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## A 'SINISTER AND RETROGRESSIVE' PROPOSAL: IRISH WOMEN'S OPPOSITION TO THE 1937 DRAFT CONSTITUTION

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**ABSTRACT.** This article explores the campaign waged by Irish women against the draft constitution of 1937. A number of articles within the constitution were deemed by women activists to threaten both their rights as citizens and as workers. A campaign, organised principally by the Women Graduates' Association, the Joint Committee of Women's Societies and Social Workers, together with the Irish Women Workers' Union, sought to amend or delete the offending articles. The campaign ran for two months and in that period, feminists, the press, parliamentarians, the Catholic Church and republicans all engaged in the debate about women's position in Irish society.

Irish women, throughout the nineteenth and twentieth centuries, have been politically engaged in nationalist, unionist, social, economic and feminist organisations. In the twentieth century they played an active role in the fight for Irish independence through their involvement in the Easter Rising of 1916, the War of Independence 1919–21 and the Civil War 1922–3. Equal citizenship had been guaranteed to Irish men and women under the Proclamation of 1916. Irish women won the right, with their British counterparts, to the parliamentary franchise in 1918. Active lobbying, particularly by women, saw all Irish citizens over the age of twenty-one enfranchised under the Irish Free State Constitution enacted in June 1922. It would thus appear that Irish women were well placed to benefit from the roles they had played in the fight for Irish independence. However, women did not retain a high profile in the political affairs of the country and from the foundation of the Free State women's political, economic and social rights were gradually eroded. The implementation of restrictive legislation in the economic and political spheres found echoes in the social sphere. For instance, the 1927 Juries Act made it very difficult for women to sit on juries. The 1929 Censorship of Publications Bill prohibited the advertisement of contraceptives. Other legislation had repercussions also on how women could live their lives in Ireland. There was a marriage bar in place and women were subjected to lower

salary and pension rates to men.<sup>1</sup> Mary Kettle, who had consistently fought for the rights of women in the early twentieth century was to note with regard to the marriage bar in the civil service that 'women, from their entry until they reach the ages of 45 or 50 are looked on as if they were loitering with intent to commit a felony – the felony in this case being marriage'.<sup>2</sup> Women campaigned actively against much of the legislation that attempted to restrict their rights as citizens or workers.

It was not only Irish society which saw women, whether married or single, primarily in terms of their reproductive capacities and responsibilities to home and children. Most of western society had difficulty seeing women as citizens. Issues of women's rights as citizens were to surface particularly strongly in Ireland when Irish women organised a campaign to oppose the draft constitution of 1937. This was a short, intense campaign that lasted less than two months but marked a turning point in women's political campaigning in Ireland. Throughout the campaign women activists (and some men) were concerned with the implications of certain articles, particularly articles 9, 16, 40, 41 and 45, for women's citizenship rights and their status as workers (see appendix). The omission of article 3 of the 1922 constitution, which guaranteed equal citizenship, was also of grave concern. Their assault on the draft constitution was informed by their understanding of both the 1916 Proclamation and certain articles in the 1922 constitution. From the 1916 Proclamation the phrase, 'The Republic guarantees religious and civil liberty, equal rights and equal opportunities to all its citizens', was the standard against which the draft constitution was measured, and found wanting. The women fought for the reinsertion of the phrase 'without distinction of sex', found in articles 3 and 14 of the 1922 constitution, but excluded from the draft constitution. They were also incensed by the phrase 'inadequate strength of women' which was seen in article 45.4.2. With regard to women, the debate over the draft constitution was about women's rights as citizens and their right to work. While many women welcomed the constitution's attempts to reinforce the status of women as wives and mothers, they

<sup>1</sup> For recent work on the role of women in politics in these years see Maryann Gialanella Valiulis, 'Defining their Role in the New State: Irishwomen's Protest against the Juries Act of 1927', *Canadian Journal of Irish Studies*, 17, 1 (July 1992), 43–60; *idem*, 'Power, Gender and Identity in the Irish Free State', *Journal of Women's History*, 6/4/7/1 (Winter/Spring 1995), 117–36; Mary E. Daly, 'Women in the Irish Free State, 1922–1939: The Interaction between Economics and Ideology', *Journal of Women's History*, 6/4/7/1 (Winter/Spring 1995), 99–116; Caitriona Beaumont, 'Women, Citizenship and Catholicism in the Irish Free State, 1922–1948', *Women's History Review*, 6, 4 (1997), 563–85.

<sup>2</sup> Commission of Inquiry into the Civil Service, 1932–5, R. 54/2 (Dublin, 1935): Addendum C by Mrs M. Kettle, cited in Mary E. Daly, *Women and Work in Ireland* (Dundalk, 1997), 49.

were not willing to support this move when it appeared simultaneously to undermine their rights as workers. The campaign was also about the ambiguities of language and women's ability to trust governments and politicians. As a campaign it can also be seen as the last major battle of the suffrage feminists; many of the women heading the campaign had been active suffragists. And while the women could claim some success in their campaign, it marked the end of an era and witnessed the emergence and development of new political strategies for women activists.

