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## Estopped by Grand Playsaunce: Flann O'Brien's Post-colonial Lore

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*This article seeks to extend our understanding of the Irish writer Flann O'Brien (Myles na gCopaleen, Brian O'Nolan) by reading him from a Law and Literature perspective. I suggest that O'Nolan's painstaking and picky mind, with its attention to linguistic nuance, was logically drawn to the languages of law. In this he confirmed the character that he showed as a civil servant of the cautious, book-keeping Irish Free State. The Free State, like other post-colonial entities, was marked at once by a rhetoric of rupture from the colonial dispensation and by a degree of legal and political continuity. I suggest that O'Nolan's writing works away at both these aspects of the state, alternating between critical and utopian perspectives.*

*After establishing an initial context, I undertake a close reading of O'Nolan's parodies of actual legal procedure, focusing on questions of language and censorship. I then consider his critical work on the issue of Irish sovereignty, placing this in its post-colonial historical context. Finally I describe O'Nolan's treatment of Eamon de Valera's 1937 Constitution. I propose that his attention to textual detail prefigures in comic form the substantial rereadings of the Constitution that have been made in the last half-century.*

From its first appearance in the *Irish Times* on 4 October 1940, Myles na gCopaleen's *Cruiskeen Lawn* column was one of the ways that independent and neutral Ireland talked to itself, or at least was talked at.<sup>1</sup> Among the column's characteristic modes was the Catechism of Cliché. The following instance leads appropriately enough into the subject of law and its representation:

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1 On the column, see S. Young, 'Fact/Fiction: *Cruiskeen Lawn*, 1945–66' in *Conjuring Complexities: Essays on Flann O'Brien*, eds. A. Clune and T. Hurson (1997) 111–8; and J. Brooker, *Flann O'Brien* (2004) ch. 6.

What physical qualities have all barristers in common?  
Keeness of face and hawkiness of eye.  
Their arguments are –  
Trenchant.  
Their books?  
Dusty tomes; but occasionally musty old legal tomes.  
In what do they indulge?  
Flights of oratory.  
If they are women, what is their description?  
They are Fair Portias.<sup>2</sup>

That is only the beginning of the text's depiction of the legal world, which sketches its outline through the fixed verbal forms associated with it. The mode is exemplary of its author's attention to the nuances of language, including its tendency to become typeset. But this particular instance of the column is also a hint at the importance that law had for its author. The oeuvre of (the columnist) Myles na gCopaleen, (the novelist) Flann O'Brien, (the civil servant) Brian O'Nolan, and their other aliases is yet to receive all the attention it merits.<sup>3</sup> But even what has been published on this writer – such as Sue Asbee's monograph, Keith Hopper's extended study, and the essay collection *Conjuring Complexities*<sup>4</sup> – has not found time to remark on the persistence of the legal in his texts. At different moments O'Nolan's work conjures alternative scenarios of law-making and law-enforcement; it ponders paradoxes raised by legal and constitutional texts; it immerses itself in the language of the law; and it reimagines the territory and sovereignty of Ireland.

This essay will seek to offer a detailed analysis of some of these moments. But it will also seek to look up from these musty old tomes, and consider the larger meaning of O'Nolan's fascination with the law. I particularly want to explore how it fits into Irish society and history – more specifically, the context of post-independence Ireland in which O'Nolan did his work, and which in some respects that work exemplified.<sup>5</sup> It is thus necessary to begin by considering the importance to independent Ireland of the British connection and the colonial history that had shaped the policy and character of the new state.

2 M. na Gopaleen (Flann O'Brien), *The Best of Myles*, ed. K. O'Nolan (1977) 204–5.

3 I have discussed some of the issues of identity and authorship that he raises in J. Brooker, 'Mind That Crowd: Flann O'Brien's Authors' in *New Visions: The Writer in Literature and Criticism*, eds. P. Mackay and K. Hadjiafxendi (2004). I generally refer to him as 'O'Nolan', unless the context bids otherwise.

4 See S. Asbee, *Flann O'Brien* (1991); K. Hopper, *Flann O'Brien: A Portrait of the Artist as a Young Post-modernist* (1995); A. Clune and T. Hurson (eds.), *Conjuring Complexities: Essays on Flann O'Brien* (1997).

5 See S. Deane, *Strange Country: Modernity and Nationhood in Irish Writing since 1790* (1997) 157–63. See, also, D. Kiberd, *Irish Classics* (2000) ch. 28, especially 500–1, 515–7.

## RUPTURE AND CONTINUITY: POST-COLONIAL LAW AND SOCIETY IN IRELAND

Most laws are contested at one time or another, but law in colonial societies has a particularly fraught status. To the extent that the whole apparatus of the colonial state is regarded as a foreign imposition, it is an object of contention rather than consensus. The law of the colonial state needs to enforce agreement and stability; but in so far as it is viewed as the language of a contested power, that which needs to be the medium of resolving contention is itself highly contentious. Part of the mission of law is to naturalize itself: to seek legitimacy as a given rather than mere convention, and to be in principle timeless rather than a temporary convenience. Yet this legitimacy is likely to be placed in question more powerfully and insistently in a colonial setting than elsewhere. If colonial power is viewed not as benevolent reign but as illegitimate occupation, then colonial law ceases to be a solution and becomes part of the problem. Indeed, the law in such conditions may even be regarded as *illegal*.<sup>6</sup> In the generations preceding Irish independence, the starkest example of this phenomenon was the struggle over the ownership and tenantry of land. The policy of withholding rent and ostracizing landlords, as in the celebrated case of Captain Boycott in 1880, was a vivid example of a challenge to colonial law with mass appeal. So too was the Sinn Féin policy of unilateral autonomy from Britain, including British courts as well as Westminster.

If colonial law is in this sense a problem, post-colonial law raises different questions. In relation to the colonial regime, it is likely to be caught between the two poles of rupture and continuity. On one hand, the end of the colonial era implies a radical break, involving the many forms of culture as much as politics. In the case of the Irish Free State, a strong political emphasis was laid upon the definition of the state as separate from Britain. R.F. Foster comments that:

what matters most about the atmosphere and mentality of twenty-six-county Ireland in the 1920s is that the dominant preoccupation of the regime was self-definition against Britain – cultural and political. Other priorities were consciously demoted.<sup>7</sup>

The founding text of such a policy had been Douglas Hyde's lecture 'The Necessity for De-Anglicizing Ireland' in 1892. Hyde had diagnosed Ireland as a nation of imitators, 'lost to the power of native initiative and alive only to second-hand assimilation'. He appealed instead 'against this constant running to England for our books, literature, music, games, fashions, and

6 In colonial Ireland a good deal of symbolic importance was accordingly invested in the Gaelic Brehon law which had been ousted by the British system. For a brief discussion, see R.H. Grimes and P.T. Horgan, *Introduction to Law in the Republic of Ireland* (1981) 17–20.

7 R.F. Foster, *Modern Ireland 1600–1972* (1989) 516.

ideas', in order that the Irish race might 'develop in future upon Irish lines': 'we must strive to cultivate everything that is most racial, most smacking of the soil, most Gaelic, most Irish'.<sup>8</sup> Hyde's thinking is one of the sources of the Free State's attempt to resist imported English publications via the imposition of tariffs. This protectionist strategy was promoted by Fr. R.S. Devane in 1927:

We are at present engaged in an heroic effort to revive our national language, national customs, national values, national culture. These objects cannot be achieved without a cheap, healthy and independent native press. In the face of English competition such a press is an impossibility ... Against such propaganda of the English language and English ideas the present effort at national revival looks very much like the effort to beat back an avalanche with a sweeping brush.<sup>9</sup>

In a polemic like this it is made clear that mere native creativity and individual endeavour are insufficient for the preservation of national culture and character: what is required is authentically post-colonial legislation. The protectionism of independent Ireland is part of an attempt to establish the state's difference with what has gone before: a politics of discontinuity.

