and their right to govern themselves.

The government's ministers drew on ideas concerning practicalities and a level of fear of "forcing democracy" when debating the requirement for voters to begin a referendum. The Minister for Local Government, Ernest Blythe responded to the criticism regarding the vote requirement by stating that the desire and capabilities for constitutional reforms in a two years-time cannot be known in advance, making the original articles requirement for a motion in case of government reluctance more convenient²⁶⁴. It can be seen that Blythe used practicality and uncertainty as arguments against making the referendums mandatory. The independent deputy, Gerald Fitzgibbon also raised a worry that with Johnson's amendment the people could be forced to partake in referendums they had no desire to take place in the first place²⁶⁵. This way Johnson's proposal was argued against by the concepts of legitimate and popular practices, making again an example that the different sides used

²⁶¹ Johnson, Dáil Éireann, 5/10/1922, Article 47, "We say in the clause as drafted that Parliament may provide for the Initiative, and, if it fails, then there must be a petition of 100,000 voters to insist that Parliament shall provide. That surely is not a reasonable proposition".

²⁶² Johnson, Dáil Éireann, 5/10/1922, Article 47, "- I submit that the numbers are too high in the present form, and could well be divided by 2 to make it practicable".

²⁶³ Eley 2002; Ihalainen 2018, 168–170.

²⁶⁴ Blythe, Dáil Éireann, 5/10/1922, Article 47, "We cannot tell what the Parliamentary history of the next two years may be. It may be impossible for it to undertake the passing of a law establishing an Initiative".

²⁶⁵ Fitzgibbon, Dáil Éireann, 5/10/1922, Article 47, " if the people do not want this thing, and you put a compulsory provision in the Constitution, with or without a time limit, Parliament must provide it even against the will of the people, and it will be extremely difficult, as was pointed out on many occasions before, to get an alteration in the Constitution".

slightly different points of view to back up their suggestions but often drew their arguments from some way of defending democracy and the people's rights.

There was also a proposal that the amount of voters needed for a motion that forces a referendum should be halved from the amount in the original article, making it so that a motion signed by fifty thousand Irish voters would start a constitutional referendum²⁶⁶. O'Higgins argued that the original higher limit was better since referendums were time-consuming and expensive²⁶⁷, making it impractical to have them as often as the limit of fifty thousand voters could make. Practicality, money and time were thus used as arguments against having referendums on what was thought to be a too common basis by some. Johnson argued that the citizens would not overuse this right if they knew of its expense for the state, stating that there were examples of such an arrangement not being used too often²⁶⁸. He also stressed that its value in educating the people politically would outweigh the cost²⁶⁹. This suggestion of lowering the required amount of votes for the motion did end up being voted on in the Dáil but it did not receive enough support and thus was rejected²⁷⁰.

In this debate the Labour Party and the independent Darrell Figgis were greatly in favor of getting the Irish people more involved in Irish politics by the use of direct democracy. The cabinet's members did not express desires of wanting to shut the people out of the state's affairs, as they for example highlighted some believed benefits of participation, but they stressed that the monetary and alternative costs of too many referendums would make them impractical. It is plausible that the Labour Party's members were quite confident direct democracy would to a good extent follow the party's lines via the support of the Irish laborers, while the executive council's members could have perhaps placed trust in the Catholic majority being in their favor.

²⁶⁶ Johnson, Dáil Éireann, 5/10/1922, Article 47, "The further amendment is, to be short, to divide the numbers that are mentioned here by two, to make 100,000 as the number of necessary signatories to a petition 50,000, and to make the number 20,000 in line 6—that is 'of whom not more than 20,000 shall be voters in any one constituency' 10,000".

²⁶⁷ O'Higgins, Dáil Éireann, 5/10/1922, Article 47, "But, in view of the great expense to the State that each Initiative will involve, we do not consider it unreasonable to ask for these other figures further down in the Article".

²⁶⁸ Johnson, Dáil Éireann, 5/10/1922, Article 47, "But the very fact that it would cause a great deal of expenditure on the part of individuals, or groups, or parties, would prevent the too frequent use of this privilege."; "—in the one country which has been so often quoted in favour of the Initiative, its experience since that reform was introduced is that it has not been used with undue frequency".