Yet it is simultaneously difficult to avoid the converse of this: the fact that the machinery of the post-colonial state is inherited from the former occupying power. This includes government buildings, institutions and structures, personnel – and also the law itself. As Basil Chubb comments apropos of the Irish case:

the political legacy of the departing imperial power in the shape of traditions, habits and institutions as well as patterns and levels of public services was enormous and could not be wiped out by a treaty leading to the emergence of a new sovereign state.<sup>10</sup>

The point can be generalized, as Ray Ryan notes:

A state, any state, cannot proclaim a spectral or millenarian relationship to history; it cannot enact a sudden, magical, divine intervention that would transform the existing order, which like the rebels of 1916 would forego mundane compromises and transform colonial dullness into exhilarating freedom.<sup>11</sup>

Chubb further elaborates on life after 1922:

The governmental institutions, devices and practices that were adopted were those in use in the United Kingdom, the Westminster and Whitehall models. The articles in the Irish Free State Constitution that dealt with the machinery of government were 'a bold attempt to capture the essential elements of

8 D. Hyde, 'The Necessity for De-Anglicizing Ireland' in *Poetry and Ireland since 1800*, ed. M. Storey (1988) 82, 83.

9 Quoted in T. Brown, *Ireland: A Social and Cultural History 1922–1985* (1985) 70.

10 B. Chubb, *The Politics of the Irish Constitution* (1991) 10.

11 R. Ryan, 'Introduction: State and Nation: The Republic of Ireland, 1949–99' in *Writing in the Irish Republic* (2000) 4.

cabinet government and squeeze them into the phraseology of constitutional clauses' ... The marked tendency from the beginning to work the British system in undiluted form was confirmed when de Valera assumed office. Evidently, it could also accommodate his very different style of government. Although his Constitution, *Bunreacht na hÉireann*, involved a radical revision of the constitutional status of the state and its relationships with the British Crown and Commonwealth, it largely confirmed what already existed so far as the machinery of government was concerned.<sup>12</sup>

J.J. Lee has sought to offer a nuanced view of the question of 'the British legacy'. He points out that 'there was no single monolithic "British legacy"', and more concretely points to a raft of legislative and constitutional issues on which the question of whether Ireland was following British precedent is at best ambiguous. Thus the formation of an unarmed police force might be seen to follow the British example, while the RUC were armed as the Royal Irish Constabulary had been. And again: 'Was Mr De Valera being "un-British" in trying to persuade the Irish people to send PR "back from where it came from" in 1959, and to replace it by the existing British system?'<sup>13</sup>

Among the clearest British legacies in the machinery of the state was the civil service. As Chubb notes:

the civil service which had been taken over and retained intact in 1922 was hardly affected by the crucial political change of 1932: neither in 1922 nor 1932 was there a purge of the public service or a spate of political appointments.<sup>14</sup>

Lee confirms that the civil service was 'the main British institutional legacy' in the 'public sphere': 'Irish public administration closely and consciously imitated the English model'.<sup>15</sup> These salient points may be qualified by the countervailing fact that the civil service was also a locus of de-Anglicization or Gaelicization, in that competence in the Irish language was made a prerequisite for successful candidates. This element of the new state's machinery is of particular pertinence here, as it was Brian O'Nolan's primary livelihood from 1935 to 1953. O'Nolan, like other applicants, had to pass an oral examination in Irish to attain his post: he can have had no difficulty in doing so, as he had spoken Irish since birth.<sup>16</sup> His years in the civil service also produced much of his most compelling work, including *At Swim-Two-Birds*, the unpublished manuscript of *The Third Policeman*, *An Béal Bocht*, and over a decade of *Cruiskeen Lawn*.

12 Chubb, *op. cit.*, n. 10, p. 12.

13 J.J. Lee, *Ireland 1912–1985: Politics and Society* (1985) 88.

14 Chubb, *op. cit.*, n. 10, p. 13.

15 Lee, *op. cit.*, n. 13, p. 89.

16 See A. Cronin, *No Laughing Matter: The Life and Times of Flann O'Brien* (1989) 74. On O'Nolan's childhood knowledge of Irish, see p. 9.

## NOTWITHSTANDING ANY COLLOQUIALISM: FREE STATE, CIVIL SERVANT

The precise contribution of his civil service career to O’Nolan’s literary career and creative make-up has yet to be fully explicated. I shall here make three general observations about this relationship. Firstly, O’Nolan’s post made it difficult for him to put his own name to texts in public. The job was a factor in prompting the confetti of pseudonyms and false identities that littered his career – though these are overdetermined, as he could undoubtedly have managed with fewer alter egos.<sup>17</sup> Secondly, the job gave him a proximity to the business of the state, which he found both intriguing and appalling. In a retrospective essay of 1956 he recalled that it had been his destiny ‘to sit for many hours everyday in Dáil Éireann, though not as an elected statesman, and the agonies entailed are still too fresh in my memory to be recalled without emotion’.<sup>18</sup> Yet to regard him simply as disdainful of the machinery of legislation is to miss his fascination with government. This is a man who actually ran for the Senate in 1957; it is a pity for literary history that he never managed to follow W.B. Yeats into it.<sup>19</sup> O’Nolan may have been disgusted with the servants of the state, but that attitude presupposed a commitment to it. As Cronin comments,

he did not have a problem in relation to nationalism because basically and instinctually as well as by heredity he was a nationalist, at least of sorts. He was not a Francophile or an Anglophile and his elaborate critique of Ireland was based on the rough premise that, with all its shortcomings, it was as good a place as anywhere else: as Myles na Gopaleen or otherwise he was always very quick to resent insult to his country or implications that other countries were inherently superior.<sup>20</sup>

The claim that ‘he did not have a problem in relation to nationalism’ is somewhat too simple: the qualifications ‘at least of sorts’ and ‘with all its shortcomings’ are more telling. But the general picture is valid. O’Nolan was a pugnacious defender of the value of Ireland as a well as a sarcastic critic of the nation, and only a figure as steeped in political process as he could have produced the peculiar political writing that he did.

That leads to the third point, which takes us closest to the heart of O’Nolan as a writer. The civil service suited O’Nolan because he was a pedant. As Cronin sees, his ‘love of order and discipline, of clearly set-out and satisfying routines . . . must have helped him’ in his early years in the service. His first reports were favourable: ‘Mr O’Nolan’, wrote his superior John Garvin in 1937, ‘is an efficient and painstaking officer [who] displays marked application to his duties’.<sup>21</sup> Even O’Nolan’s solitary complaint

17 See Brooker, *op. cit.*, n. 3.

18 Cronin, *op. cit.*, n. 16, p. 65.

19 *id.*, p. 192.

20 *id.*, p. 52.