²⁶⁹ Johnson, Dáil Éireann, 5/10/1922, Article 47, "therefore expense is not a matter of very great moment, especially if one is prepared to consider the real educational value, in a political sense, of the agitation for an Initiative".

²⁷⁰ Dáil Éireann, 5/10/1922, Article 47, the amendment received – votes in support and – votes against it.

6.3 Who knows better? – War referendum or parliamentary action

Popular sovereignty and responsibility became apparent in the debates again regarding what was to be Article 49 in the final Constitution, as according to it going into a state of war would require the acceptance of the Irish Parliament, the Oireachtas. This was argued by the Minister for Home Affairs Kevin O’Higgins to provide fast enough reactions to threatening military situations as he said that having referendums on such matters would take too much time²⁷¹. Darrell Figgis, an independent deputy, soon came forward with a highly opposing view when he stated that the people should in fact be the one and only authority that decides when the nation should go into war, except in the case of an invasion, and that this decision was to be done via a referendum²⁷². The proposal for a referendum before war was quite different and unusual in a larger European context as well, but possibly reflected Ireland’s experiences from the First World War.

Figgis’ arguments seemed to draw partly on Irish experiences under British rule. He emphasized that this quite unusual practice of direct democracy would be done in cases where the war was elsewhere than on the Irish island²⁷³. He stressed that the people would be the one who would bare the most amount of weight and take most of the damage during a war, so that they should be the one entity that accepts war²⁷⁴. This could be tied to experiences that the Irish as a part of the British Empire and the UK had been dragged into wars unnecessary for themselves most recently with WWI, although it has been argued that even many Irish participated voluntarily as the war was at first popular²⁷⁵. Nevertheless, this was quite a different view on direct democracy and such a model of a referendum on wars, or a war referendum, has never taken place. The ideas included in Figgis’ proposal were also introduced elsewhere such as in some ideals by US President Woodrow Wilson and some ideas introduced in the British Parliament regarding internationalistic thoughts, according to which

²⁷¹ O’Higgins, Dáil Éireann, 5/10/1922, Article 48, ” We choose Parliament there in that Article because war is almost invariably a matter of sudden emergency.” ; ” Therefore, the assent of Parliament rather than referendum of the people was chosen by the Government for insertion in that Article”.

²⁷² Figgis, Dáil Éireann, 5/10/1922, Article 48, ”I beg to move as an amendment:—’To substitute instead of the words ”without the assent of the Parliament/Oireachtas,” the words ”without the assent of a majority of the voters on the Register obtained on a Referendum.”” ; ”- the actual decision for war should be actually with the people, except in the case of invasion”.

²⁷³ Figgis, Dáil Éireann, 5/10/1922, Article 48, “Therefore the decision in that case should be given by the people themselves. Let them decide whether this war outside Ireland is a war in which they desire or do not desire to participate”.

²⁷⁴ Figgis, Dáil Éireann, 5/10/1922, Article 48, “It is the people's children who will be lost in that war; it is the people who will have to bear the privations of the war, and it is the people will ultimately have to pay the cost of that war”.

²⁷⁵ For example Pelling 2003, 69, “The great rush to join up when war broke out in 1914 is only the most famous example of a general idea around that war helped men to realise their manhood and helped nations to do the same”.

politically educated people would form an international public opinion that would end all wars²⁷⁶. The proposal sparked debate and a few of the views that came forward would tie into the views that were strong elsewhere in Europe as well when it comes to rejecting such strong direct democracy.

One of the most prominent speakers against Figgis's amendment proposal was Minister O'Higgins who stated that a referendum would take too much time if it were to be taken with the threat of a war being close. He for example suggested that this might give a possible enemy time to prepare their moves against Ireland²⁷⁷. The minister for home affairs also stressed that the Parliament would be very likely to be agreeable and co-operative with the Irish people when it would come to a question about war by stating that, "We consider that there is no matter on which the Government and Parliament are more likely to keep at one with their people than on this matter of peace and war"²⁷⁸.