21 *id.*, pp. 77–8.

against his employers in these early years demonstrates not his unsuitability for the post but the meticulous qualities that he brought to it. Having sat the entrance exam as Brian Ó'Nualláin, he now complained that

During my recent absence from the office, I received two letters addressed to B. Nolan. This is not the name under which I entered the Civil Service, nor is it the English transliteration in use by my family. My own name is one of the few subjects upon which I claim to be an authority and notwithstanding any colloquialism countenanced for the sake of convenience in the Office, I would be glad if my own predilection in the matter be accepted in official correspondence in future. I also desire that my name be correctly entered in any future edition of the telephone guide or any similar circular.<sup>22</sup>

This is the appropriate language for a bureaucrat speaking to bureaucrats. But it is also an idiom with affinities to O'Nolan's creative work. To take just one example from *Cruiskeen Lawn*, occasioned by a controversy over a picture in the Municipal Gallery:

Impertinent as the expression of individual opinions must be in such a situation, it is a gross outrage that this Board of the Municipal Gallery, having formed opinions desperate and dark of hue, should decide that the citizens of Ireland should not be permitted to form any opinion at all. By what authority does this bunch take custody of the community's aesthetic conscience?

The members of the Corporation are elected to discharge somewhat more physical tasks, such as arranging for slum clearance and the disposal of sewerage. Here there is scope for valuable public service, a vast field of opportunity confronts the eye. Why must the members trespass in other spheres where their intellectual equipment cannot be other than inadequate?<sup>23</sup>

A few words here signal that this is not to be treated as an ordinary public pronouncement: 'opinions desperate and dark of hue' is an alliterative touch of purple excess, 'this bunch' is excessively colloquial. But the overriding idiom is not far from the precise and extensive language of the state, with which O'Nolan was so familiar in his other day job. The subject matter is the remit of the state's public work – 'arranging for slum clearance and the disposal of sewerage' – and its limits. O'Nolan, in the guise of Myles na gCopaleen, seeks to circumscribe excessive state intervention in civil society and cultural experience. Granting himself a legislative power – the column begins with the assertion that 'I know that many readers will look to me for an authoritative pronouncement'<sup>24</sup> on the issue – he bids to set rules for the limits of public bodies. The column is in part a parody of the official discourse that O'Nolan knew well; but it also simultaneously appears to be a serious judgment on a public issue. We cannot find Myles na gCopaleen either wholly inside or wholly outside the language of the bureaucrat: his writing relies heavily on what it mocks. Much of O'Nolan's writing is in this vein: particularizing, hairsplitting, obsessed with form and formula. This is a

22 Quoted in *id.*, pp. 78–9.

23 *na Gopaleen*, *op. cit.*, n. 2, pp. 236–7.

24 *id.*, p. 235.



major part of what drew him to the discourses of law, as we shall see more clearly a little later on.

The mixture of rupture and discontinuity in post-colonial state-building leaves the new dispensation in an ambiguous position. Michael Collins's triumphant arrival at Dublin Castle is at once an emblem of radical change that would have seemed unlikely not long earlier, and a sign that the ticking business of the modern state is about to carry on in safe hands. Too timid a continuity with the past places the value of the revolution or triumph over colonial rule in doubt. The extent of constitutional continuity described by Chubb may reasonably provoke the nationalist reflection that society has stayed fundamentally the same while the post-boxes have been painted green.<sup>25</sup> Yet too radical a rupture threatens to damage the conception of law as a given, a system whose origins are in nature rather than in contingent decision-making. It may also risk losing the sympathy and tacit support of the citizenry if the transition involves making new legislation which is thought to be oppressive. The Irish Free State can be seen in both these lights. If the new state was cautious and unadventurous, the triumph of the Gaelic and de-Anglicizing ethos could also be an onerous force – not least for those writers and intellectuals of Brian O'Nolan's generation. 'Many intellectuals', writes Dermot Keogh, 'felt themselves ground to bits in de Valera's new Ireland'.<sup>26</sup> Anthony Cronin confirms this analysis in his account of the formation of O'Nolan's generational group at the UCD of the 1930s: 'it was they who were most irked by the Catholic triumphalism, the pious philistinism, the Puritan morality and the peasant or *petit bourgeois* outlook of the new state'. He adds, however, that any such dissidents were in an ambiguous position: 'in the first place they were themselves inheritors of whatever privileges were going, and in the second they found it almost impossible to break with formal Catholicism, either in belief or practice'.<sup>27</sup>

Brian O'Nolan was a product of this ambiguous situation, in which a rhetoric of national renewal was accompanied by the persistence of pre-revolutionary processes and institutions. The civil service itself is a good enough illustration of this process, with its Gaelic requirements and residual British structure. If O'Nolan's penchant for the pedantic created a certain continuity between his work as a civil servant and his writing, this analogy can be extended to the relationship between O'Nolan and the Free State as a whole. In Cronin's words:

The outlook of the Government was legalistic and fanatically Catholic although it had a certain reverence for the book-keeping virtues of the Protestant business community which had continued to thrive after independence. Its greatest fear, other than the spread of godless, atheistic

25 For this motif see D. Kiberd, *Inventing Ireland* (1995) 265.

26 D. Keogh, *Twentieth-Century Ireland: Nation and State* (1994) 75.

27 Cronin, *op. cit.*, n. 16, p. 48.

communism to Ireland, was deficit financing. The Free State scrupulously paid its debts and expected everybody else to pay theirs.<sup>28</sup>

O’Nolan was not fanatically Catholic, though he remained quietly so. It is telling that his final novel, *The Dalkey Archive* (1964), is prefaced by a cautious dedication to ‘my Guardian Angel, impressing upon him that I’m only fooling and warning him to see to it that there is no misunderstanding when I go home’.<sup>29</sup> More significant here is the analogy that O’Nolan’s career suggests with the ‘book-keeping virtues’ of the state. The publican and publisher John Ryan recalled O’Nolan’s bitterness at the fact that he had to make two requests to the Commissioners of the Inland Revenue for a tax assessment form.<sup>30</sup> Declan Kiberd well captures this aspect of the writer, but also grasps the larger paradox of which it is only one half:

O’Brien himself was in the strictest sense a Free State author, disabled by that very culture that had nurtured him, yet strangely addicted to many of its practices. He was one of those law-abiding bourgeois souls who actually paid their taxes in advance, and whose journalism was motivated by a concern that ratepayers get value for their pound; but he consorted with the city’s bohemian set in bars before slipping away to catch the bus home to Blackrock. If the cultural debates of the time pitted Irish-speaking suburban inheritors of the national culture against the roaring dissidence of a Patrick Kavanagh, O’Brien found himself on the cusp between the two groups. The intellectual stasis of the civil servants was replicated in his art as surely as the formal energies of the bohemians.<sup>31</sup>

If O’Nolan’s writing is in this sense double-sided, his satire and critique also turns on two contradictory aspects of independent Ireland which we have already noted: the language of rupture and the experience of continuity. On one hand he is a critic of overblown rhetoric and nationalist exaggeration, swift to scorn exorbitant claims on behalf of the new state. On the other hand, his work reacts against the sense of stasis and entrapment in that state, with a utopian vein of fantasy. We shall see both these tendencies at work in O’Nolan’s treatment of the issue of national sovereignty. But first let us consider more directly his treatment of the Irish legal system.

## AGRO AND OTHER RELIEF: THE CRUISKEEN COURTS

Owing to (pressure) (of work) in the courts of justice, withdrawal of judges, electric heaters, bicycle-crime and other matters, the public-spirited Myles na gCopaleen Central Research Bureau has persuaded several impatient litigants to bring their differences before the Cruiskeen Court of Voluntary Jurisdiction.<sup>32</sup>

28 *id.*, p. 47.

29 F. O’Brien, *The Dalkey Archive* (1993 [1964]) 5.

30 Cronin, *op. cit.*, n. 16, p. 190.

31 Kiberd, *op. cit.*, n. 5, p. 516.

32 *na Gopaleen*, *op. cit.*, n. 2, p. 137.

So begins the first of Myles na gCopaleen's wartime courtroom dramas. Myles's alternative court is to handle the overspill from Ireland's crowded legal system. Unsurprisingly it produces its own kind of overspill – a surreal surfeit of jargon and rhetoric. The cases tried by the Cruiskeen Court are the most central instances of O'Nolan's imagination of the law. They allow him to probe at some issues of social import, and to create a fantastic version of Irish legal proceedings. More immediately and self-evidently, though, they demonstrate the appeal that the languages of law had to his mind, attracted as it was to elaborate phraseologies and verbal formulas:

In the first case the plaintiffs sought a plenary injunction for trespass, a declaration of fief in agro and other relief. The defence was a traverse of the field as well as the pleadings and alternatively it was contended that the plaintiffs were estopped by grand playsaunce.

Mr Juteclaw, for the defendants, said that at the outset he wished to enter four caveats *in feodo*. His statutory declarations were registered that morning and would be available to the plaintiffs on payment of the usual stamp duty. He asked for a dismiss.<sup>33</sup>

One can almost see O'Nolan chuckling behind his clacking typewriter. Myles does not do much to the legal language here: he just accumulates it for its own sake. The Latinate idiom gains a certain autonomy, a condition of pure linguistic exuberance: simply in marshalling technical terms the writer indulges his attraction to the recondite word ('estopped', 'playsaunce') and savours the queerness of the official idiom. Elsewhere, though, Myles intervenes more noticeably in the language of the court.

Thus, when the prosecuting counsel, Mr Juteclaw, protests that his client's loss of two fingers while at school 'had reacted somewhat against his client's ability as a wage-earner in later life', the judge protests:

His Honour: Re-acted, Mr Juteclaw? Come now. Surely the word we seek here is 'militated'?

Mr Juteclaw: I accept your Honour's correction.<sup>34</sup>

At the close of this case, the successful counsel for the defence asks for a clarification:

Mr Faix, thanking his honour, asked for guidance as to the meaning of the phrase 'the parties to pay their own costs'.

His Honour: It means what it says.

Mr Faix: In a lifetime at the bar I have never heard the phrase. I have frequently heard the phrase 'abide their own costs'. I respectfully ask for guidance.<sup>35</sup>

Elsewhere, in a column detailing the dealings of the District Court, a defendant confesses to the linguistic grounds that lie beyond his failure to abscond:

33 *id.*, p. 137.

34 *id.*, p. 139.

35 *id.*, p. 140.

If I had failed to appear in this court at the time appointed, too well I knew that my bail would not be *confiscated*. Neither would it be *impounded*. (Here defendant became moved.) Neither would it be *declared forfeit* – or even *forfeited*. It would not be *attached*. It would be ... (Here defendant broke down and began to weep.) ... My bail would be ... ESTREATED.<sup>36</sup>

The work done upon language in these examples is more flagrantly evident in the following incident. When the counsel for the defence leaves the court in protest, he soon returns:

Mr Juteclaw re-appeared and said he wished to apologise for a serious solecism he had unwittingly committed. When felt compelled by the dictates of honour to quit the court, he had merely lifted his papers and left. As a lawyer of long standing, he knew that the correct and accepted thing was to *gather up* his papers and withdraw. He then renewed his apologies, gathered up his papers, and withdrew.<sup>37</sup>

This stages as solemn farce one of Myles na gCopaleen's most insistent concerns: the role of cliché in public discourse. The presiding judge, Twinfeet J., is apt to correct the lawyers, not on what might be thought substantive moral grounds, but on purely idiomatic points. The gravest error that a counsel can make in the Cruiskeen Court is a linguistic one. The clichéd terms are less often legal language proper than those which have become the standard form in court reports. Mr Faix is unable to understand the meaning of 'pay their own costs', so used is he to the formula 'abide their own costs'. More drastically, Juteclaw's failure to *gather* his papers and *withdraw*, rather than lifting them and going, is recognized as a 'serious solecism'. In this case not only the form of words is wrong: the same action must be repeated under the correct name. The idiom in which the courts have been shrouded thus not merely dictates the thoughts of the legal representatives, but scripts their physical actions and movements too.

The tracking of such prescribed language and ready-made phrases was a major dimension of *Cruiskeen Lawn*. Myles uses a number of methods to expose the presence of such discourse, of which we have already glimpsed the most extensive: the Myles na gCopaleen Catechism of Cliché.<sup>38</sup> The catechism is characteristic of O'Nolan, in its rationalistic pursuit of the logic of something that does not deserve to be treated so logically. The most banal locutions Myles can find are solemnly treated not as isolated infelicities but as a connected system; an alternative intellectual world becomes founded on error or poverty of imagination. Crucially, all its materials are recognizable – more than that, are overly recognizable, are precisely the kind of sentences one is most likely to employ should one pluck up the self-importance to write to the *Irish Times*. The unhappy joke of the Catechism of Cliché is not

36 *id.*, p. 153.

37 *id.*, p. 138.

38 I have discussed the catechism, and other methods by which Myles pursues cliché in the column, in Brooker, *op. cit.*, n. 1, ch. 6.

so much that we can imagine a world like this, as that this is our world, day in day out.

There are two sides to the catechism. It revels in repetition, and attacks it. Certainly the clichés are savoured even as they are criticized. Yet the note of disdain for them is persistent. This can be visceral: ‘This murder of my beloved English language is getting in under my nails’.<sup>39</sup> The catechism is also described as:

[a] unique compendium of all that is nauseating in contemporary writing. Compiled without regard to expense or the feelings of the public. A harrowing survey of sub-literature and all that is pseudo, mal-dicted and calloused in the underworld of print.<sup>40</sup>

Elsewhere, with what looks a rare degree of unqualified seriousness, Myles reasons that ‘[a] cliché is a phrase that has become fossilised, its component words deprived of their intrinsic light and meaning by incessant usage’.<sup>41</sup> What is striking in the present context is that the clichés of the Cruiskeen Court are *not* treated in this manner. The note of joy in the ravelling of discursive stereotypes is present; the note of exasperation is absent. It is as though Myles grants the law its right to cliché: as though it goes without saying that the law is a matter of cliché. It relies, after all, on precedents, rules, formulas; it aims to be consistent rather than creative. The clichés of the courtroom do not suggest a degraded tongue but a social ritual. Law thus escapes Mylesian censure, but at the cost of being rendered as performance. In particular, Myles’s columns emphasize the discursive channels through which legal activity runs, the persistence of the letter in the legal. Peter Goodrich writes that:

Law is a literature which denies its literary qualities. It is a play of words which asserts an absolute seriousness; it is a genre of rhetoric which represses its moments of invention or of fiction; it is a language which hides its indeterminacy in the justificatory discourse of judgment; it is procedure based on analogy, metaphor and repetition and yet it lays claim to being a cold or disembodied prose.<sup>42</sup>

*Cruiskeen Lawn* itself, we might add, was a literature whose literary status was never clear.<sup>43</sup> But in its treatment of the courtroom it can be seen to insist on that literary and rhetorical quality in the law to which Goodrich points. We shall see later that a similar insistence on the letter of the law underpins Myles’s approach to the Constitution.