Thus O'Higgins advocated for parliamentary democracy concerning this matter of war time and peace time. According to his words he viewed parliamentarism to follow the people's interests quite well with a topic such as this. O'Higgins's speech also hinted that sometimes the Parliament might not quite keep at one with their people as he specifically mentioned this topic to be something that would do that. Related to this, O'Higgins also mentioned that he believed that if a parliament were to take its people into wars they did not want to go to, that parliament would not stay in effect for very long²⁷⁹. This way the necessity for referendums concerning wars was debated to be unnecessary in addition to being time consuming, while Figgis stressed it as an instrument of equality and a tool of power for the people.

The previous argument by the Minister of Home Affairs O'Higgins was criticized by the chairman of the Labour Party Thomas Johnson who stated that if a nation was to be dragged into a state of war against the people's will, the disbanding or reforming of the institutions that did so would not matter as much as the damage of the war would have at least partly taken place at that point²⁸⁰. It was also argued that referendums could be conducted in a week's time so that they would not have been as impractical timewise as O'Higgins suggested²⁸¹. This way direct democracy was emphasized to be

²⁷⁶ The contesting ideals off nationalism and internationalism after WWI as handled by Holmila & Ihalainen 2018.

²⁷⁷ O'Higgins, Dáil Éireann, 5/10/1922, Article 48, " - a Referendum which may last some months and with the enemy looking on, and, so to speak, counting the votes and going ahead with his particular preparations -".

²⁷⁸ O'Higgins, Dáil Éireann, 5/10/1922, Article 48.

²⁷⁹ O'Higgins, Dáil Éireann, 5/10/1922, Article 48, "The Parliament that will declare war against the wishes of its people will not last two months having done so".

²⁸⁰ Johnson, Dáil Éireann, 5/10/1922, Article 48, "I mean to say Parliament gets the country into war, then the fat is in the fire and there is no use talking about retrieving one's self".

²⁸¹ Johnson, Dáil Éireann, 5/10/1922, Article 48, "You will have to provide machinery for taking a Referendum perhaps within a fortnight, perhaps even within a week, and it will always have to be ready for action, so we should not let our minds be swayed by a thing like this —by arguments of the impracticability of taking a Referendum in the case of war".

a possible solution regarding war that would serve the interests of the Irish people²⁸². Popular sovereignty was visible here through this stresses on the benefit of the people and the demands for their power.

With his intervention regarding this article Johnson could have been showing support for Figgis' proposition, but he could have also only taken part in a deliberative manner to bring up some possible arguments without necessarily agreeing with them himself. If Johnson was in support of this proposal, then the Labour Party would seem to have been even more in favor of a heavy role for direct democracy, even stretching to some extent to suggest a war referendum.

O'Higgins later stated having a war referendum could be a good thing in some ways, but that he did not see it as practical to be adopted in Ireland at the time. He said that,

Well, if you can have that adopted in all countries it might be a very good thing, but if you adopt it here and if it is not adopted in other countries then you are bringing about a state of affairs where you have the dogs tied and the stones loose and you will regret it.²⁸³

This sentence contained a criticism of the suggested war referendum with O'Higgins seemingly describing it as too idealistic and naïve. Having the dogs tied and the stones loose are expressions that mean that one has their guard down so here it was apparently suggested that the practice of a referendum concerning war would make Ireland vulnerable. The first part of the sentence contained the phrase that if the model were to take place everywhere else, it would be great, but this was not the case and O'Higgins seemed to think that neither would it be that in the near future. Thus, according to this logic Ireland was seen to be better off not adopting such forms of action for their own safety, even if the models themselves were accepted as noble goals. Here again direct democracy was seen as a good goal but with limitations that were viewed to make it too difficult for some occasions, also reflecting the more nationalistic thought regarding the mentioned question of whether or not the people's of the world's nations could together abolish wars.

An attempt by Figgis to pose a pressure of some kind onto the Dáil also became quite visible in the debate concerning a referendum before war. This was when he stated that, "I do not believe that any Deputy here, if he voted in accordance with what his own people would like to see done, would vote against this amendment"²⁸⁴. This way he argued that those who did not want to vote for this

²⁸² Figgis, Dáil Éireann, 5/10/1922. Article 48, "– I may say that the practice in countries where the Referendum is employed, that from the decision to hold the Referendum until the obtaining of the final result, in most countries, is not more than 7 days".