Language can also be at stake in a more specific sense. As well as recalling the counsel to their proper clichés, Twinfeet J. also seeks to hold the line against their foreign-sounding ‘jargon’: ‘Justice is a simple little lady

39 na Gopaleen, op. cit., n. 2, p. 207.

40 id., p. 202.

41 id., p. 227.

42 P. Goodrich, *Law in the Courts of Love: Literature and other Minor Jurisprudences* (1996) 112.

43 See Young, op. cit., n. 1, pp. 117–18.

... not to be overmuch besmeared with base Latinities'.<sup>44</sup> Twinfeet is not easy to pin down. He may suddenly break into Hiberno-English:

Twinfeet J., mounting the bench, remarked that 'That was a hardy one'.  
Mr Faix, speaking on behalf of the Dublin Bar, agreed that the day was cold.  
His Lordship: how did ye all get over the Christmas.  
Mr Faix: Er – suitably, my Lord.  
His Lordship: Do you know what it is, there is a lot of bad stuff going around. If ever one of the criminals responsible is brought before me, I warrant you that I will make an appalling example of him. But pray let us to business.<sup>45</sup>

Like much of Myles na gCopaleen's output, this turns on a collision of idioms, whose most sustained form is the series of columns recounting the schemes of 'the Brother'. There is some glee in the depiction of a presiding judge whose discourse belongs not to the accredited profession but to the Dublin working class. Mr Faix is evidently disconcerted. Equally disconcerting is Twinfeet's lurch back into respectable speech within a couple of sentences, as though he has switched on the translation device that will produce the idiom appropriate to this arena. We may read this as a further confirmation of the artificiality of legal discourse posited by Goodrich. Yet one odd feature remains in the language of the court: the predominance of English. Twinfeet J. declares at one point that:

indecencies are ... possible in the sphere of Saxon grammar. One must not mate our gentle tongue with Negroid importations from regions barbarous of character, of situation transalpine.<sup>46</sup>

The 'gentle tongue' here is English. What, we might wonder, has happened to the nation's proclaimed first language, Irish?

It is possible to see it making a disguised return elsewhere, in a District Court report. An elderly man who gives his name as Myles na gCopaleen is 'charged with begging, disorderly conduct, using bad language and with being in illegal possession of an arm-chair'.<sup>47</sup> He claims to be a 'republican soldier', who was 'holding a political meeting in Capel Street when he was savagely assaulted by the Sergeant'; later, 'in the course of a long address', he calls himself 'a Southern Irishman' who cannot accept the suggestion that he should reside in Belfast, 'a steel iron town of aspect unendearing of populace contumacious'.<sup>48</sup> The bulk of his statements are incomprehensible to the court: as the Sergeant guarding him complains, he is 'continually conversing in this strain, leaving us all as wise as if he were speaking double dutch'.<sup>49</sup> The reason that they are in Latin. The irony is that we might expect such a character's linguistic defiance to consist of speaking Irish.

44 na Gopaleen, op. cit., n. 2, p. 137.

45 id., pp. 142–3.

46 id., p. 141.

47 id., p. 148.

48 id., p. 152.

49 id.

A real-life precedent is offered by *Attorney-General v. Joyce and Walsh* (1929), a murder trial in which:

nine prosecution witnesses and both of the accused gave their evidence in the Irish language, which was interpreted, for the benefit of the judge, the jury and others concerned in the case by an official interpreter provided by the State, whose version of the evidence, in English, was taken down by the official stenographers and formed the record of the witnesses' and the accused's evidence.<sup>50</sup>

The work of the law thus involves an act of translation. Kennedy CJ noted that any witness should be 'allowed to give evidence in the language which is his or her vernacular language, whether that language be English or Irish, or any foreign language'.<sup>51</sup> But he also noted that Irish was a special case:

The Irish language, however, is not merely the vernacular language of most, if not all, of the witnesses in question in the present case, but it holds a special position by virtue of the Constitution of the Saorstát, in which its status is recognised and established as the national language of the Saorstát, from which it follows that, whether it be the vernacular language of a particular citizen or not, if he is competent to use the language he is entitled to do so. Therefore it may be said that all those who gave their evidence in the Irish language in the present case had, as it were, a double right to do so: first, on general principles of justice as their vernacular language; and, secondly, as a matter of constitutional right.<sup>52</sup>

The 'double right' that the judge seeks to define is not exercised in the District Court. The 'republican soldier' frustrates the court by speaking not in his native tongue but in a foreign one too obscure for most of his listeners. He thus becomes, in part, a strange rewrite of a figure of whom James Joyce had written in an essay of 1907, 'Ireland at the Bar'. This 'bewildered old man ... a deaf-mute before his judge', unable to understand English, had been tried and sentenced to death through an interpreter. Joyce read him as an emblem of Ireland's plight in the face of an uncomprehending world.<sup>53</sup> The old man's name was, of all things, Myles Joyce.

The parallels between the two cases are inexact; the Myles who appears in the *Cruiskeen Lawn* scenario is able to speak English when he chooses, and indeed moves in and out of Hiberno-English ('Yez are all leppin' because I didn't skip'<sup>54</sup>). But the comparison points up the oddity of O'Nolan's figure, in whom Latin has come to take the place of Irish. The dead language subtly works as a ghost of the native tongue. The effect is incongruous, as the scene plays itself out in a queerly different yet parallel way from how it might have proceeded in the era of Joyce's essay. The defendant exercising what in

50 *Attorney-General v. Joyce and Walsh* [1929] I.R. 526, reprinted in *Irish Cases on Evidence*, ed. J.S.R. Cole (1972) 126.

51 *id.*

52 *id.*, p. 127.

53 J. Joyce, *Occasional, Critical, and Political Writing*, ed. K. Barry (2000) 144–5.

54 na Gopaleen, *op. cit.*, n. 2, p. 151.

independent Ireland has become his 'double right' (Kennedy CJ) is replaced by the author-surrogate, exercising his right to an erudition that will frustrate the Irish court just as an Irish speaker would once have frustrated its colonial predecessor. The old republican who refuses to speak English and does not retreat into Irish either may indeed be seen as making what the Sergeant calls 'a farce of the language movement'.<sup>55</sup>

One final case deserves attention for its direct pertinence to the law and policy of the Free State. Here a shopkeeper, 'a member of the Gaelic League, a fluent speaker of Irish and a graduate of Cardinal Newman's university', is tried 'for "exposing" for sale a book which, while not indecent, was in its general tendency indecent'.<sup>56</sup> The establishment of literary censorship at the start of the 1930s was a major piece of 'Gaelicizing' and Catholic legislation. The Censorship Board would become a major component of the draconian public policy of the state for decades to come.<sup>57</sup> Myles's column is thus not teasing at a minor or marginal matter. The mockery takes two main forms. One is an amused indictment of the judge's hypocrisy. 'Gentlemen', he asks the court, 'is this book you have there any good? I mean, is it . . . very bad? Is it disgusting, I mean?'. Mr Lax, prosecuting counsel, informs him that it is 'filthy', then admits that he has not read it: 'I would not soil my eyes with such nefarious trash, my Lord'.<sup>58</sup> Lax embodies the paradoxical position of the Censorship Board and its supporters: in order to condemn a book it might be necessary to read it, but to read it was to lay oneself open to its corruptive influence. The Catholic commentator, Shane Leslie, writing on *Ulysses* in the *Dublin Review* in 1922, had found an ingeniously simple way around this crux, assuring his readers that Joyce's book 'may safely be repudiated, before reading, by the Irish people'.<sup>59</sup>

Twinfeet J's position is slightly different. His solicitous inquiries as to whether the book is 'any good', which is to say 'very bad', prime us for his subsequent retreat to his chamber for one hour to read the book in private. This echoes another incident in which he insists on taking a plaintiff's landlady to his chamber for questioning overnight.<sup>60</sup> The broad joke is that the masters of suppression are the most given to temptation: the censor secretly relishes the material he denounces. But a more surprising twist awaits when Twinfeet returns with the book. It purports to be a copy of *Madame Bovary*, whose cover image of its heroine 'not dressed for the street', but 'withal attired', Twinfeet judges acceptable. The book's contents are thus incongruous:

55 *id.*, p. 148.