²⁸³ O'Higgins, Dáil Éireann, 5/10/1922. Article 48.

²⁸⁴ Figgis, Dáil Éireann, 5/10/1922, Article 48.

amendment did not believe in truly following the people's will. This was quite a strong accusation but perhaps many did not see it as a fair argument but as a sort of entrapment, since Figgis's amendment proposition did not receive as a great deal of support as this argument perhaps suggested it to deserve.

Other nations were brought up as examples in this debate by the different sides to argue for their own suggestion. For example the independent Darrell Figgis argued that Woodrow Wilson, the president of the United States, won his nation's presidential election in 1916 with promises of avoiding the war in Europe but taking the country in the war three months after of these promises²⁸⁵. This way it was argued that the proposed amendment would help secure actual following of the people's will. Figgis's speech had a quite accusative tone and he stated for example that what he said was a "historical fact"²⁸⁶ heavily emphasizing his point of view as being correct. This also showcased the use of history and other nations' past political experiences being used in the constitutional debates. Like Figgis, Walter Cole from the Sinn Fein party argued for the referendum concerning the matter of going into a war by stating that Switzerland had such a practice and it avoided taking part in World War I²⁸⁷. This way the connections and interaction between the continent's nations concerning parliamentarism and democracy became apparent again.

Figgis responded to his proposition's critics by further arguments for the desirable ideals behind it. He argued for example that while referendums might take time and resources as the amendment proposal's critics were stating, he believed that it would function as a safeguard against the parliament should it want to serve its own interests by going to war²⁸⁸. Thus Figgis argued that the referendum would protect against the abuse of the parliament's power, showing and perhaps even drawing support from Irish people's common previous experiences and beliefs, which even O'Higgins, as mentioned before, had described to be against their own government²⁸⁹. Distrust in the parliament or possible misconduct by the parliament were here used as arguments to support direct democracy concerning

²⁸⁵ Figgis, Dáil Éireann, 5/10/1922, Article 48 "- the President of the United States was elected on a peace ticket, with the entire consent of the American people for avoiding participation in that war. Within three months he committed the nation to that war".

²⁸⁶ Figgis, Dáil Éireann, 5/10/1922, Article 48.

²⁸⁷ Cole, Dáil Éireann, 5/10/1922, Article 48, "Switzerland in the great European War succeeded in keeping clear all the time. It is the only country that, I take it, according to its Constitution, would have to have the matter decided by the people".

²⁸⁸ Figgis, Dáil Éireann, 5/10/1922, Article 48, "He also said that no Parliament is likely to conduct war unless it has the support of the people. That has been stated a thousand times from different platforms in this country, and the people of this country believed it when the representatives of the people in 1914 did commit this nation to war, which the nation did not at that time desire".

²⁸⁹ Referring to O'Higgins's words concerning Article 47.

war, with even direct references being made to the experience regarding WWI. This setting pitted the people quite directly against the parliament.

In addition to the arguments that saw the referendum-model for going into a state of war as too time consuming and expensive, other arguments drawing from the possible failures of direct democracy were also made. One of these was brought forward by the President of the Dáil and Minister for Finance William Cosgrave who at first stated alongside his ministerial colleague O'Higgins' views that having referendums caused "democratic sanctions", slowing Ireland down so that such an arrangement should only be adopted if it was more widely in use elsewhere²⁹⁰. It was also stressed that as a representative of the people's will, the parliament would function according to it²⁹¹. According to these views, having a referendum to decide about a war did not fully function as an element that would keep the nation out of a war, but might make Ireland more vulnerable to them while ignoring a parliament that was described to be capable of truthfully representing popular will.