56 *id.*, p. 141.

57 See M. Adams, *Censorship: The Irish Experience* (1968), and J. Carlson (ed.), *Banned In Ireland: Censorship and the Irish Writer* (1990).

58 na Gopaleen, *op. cit.*, n. 2, p. 142.

59 S. Leslie, 'Ulysses' in the *Dublin Review*, clxxi (September 1922) 112–9; reprinted in *James Joyce: The Critical Heritage*, ed. R.H. Deming (1997) 201.

60 na Gopaleen, *op. cit.*, n. 2, p. 144.



The tone throughout is elevated, urbane, even technical. It appears to be ‘An Outline of Irish Grammar’ and is the work of the Irish Christian Brothers. The work bears no obvious relation to the illustration I have mentioned. The case must be dismissed with costs.<sup>61</sup>

How we should read this is not quite self-evident. A possible interpretation is that the judge has substituted the Irish Grammar into the covers of the book and kept Flaubert’s novel for himself. But perhaps the correct interpretation is that the joke is a piece of inversion. The pious shopkeeper has been reading a book by the Christian Brothers, and has been so ashamed of this that he has felt the need to disguise it as *Madame Bovary*. One is reminded of the joke in which a teenage boy is too ashamed to ask for a Crystal Palace shirt and ends up with something that was less embarrassing to request at the counter, a packet of condoms. It is not Flaubert, but the tastes of the Gaelic Leaguer and language revivalist, that are really obscene.

### ‘TO LEAVE THE SO-CALLED EMPIRE’: SOVEREIGNTY AND BEYOND

The question of national sovereignty was among the most central and most vexed in political, legal, and cultural debates in independent Ireland. At a commemoration of the Easter Rising in 1933, the new Taoiseach, Eamon de Valera, publicly placed the term at the centre of his political and constitutional strategy:

Let it be made clear that we yield no willing assent to any form or symbol that is out of keeping with Ireland’s right as a sovereign nation. Let us remove these forms one by one, so that this state we control may become a Republic in fact; and that, when the time comes, the proclaiming of the Republic may involve no more than a ceremony, the formal confirmation of a status already attained.<sup>62</sup>

If that de facto Republic was by definition to cover the whole territory of Ireland, then this was wishful thinking on de Valera’s part. Indeed, he himself knew as well as most nationalist leaders the intractability of the Northern question.<sup>63</sup> The 1937 Constitution itself would include a claim to the whole national territory which was, however, no sooner staked than deferred.<sup>64</sup> It was owing to the nuances of territorial aspiration that de Valera’s 1937 text did not, in fact, define Ireland as a Republic. Instead, Article 5 defined Ireland as ‘a sovereign, independent, democratic state’. Personally presenting the new document to the Irish population in a radio

61 *id.*, p. 142.

62 Eamon de Valera, quoted in R. Fanning, ‘Mr de Valera Drafts a Constitution’ in *De Valera’s Constitution and Ours*, ed. B. Farrell (1988) 34–5.

63 See Chubb, *op. cit.*, n. 10, pp. 22–6.

64 See P. Hanafin, ‘Legal Texts as Cultural Documents: Interpreting the Irish Constitution’ in Ryan, *op. cit.*, n. 11, pp. 159–61.

broadcast, de Valera assured his listeners that ‘sovereignty resides in them the people as their inalienable and indefeasible right’.<sup>65</sup>

The word ‘sovereign’ itself had an added potency in relation to the Ireland in which Brian O’Nolan grew up: it would have referred most immediately to money, and by symbolic extension to the British monarch. Ireland’s relation to the Crown was of course pivotal in the arguments which attended the birth of the Free State: the anti-Treaty side were more vocally offended by the prospect of an oath of allegiance to the King than by the partitioning of Ireland. As R.F. Foster puts it, the Irish conceived sovereignty and allegiance to be the ‘real’ questions, and ‘the position of the Crown in Irish affairs remained the crux’.<sup>66</sup> Vital to Ireland in the years after independence, then, was to establish its own sovereign character: to demonstrate that the new state, which hardline republicans had called so meagre, indeed possessed an independent status and identity. In that sense the intensity of official enthusiasm for Gaelicization may be interpreted as a result of the Civil War.

I have suggested that O’Nolan was an emblematic figure for the Free State: but despite his own idiosyncratic love for the Irish language, this does not apply to the Gaelicizing tendency. In his own way, O’Nolan was one of the period’s most penetrating critics of Irish pride. I have analysed elsewhere the way that he chisels away at the nation’s inflated account of itself in some of his earliest work – specifically an article in the magazine *Blather* which he produced with friends in 1934 and 1935.<sup>67</sup> The jest here is that the agitation for:

proper Atlantic ports at Galway, Killybegs and elsewhere, has in no small measure displeased *Blather*. Why? The reason is very simple. The pre-eminent claims of Bettystown have been passed over, and it is the sheerest folly on the part of those concerned to imagine that *Blather* is going to stand for it.<sup>68</sup>

The magazine’s pursuit of Bettystown’s strategic potential rebounds on those places whose nautical claims really were being exalted at a time when, as Joseph Lee bluntly notes, ‘For practical purposes, Ireland had neither an air force nor a navy’.<sup>69</sup> *Blather*’s comedy hints that Ireland’s proud strides towards securing its sovereignty are equivalent to the vital task of developing Bettystown harbour. The piece is thus an act of comic belittling, which undercuts the rhetoric of sovereignty with the reality of political continuity and material limitation.

Yet we can see a countervailing impulse elsewhere, in the conveniently direct form of alternative nautical fantasies. In the *Blather* of January 1935,

65 Quoted in Chubb, *op. cit.*, n. 10, p. 22.

66 Foster, *op. cit.*, n. 7, p. 505.

67 See J. Brooker, ‘Children of Destiny: Brian O’Nolan and the Irish Ready-Made School’ (2004) 2 *Precursors and Aftermaths*.

68 ‘Whither Bettystown? Progress or Decay? Our Stern Attitude’ *Blather*, October 1934, reprinted in *Myles Before Myles*, ed. J. Wyse Jackson (1988) 106.