Cosgrave's view was later followed by that Padraic O'Maille from the Sinn Féin who said that it was easier to sway the opinion of the general public in one direction than it was to sway the opinion of the Parliament, with him making a reference to Italy²⁹². This was linked to ideas of deliberation, that the parliament functions as a debating institution. Together these views vouched for a type of ideal parliamentary democracy that as a practical guarding element with functioned experienced politicians functioning as a barrier against sudden sways in public opinion. This way they carried similarity to the cabinet's views that vouched for the importance of the Dáil as a deliberative assembly and the role of the Seanad as monitor on hasty decisions. They also followed along some common criticisms of direct democracy, which was feared by some to allow the fulfillment of public wishes that might not consider the nation's interests or be fully aware of larger consequences. Beliefs in larger internationalization by following of the people's will were this way criticized as been recognized by previous research (Holmila & Ihalainen 2018). The parliamentary model did go on to become the one in use concerning the decision of war, showing that despite the many proclamations of popular

²⁹⁰ Cosgrave, Dáil Éireann, 10/5/1922, Article 48, "There appears to be a certain democratic sanction for asking the consent of the people in those cases; there appears to be a great case for getting every nation to accept the same principle with regard to it"; same debate, "- I think until there is a more general acceptance by other people who are likely to engage in a war of the principle of consulting the people that you ought not to take any risks with regard to the defences of the nation".

²⁹¹ Cosgrave, Dáil Éireann, 10/5/1922, Article 48, "When Deputies speak of the people having to be consulted they apparently forget that the Parliament in this case is in very close association with the people, understands the need of the situation, and are in a position to feel exactly the pulse of the people in a matter of that sort-".

²⁹² O'Maille, Dáil Éireann, 5/10/1922, Article 48, "I maintain there is a far greater danger of swaying a mob in favour of war than there is in the case of a deliberative Assembly. That happened in the case of Italy, where the Italian people were drawn into war by the action of the mob in Italy".

sovereignty within the Constitution and the debates, a degree of support for parliamentary sovereignty and the parliament's authority as a supreme entity was in place in the Dáil.

6.4 Direct democracy's fateful article

According to what was originally referred to as Article 49 but as Article 50 in the final Constitution, the Oireachtas could make amendments to the constitution but that in a five-years-time Ireland would have referendums on these amendments following the steps in Article 46²⁹³. In the debate Thomas Johnson from the Labour Party proposed that the referendums could come after a period of eight years or the time of two elected Dáils instead of five a five-year-period, arguing that this would allow more time to handle more pressing matters and not force the referendums on the Irish people²⁹⁴. This amendment was accepted, making the period the Oireachtas could make amendments to the Constitution and the Irish people were to wait before being able to vote on these amendments longer. Considering some of Johnson's and many of the Labour Party's previous statements vouching for large direct democracy, this particular stance can be somewhat surprising. It could however be like Johnson stated, that he viewed other matters to be more pressing instead of constitutional referendums.

The debate on this article had talk around the precise formalities of how the referendums were to be conducted. The members of the Dáil discussed that the Article must be very precise to allow the people to vote on multiple constitutional amendments in one referendum to save more time and to be practical²⁹⁵. This could be seen as an attempt to guarantee functional direct democracy. Here the concept of sovereignty was present as something accepted as the people's right to influence their nation was not debated, rather its means and the meanings it posed for the nation through its costs and time. Like with the many other articles concerning direct democracy here the ideals of direct democracy were weighed by the Dáil's members against practicality, the nation's wealth and time. It

²⁹³ Note: This was Article 47 in the final constitution.

²⁹⁴ Thomas Johnson, Dáil Éireann, 5/10/1922, Article 49, "- it is obvious, that constitutional matters will not be in the minds of the people if these other legislative demands are being attended to in the Parliament".

²⁹⁵ For example Duffy, Dáil Éireann, 5/10/1922, Article 49, " It is an amendment designed to show, what is obviously the intention of everybody, that on any Referendum you might have more than one amendment proposed to the people-" ; responded to by O'Higgins who believed that the Article allowed more than one Article to be included in a referendum, " We do not agree that the text as it stands or as it will stand, excludes the possibility of more than one amendment being put to the people-".

is quite interesting although perhaps not surprising that the notion that the parliament's actions and upkeep also cost the people some money and time was not brought up.