69 Lee, *op. cit.*, n. 13, p. 236.

three months after the plea for Bettystown, O’Nolan, under the guise of the magazine’s proprietor, the O’Blather, proposes the fancy that Ireland should be sawn off from its moorings and allowed to float. To counter the risk that it should ‘edge over to England on a dark night and be anchored to her for the rest of time, like Wales’, the Shannon would be diverted to the back of the country so as to propel it forward. The whole nation, the O’Blather proposes, can now go abroad for the winter: languish in the Mediterranean, grow tropical fruits, bait arctic bears and Russian wolves. ‘We can give the British hell’, he concludes, ‘as often as we feel like it by steaming past her coast and ruining the country with gigantic tidal waves. The possibilities are endless’.<sup>70</sup>

This was not the last time that O’Nolan would exploit this conceit. In a *Cruiskeen Lawn* column of July 1945, he offers a lengthy reworking. The piece begins in politico-legalistic vein, punningly offering ‘posed war plans for the land of May had option’, in the light of the fact that:

Readers will be aware of the constitutional position. We are in the Empire but not Ovid. Distinguished British statesmen resident in Co. Belfast have seen fit to make discourteous references to your republic, even suggesting that it would be no harm if you packed up and clear doubt! I . . . I wonder would Mister Churchill really like it that way?<sup>71</sup>

What is most striking about this is its anticipation of Ireland’s actual departure from the Commonwealth four years later. It was Mister Attlee, not Mister Churchill, who in the House of Commons in November 1948 would have cause to express regret at Ireland’s repeal of the External Relations Act.<sup>72</sup>

Yet the post-war establishment of the Republic, the result of a piqued decision by Taoiseach John Costello while on an official visit to Canada, was a scuffling, haphazard business, as Ray Ryan notes: ‘There were no ringing declarations of the nation’s geography, history or identity, no mention of the people, no heroic acts of defiance, parades, speeches or flags’.<sup>73</sup> Myles na gCopaleen’s imagined republic is different:

Suppose . . . suppose I were to tell you that I have devised a system of . . . land migration, a system based on liquefaction and pumping such as would enable the sovereign republican government of your Ireland to . . . literally to run the country, have it go and come as they please? Suppose you were, early one morning, to leave the so-called Empire in the most devastatingly literal sense, simply disappear bag and baggage? Wouldn’t the British be just a little bit sorry? Know for the first time what you so patiently put up with from the Atlantic Ocean?<sup>74</sup>

70 ‘Balm for Ireland’s Ills’ *Blather*, January 1935, reprinted in Jackson, op. cit., n. 68, pp. 150–2.

71 M. na gCopaleen, *Cruiskeen Lawn*, 28 July 1945, reprinted in F. O’Brien, *At War*, ed. J. Wyse Jackson (1999) 166.

72 See Chubb, op. cit., n. 10, p. 15.

73 Ryan, ‘Introduction’, op. cit., n. 11, p. 1.

74 O’Brien, op. cit., n. 71, p. 167. Ellipses in original.

Ireland, it seems, can be moved. When Myles writes of the possibility of leaving the Empire ‘in the most devastatingly literal sense’, he puts a finger on a major source of his own comedy, which so often relies on the literalization of the figurative. Here the notion of ‘leaving the Empire’ is made concrete. The result propels Ireland away from the mutually paralysing circuit of Anglo-Irish relations, into a broader orbit: ‘And where to go? Well, *there* is one idea. Set up house in the middle of the mild blue Mediterranean, become hot Latin persons’. At this point Myles provides a hand-drawn map, showing Ireland in its new southern location. The colonial relation – and the enduring post-colonial relation – of British economic and cultural superiority is suddenly transformed:

Observe, reader, the bare forsaken aspect of England and Scotland on that map. Do they want it that way? Do they *really* want to traverse the Bay of Biscay and squeeze in through the tortuous portals of Gibraltar just to have a steak in Dublin? Do they seek a situation wherein a visit to Ireland even for the purpose of collecting debts involves an expensive ocean voyage? I doubt it very much. And let me add that if your somewhat severe governors think that there is much to be said against the South of France as a latitude unsuitable for your Ireland, why – [He provides another map, showing Ireland zig-zagging across the North and South Atlantic.] – there are other places. What’s wrong with being anchored off New York harbour? Would not that substantially reduce the expenses of emigration? *And* if that ultimately bores, there are, as I have shown on my map, other places. (And still others – I understand that the climate is very temperate around Japan?)<sup>75</sup>

Sovereignty is redefined here, not as territorial integrity but as the capacity for spatial mobility. The reference to New York harbour points to the already-existing mobility of the Irish, as a diasporic nation that might not be defined merely by its location on the map. In this sense Myles’s fantasy anticipates the alternative sense of space and place more recently proffered by Fintan O’Toole, when he notes that diasporic history has already meant a premature encounter with the challenges of modernity:

What is history for the New York Irish is news for the Irish Irish, balanced, in a global society, between the ins and outs, the victims and the victimisers. There is a sense of moving back to the future, of the newest and most astonishing changes – mass media, virtual reality, the fusion of cultures – being a repetition of what is, in the history of emigrants, old hat. There is also a sense that what is most alien, most foreign, is also a kind of homecoming.<sup>76</sup>

Myles na gCopaleen’s scheme to set Ireland into physical motion makes literal some of what O’Toole would consider as ‘astonishing changes’ fifty years later.

These two articles from O’Nolan, over ten years apart, play upon the same fantasy. What both offer is, in a sense, the opposite of satire. It is a utopian gesture – literally so, in the elastic or fluid sense of space and place that it

75 *id.*, pp. 167–8.

76 F. O’Toole, *The Lie of the Land* (1997) 165.

involves which seeks to set Ireland free from the actual limits of the Free State, and propel it into a more fantastic realm of possibility.<sup>77</sup> Where the campaign for Bettystown turns on the smallness of Irish concerns, the O'Blather's plan and Myles's proposal seek to enlarge them, in an imaginative movement that would set Ireland in motion. They thus try to laugh their way beyond mere political continuity, into a rupture more generously conceived than that of the Gaeligores. If in the first piece sovereignty is shown to be a petty affair, in the other two it is given impossibly dynamic reality.

### 'THE IRISH VERSION PREVAILS': REREADING THE CONSTITUTION

In a later column, Myles na Gopaleen turns his attention more directly to the language of the state. We have already observed his declared aversion to official political discourse. But this distaste could express itself as forensic analysis:

I regret to announce that the Constitution, your ultimate and fundamental statement of your Irish identity and destiny, is an unconscionably careless document. Some of the English is bad and most of the Irish is disgracefully bad. More, the two languages frequently express dissimilar and mutually repugnant meanings in stating what purports to be the same Article.<sup>78</sup>

It needs to be emphasized how significant a target the Constitution was. A national constitution, notes Chubb, is customarily 'the fundamental law of the land' and also 'a kind of higher law'.<sup>79</sup> Yet as McWhinney, cited by Chubb, emphasizes, the constitution of a democracy must also at least claim to be rooted in actual life and common social practice:

A normative constitution is not only valid in a legal sense, but it must be faithfully observed by all and have integrated itself into the state society: ... its norms govern the political process; or the power process adjusts itself to the norms ... the constitution is like a suit that fits and is actually worn.<sup>80</sup>

Basil Chubb declares that de Valera's Constitution 'quickly became and remains a "normative" constitution'<sup>81</sup> in precisely this sense. To the extent that the text did reflect the unusually homogeneous religious and social views of the twenty-six-county state, Chubb is justified in viewing the law as

77 Perhaps what is most fantastic about the *Cruiskeen Lawn* diagrams is that the whole island of Ireland becomes mobile: there seems to be no Unionist veto over the scheme.

78 F. O'Brien (Myles na Gopaleen), *Further Cuttns from Cruiskeen Lawn* (1988) 137.

79 Quoted in Chubb, *op. cit.*, n. 10, p. 1.

80 E.M. McWhinney, *Constiution-making: Principles, Process, Practice* (1981) 7, quoted in *id.*, p. 2.

81 Chubb, *id.*, p. 30.

consensual. But his judgement is too complacent. The issue of gender is the most glaring site of discontent and contestation. Yvonne Scannell, while boldly proposing that the Constitution as reinterpreted in subsequent decades can actually ‘advance the cause of women’s rights’, still confesses that the Constitution was ‘rooted in a patronising and stereotypical view of womanhood’.<sup>82</sup> More recently, Patrick Hanafin has been more severely critical of the framers of the original Constitution, arguing that:

the value placed in women in postcolonial society lies almost completely in their reproductive function. Woman’s social role as mother is cherished more than any notion of individual female autonomy. A woman’s value, as constitutionally predicated, lay only in what she could contribute to the greater good by her role as mother ... [The Constitution’s provisions in Article 41.2] represent an outmoded and patriarchal view of societal organization.<sup>83</sup>

These feminist perspectives are not what power Myles na gCopaleen’s treatment of the Constitution. O’Nolan was in some respects a conservative thinker, nervous of novelty and swift to scorn progressive schemes; and this is nowhere more evident than in his treatment of the claims of feminism.<sup>84</sup> Indeed, on this issue there is some basis for viewing Eamon de Valera himself as a more progressive figure. The Taoiseach had at least had the grace to acclaim Constance Markiewicz as ‘colleague and comrade’, and as the ‘soldier of Ireland’ the world knew, upon her death in 1927.<sup>85</sup> Myles’s contribution to the debate over the Constitution is different: a matter less of content than of form, less of positive political and legal proposals than of textual insubordination.

He picks on the example of the age limit for the Presidency of Ireland. ‘People think’, he writes, ‘that one must be at least thirty-five years old, a figure apparently arrived at by an arbitrary bisection of the Biblical three score and ten’. He then looks at the text of the Article. In English, it reads, ‘Every citizen who has reached his thirty-fifth year of age is eligible for election to the office of President’. Myles responds:

Consider the utter carelessness of that term ‘reached’. First, it can be argued that the absence of the complementary term ‘or passes’ restricts candidature in the case of any individual to one year. Secondly, the word ‘reached’ establishes clearly that one need not be thirty-five but merely thirty-four! When one has reached one’s thirty-fourth birthday, one has then reached one’s thirty-fifth year. Was this then what the authors of the Constitution intended? Let us turn (puts on second pair of glasses over first) let us turn for enlightenment to the Irish version.<sup>86</sup>

82 Y. Scannell, ‘The Constitution and the Role of Women’ in Farrell, op. cit., n. 62, p. 134.

83 Hanafin, op. cit., n. 64, p. 158.

84 See, for instance, O’Brien, op. cit., n. 78, pp. 99–103.

85 See C. Markiewicz, *Prison Letters of Countess Markiewicz* (1987) 118–9.

86 O’Brien, op. cit., n. 78, p. 137.

Myles gives a literal translation of the Irish version – which he finds ‘colossally inelegant’ – as ‘Every citizen who has completed thirty-five years, he is electable to the office of President’. ‘Thus, you see’, he concludes,

you must have concluded your thirty-fifth year – reached your thirty-fifth birthday – to be eligible according to the Irish version. According to the English form of the Article first cited, you are game ball at thirty-four! The Irish version prevails. The English version of the Article, which is the only one many people can read, is false and repugnant to the Constitution!<sup>87</sup>

This is a characteristic comedy of pedantry. A line has been isolated, a small point magnified. But the little joke hints at larger issues. Myles’s starting point is what ‘people think’ – the everyday assumption which the law underwrites at the same time as it draws authority from it. Yet the discovery he flaunts is that this assumption is in conflict with the law. He points to a problem of legitimacy, identifying a discrepancy between law and life. In this sense the ‘normative’ quality of the Constitution, its successful integration with social practice, is minutely but pointedly eroded. And this discrepancy arises on a matter central to questions of political authority in a country which has escaped the oath to the British Crown: the means by which the head of state is selected.

The law, let alone not squaring with actual practice, does not even agree with itself. The post-colonial Constitution is bilingual: but the two languages, according to Myles’s wilfully problematizing exegesis, are in conflict. The law concerning the head of state is fractured along the most broadly symbolic line imaginable: the language which the new state has promoted as its true tongue, and the one left over – left everywhere – by the old dispensation. Article 8 of the Constitution declares that the Irish language is ‘the national language’ and ‘the first official language’; English is ‘recognised as a second official language’. Should the two texts of the law conflict, ‘the text in the national language shall prevail’.<sup>88</sup> ‘The Irish version prevails’, Myles thus notes in a line whose brisk rendition of official dogma is perhaps his article’s comic peak. Yet if this seems to end the legal stand-off, it raises problems of its own. For one thing, as he notes, most people are unable to read this version, authoritative though it may be. For another, in a final irony, he reports that the Irish version is atrociously written anyway. The implication is that the self-appointed custodians of the language are the last people who should be trusted with it. However the crux is resolved, it seems, the law is flawed.

Norton writes that constitutional documents should not be confused with constitutions themselves, but ‘can more appropriately be considered as a form in which the constitution is expressed rather than as a definition of the term itself’.<sup>89</sup> This view, notes Chubb, is convenient for the British with their

87 *id.*, p. 138.

88 Quoted in Chubb, *op. cit.*, n. 10, p. 30.

89 Quoted in *id.*, p. 2.

lack of a written constitution.<sup>90</sup> Arguably it seeks to remove constitutions from textual expression. But this is the manoeuvre against which Myles na gCopaleen is working. His critique of the constitution is precisely a reading, which presupposes that the constitution will necessarily take textual form. Myles's pedantry is in a sense a materialism, refusing the consolations of a disembodied constitution beyond textual debate and criticism.

In this respect – in its tenacious determination to read and problematize the constitutional text – it is a comic forerunner of the very serious interpretations of the Constitution that have taken place over the last half-century. As Brian Farrell notes:

de Valera had built in the mechanism for change in the provisions for formal amendment and for judicial review. He could scarcely have envisaged how adventurously Irish courts might come to relish that role. . . . In fact, it is mainly through judicial review that de Valera's document is becoming our Constitution. It is not just a historical description of the institutions of government as established but a living organism that can grow to protect the lives, liberties and interests of citizens through changing times.<sup>91</sup>

Whether the Irish Constitution has actually done this to an adequate extent, in Irish times that have changed significantly even since Farrell's essay was published, one may doubt. But as Hanafin indicates, it is through reinterpretation that:

the Constitution of national identity has been read otherwise as an opening to the other, to difference, and as an instance of the nation to come . . . The Gaelic Romantic tradition of the constitution has now become the 'minor literature' of the Irish constitutional space. The dominant discourse has now been identified as the Irish Enlightenment tradition . . . The Constitution now stands, ironically, as a site of resistance to that ethos upon which it was founded.<sup>92</sup>

In this sense the process of rereading may also imply a tacit process of rewriting. And Brian O'Nolan, as one of modern Ireland's most dogged readers, may be enlisted to this story. Simultaneously state employee and critic of national development, O'Nolan produced an idiosyncratic immanent critique of independent Ireland. His fascination with formula, his pedantic, painstaking approach to the languages of law, comprise an element of that work with which we have not hitherto made a reckoning. It was not only in conjuring a trinity of impossible policemen that Brian O'Nolan set his imagination to work on Ireland's law.

90 *id.*, p. 30.

91 Farrell, *op. cit.*, n. 62, p. 204.

92 Hanafin, *op. cit.*, n. 64, p. 162.