This article, despite how it characterized the referendums to become mandatory on the people's demand, would later become the one that would be used to disband the possibility for direct democracy in Ireland until the nation's new constitution in 1937. As mentioned, the Article contained the term that the Oireachtas could make amendments to the constitution. This part of the article was later used to amend this article's other key component, the constitutional referendums²⁹⁶, as when the time for the first constitutional referendums arrived in 1930 and the motions for these referendums were put forward among the Irish public, the Oireachtas and the cabinet were not cooperative and amended this article's eight-year period to a longer period²⁹⁷. Thus the original legal base for the referendums was taken away so that they became impossible to conduct. The article's amendment rights given to the Oireachtas were thus used to amend this article itself, in effect blocking direct democracy until the new constitution.

While examining this particular article, one might need to pull themselves a bit back from the temptation of judging the actions of the people in the Dáil. Many of the previous debates showed ideas that the deputies and the ministers wanted to create a democratic state where the Irish people could influence their own matters via the means of direct democracy, but this article which later turned out to be the one to put a stop to all these attempts and desires received little to no resistance in the Dáil. This was quite interesting but by looking at the debates and their context it can be easier to understand how this decision and the possibility it opened came to be. The turbulence of the time, what were seen as more pressing matters, preference to establish rights to act instead of making demands to act, and beliefs about what the future was going to be like led to these developments that probably were not anticipated in this Dáil. This later somewhat infamous part of the Constitution of the Irish Free State drastically shaped what the state was going to be like as it had a key part in cementing the loss of many of the democratic ideals behind the drafted Constitution.

²⁹⁶ Cahillane 2016, 156–157.

²⁹⁷ Cahillane 2016, 162–165.

Conclusions

This thesis has now gone through the third Dáil's constitutional debates from the perspective of how they debated democracy and its different forms. The debates spanned across a wide array of topics and many concepts concerning the division of power between the people, the parliament and the cabinet. It has been shown that concepts like sovereignty, representation, parliamentary responsibility and deliberation that previous research has established as key concepts for parliamentary democracy were visible in the Dáil's debates as well. Other democracy's concepts visible in the Dáil were participation and publicity, as the debates were on occasions very visibly oriented outside towards the public by their speakers and during some debates the ability of the Irish people to participate was brought up as an important ideal.

While the Constitution of the Irish Free State expressed that the foundation the state was going to be built upon popular sovereignty, ideas more connected to parliamentary sovereignty were visible in some of the deputies' and the ministers' expressed views. Parliamentarism of course played a large role in The Irish Free State as it had been established by the Anglo-Irish Treaty but the mentions of parliament as the sovereign and supreme authority slightly differed from the ideas of popular sovereignty, and they were not notified in all of the previous research. Since the French Revolution popular sovereignty has been theorized to be possible to follow in a representative democracy, but the problematics regarding how popular sovereignty is then fulfilled in practice is a topic that can be brought up even today. As the draft constitution brought to the Dáil's constituent assembly contained both parliamentarism and relatively extensive direct democracy, by offering Irish citizens a chance to vote on the Dáil's constitutional amendments and other laws for example, the setting between parliamentary and direct democracy was very visibly manifested. The forming of democracy's power relations within Irish Free State thus connects well to the larger field of ideals and concepts regarding democracy. The mentioned key concepts were sought after and used both in practice and as arguments in variable ways. Whether or not the visible thoughts on parliamentary sovereignty played any role regarding the decrease and eventual collapse of direct democracy in the Irish Free State through the lost ability to actually conduct referendums is not something that could be said for certain but nevertheless these views were present in the Dáil.

In the debates parliamentary democracy was especially vouched for regarding setting a difference from British rule, which was a key question in Ireland at the time with concerns over the British somehow remaining in control running rampant. The Constitution contained for example mentions

of the UK's ruler's and a very controversial oath for the Oireachtas members' to swear allegiance to that ruler, which some argued to lessen the sovereignty of the parliament and the state, while others stressed them to be mere symbols with the Dáil being the de facto sovereign authority. The legitimacy of the Oireachtas as an institution and the Dáil as the supreme authority elected by the people was this way connected to establishing independence from the British Empire, while protecting the Irish people's right to govern themselves through the parliamentary system.

The fact that some previous agreements with Southern Unionists and the British bound the Dáil in the constitutional debates to an extent was also argued by some to mean that the Dáil was not sovereign but especially the executive council stressed that this was not the case. These agreements were emphasized to not only be legitimate but also beyond control to an extent at that point in time, thus stressing that they should not be deemed to mean the Dáil to not be sovereign. Germany and Poland were mentioned to be examples of other sovereign nations that were created under similar conditions of binding treaties after WWI.

Suggested issues, goals, ideals and concepts regarding parliamentary democracy were used in the Dáil's actors' arguments as reasons to utilize, amend and guard parts of parliamentarism, but also as reasons to turn towards direct democracy in other cases. Parliamentary democracy was supported for example by arguments that it allowed deliberative decision-making by professional politicians. Through these types of notions it was argued by its advocates to be cost-efficient, quick and offer knowledgeable politics, which would have in turn served the interests of the Irish people.

The elections of the Dáil were determined to be done based on the single transferable model of proportional representation, which was argued to allow thorough representation even for minorities and give their interests visibility, stressing equality. Also regarding representation, an alternative for the model of territorial constituencies concerning elections was brought forward as a suggestion that the Seanad's members would be based on vocational constituencies. Vocational constituencies were argued by its advocates to help more competent politicians be elected as the people would not vote based simply on a political party. This idea is tied to models of corporatism, which were in Europe favored by some parties on the left, as was the case in Dáil with the Labour Party stressing this idea. While this suggestion did not pass, vocational councils were in turn accepted as a part of the constitution as they, similarly to the suggestion of a vocation-based Seanad, were argued to give the Irish people ways to affect their state's politics through easily understandable lines based on vocations.

The concept of responsibility was both used in arguments and in practice. It became apparent in practice for example through the numerous occasions on which the executive council needed to defend its stances to the Dáil, showing the Dáil as the entity the cabinet was responsible to. Responsibility of the cabinet was not questioned directly but the precise practices related to it were debated. Related to parliamentary responsibility, the topic of collective cabinet responsibility was challenged to an extent via the external ministers scheme. According to this scheme the Dáil could elect people from outside the Oireachtas to be ministers, who then would not be responsible to follow the executive council's lines, but instead would be responsible to the Dáil individually regarding their own departments. This was argued to lessen the role of parties in the state's politics and help ensure that the most competent citizens were elected ministers. Collective responsibility was still seen as important as others stressed that it was needed for a government to conduct its business in a working manner. The distinction between what ministry could be external and what did not receive full agreement either and it was also stressed by some that the executive council could in fact by its control of finances and the likelihood of having a large party in the Dáil affect the external ministers heavily.

The constitutional debates contained very visibly a desire to lessen the role of political parties and shrinking their sizes in the parliamentary system. The model of proportional representation, a repeated wish that party members did not have to agree with each other which was also visible in practice on many occasions, and the scheme of external ministers were means that were argued to help reach this goal of even eventually abolishing parties. Political parties were argued to lessen the independence and freedom of the Dáil's members, hamper deliberation in the debates, and they were connected to the British model of parliamentarism, which was heavily stressed as a bad model. Through these types of arguments, broad and open deliberation was expressed to be a great goal of the Oireachtas. Different stressed aspects of it, such as the rights of the parliament's houses to protect themselves, refraining from personal attacks, and the parliamentarians' immunity from arrest in certain cases further showed this emphasis of the concept, with it being seen as a requirement for open and well-considered decision-making. Deliberation was also followed in the basic practice of the debates, as differing viewpoints and emphases were brought constantly brought forward. It was not uncommon for deputies against their party's chairman's stance, so in a way, anti-party politics did have some success but it did not turn out to last as long as some had hoped.

In the debates direct democracy was often supported by stressing it to be a more justified form of democracy through ideas of popular sovereignty, by arguing that in time it would make the Irish people more conscious politically, and that it would allow participation to take place concretely. This way it was seen as a way of giving the Irish people a new way of influencing their state. Virtually all

the sides present in the Dáil seemed to agree that direct democracy would to an extent be a good thing to adopt and that articles containing it should be implemented, possibly because the actors were partly confident their interests and ideals would get support even with direct democracy and also possibly because direct democracy could have been seen as a factor that would help restore the population's confidence and trust in their governance after the long period of British rule. Giving the people possibilities to affect their own legislation and even the state's constitution via referendums were this way argued to strengthen and stabilize the political situation of the new state, while also being in itself a just procedure of popular sovereignty.

Despite being seemingly popular, the extent of how far direct democracy should reach in the Irish Free State was debated and aspects of direct democracy were criticized. Actors in the Labour Party especially and the independent deputy Darrell Figgis for example expressed desires for far stronger direct democracy than what the cabinet for example were willing to accept. Some of the visions regarding direct democracy contained similarities to views expressed by leftists in the contemporary Weimar republic, where some desired the boundaries between decision-making and the people to be abolished nearly entirely. In the Dáil's debates there were suggestions that the constitutional referendums should be mandatory instead of requiring a motion by an adequate amount of voters first, slightly implying a thought that otherwise they might be resisted or as was more directly expressed that it would be harder to start referendums due to the preliminary support requirements. This idea would have emphasized the Irish people's role in the forming of the constitution by allowing them to change the Dáil's decisions, but it was resisted and rejected due to concerns that it could force the people to partake in something they had no interest in, as it was suggested that the Constitution might not be the top priority of the Irish in any time period the Dáil could with good reason predict, while the referendums would also require a lot of time and money from the state.

The idea of a war referendum was another example of strong direct democracy brought forward in the Dáil, where the role of the parliament was wanted to be left aside, except in the case of an invasion of the Irish Free State. Switzerland was argued to be an example of a state that successfully avoided taking part in WWI due to its requirement of a war referendum. This idea of war referendums is argued to be connected to contemporary ideals regarding internationalism established from rule of the people, according to which having the people as rulers, wars could be eventually ended as the people would as bearers of wars' costs reject them. In the debates the Oireachtas was suggested by some to possibly drag the state into an unnecessary war, posing a problem for just parliamentarism. Critics of the war referendum did not agree that the desired end result of the motion was likely and stressed that national capacity to act quickly was more important. In the Dáil, Italy was expressed to

be an example of a nation that had gone into war by the will of the people, while the Oireachtas was then in turn stressed to allow more thought-out decisions that resisted mob rule and in a quicker and cheaper manner. This way the practicality and expertise suggested to stem from parliamentarism were also used as arguments against direct democracy, which would then be seen as time-consuming and expensive.

When direct and parliamentary democracy were pitted against each other in the constitutional debates some common lines could be spotted between the occasions. For example, direct democracy was often vouched to offer more justified power, political knowledge and participation for the people, while parliamentary democracy was stressed to be quicker and less expensive. For many aspects of the Irish Free State's political life, direct democracy was not as favored as parliamentarism despite many parliamentarians expressing appreciation for these ideas.

The debates on the Constitution of the Irish Free State showed that the Dáil had a multiplicity of differing views which were helped forward by the thoughts that the Oireachtas' members should be able to speak their minds on all occasions. Not only the drafted Constitution but the suggested amendments, some of which were of course left in the Dáil, demonstrated will for a democratic state that was also eager to try even quite new things for the time. Through this examination it has been seen that Dáil's members had appreciation for the key concepts of parliamentarism with also additional desires for direct democracy, some for more than others. The numerous kinds of ideals colliding together with realities and strong opponents however did not allow all ideas to succeed and some turned out not to work later on. Despite the Irish Free State being often remembered for the failures of its direct democracy in particular, the Dáil showed in its actions a desire to not only follow good parliamentary practice but an attempt to set the standards for that practice and democratic values higher than it had ever experienced. Like so many other democracies it was just at the start of a learning curve.

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Source:

<https://www.oireachtas.ie/en/debates/find/?debateType=all&datePeriod=dates&fromDate=9%2F9%2F1922&toDate=25%2F10%2F1922&term=%2Fie%2Foireachtas%2Fhouse%2Fdail%2F32&committee=&member=>

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