### **The publication of the draft constitution**

On 24 May 1934 Eamon de Valera, president of the executive council, established a committee of four civil servants to examine the Irish Free State Constitution of 1922. That committee's report was available by 3 July 1934, but detailed drafting of the new constitution did not begin until the summer of 1936.<sup>3</sup> De Valera had limited the circulation of a draft document before its publication and it became available to the executive council for discussion on 16 March 1937. The *Irish Times* was to record on 7 April that 'very little is known about the Constitution'. The final proof of the document became available on 29 April. On 1 May 1937 a draft of the proposed constitution was finally published.

Women's fears about their political position in Ireland had been heightened as early as 1936. On 1 July the Joint Committee of Women's Societies and Social Workers wrote to de Valera concerning 'women's constitutional and economic condition'. At this stage they were anxious about women's future representation in the new Senate being created by de Valera. It took the Joint Committee from July 1936 to 29 January 1937 to arrange a delegation to meet with de Valera on this issue of representation. A departmental memo, summing up his response to the meeting, noted:

The president pointed out that any inadequacy in the representation of women in the legislature and public bodies was attributable to the state of public opinion. It would be difficult to do anything to give women a larger role in public life while public opinion remains as it is.<sup>4</sup>

Such a response revealed the unwillingness of the government to take the women's concerns seriously. Women's organisations were, however,

<sup>3</sup> Sean Faughnan, 'The Jesuits and the Drafting of the Irish Constitution of 1937', *Irish Historical Studies*, 26, 101 (May 1988), 79–80.

<sup>4</sup> Memo regarding the deputation from the Joint Committee of Women's Societies and Social Workers who met with the President on 29 January 1937. Department of the Taoiseach File, S 9880, 'Women, Position under the Constitution, 1937', National Archives of Ireland, Dublin [hereafter D/T, NAI].

to join forces, even if only briefly, when the draft constitution was published. Feminists, the Catholic Church, parliamentarians and women republicans all had something to say on the position of women in the constitution. The appearance of the draft constitution marked the beginning of sustained interest, if not always fruitful debate, on the position of women in Irish society that had not occurred since the suffrage campaign. Two early letters published in the *Irish Times* outlined what were going to be considerable problems for women activists.<sup>5</sup> Both letters remarked on the political apathy of women generally, and particularly noted the lack of women in formal political life. The various political parties had ignored the issue of women candidates in elections 'having not thought it worth their while to respond to women's organisations on the subject'. It was clear to these correspondents that public opinion, ill informed as it was regarding women's political needs, would be difficult to organise in any campaign to support women's political advancement.

### **The response: Costello**

Dáil Deputy, John A. Costello, Fine Gael, and ex-attorney general, was one of the first to draw attention to the position of women under the draft constitution. In a long article in the *Irish Independent* on 6 May, which contained two paragraphs on women, he wrote, 'We read the somewhat grandiose statement that all citizens shall be held equal before the law, but we then discover that the substance of that declaration is taken away by the provision that the State may, if it likes, in its legislation declare them to be unequal.' He argued that in introducing legislation the state, because it could take 'due regard to differences of capacity, physical and moral, and of social function', was allowing itself immense powers. That provision, he argued, read in conjunction with the constitutional declaration of 'the inadequate strength of women', and the omission of the significant words, 'without distinction of sex' contained in articles 3 and 14 of the existing constitution, 'must', he noted, 'appear curious in view of the substantially equal rights of voting and otherwise at present accorded to women'. Costello claimed that, under the draft constitution, women did not have 'as a constitutional right' any claim to the exercise of the franchise on equal terms with men. As it stood, the draft offered its framer as a 'whole burnt offering to feminists and feminist associations'.

### **The response: Gaffney**

The journalist, Gertrude Gaffney, responded to the draft constitution in her regular column in the *Irish Independent*.<sup>6</sup> She objected to several

<sup>5</sup> *Irish Times*, 28 Apr., 3 May 1937.

<sup>6</sup> *Irish Independent*, 7 May 1937.

assumptions made within the draft constitution and called on women to mobilise themselves into action. The 'death knell of the working woman is sounded in this new constitution' she wrote. 'Mr de Valera has always been a reactionary where women are concerned. He dislikes and distrusts us as a sex and his aim ever since he came into office has been to put us into what he considers is our place and keep us there.' Under the proposed constitution, Gaffney argued, 'we are to be no longer citizens entitled to enjoy equal rights under a democratic constitution, but laws are to be enacted which will take into consideration our "differences of capacity, physical and moral, and of social function"'. Restrictions regarding women's work were already in place since 1935.<sup>7</sup> Gaffney observed de Valera's skill in re-affirming the principles of 1916 but commented that the inclusion of conditional clauses would result in 'exterminating us [as workers] by degrees'. Were de Valera to descend to reality, she observed, he would see that 'ninety per cent of women who work for a living in this country do so because they must'. The argument revolved around commonly held beliefs that to remove women from the workforce would immediately lead to a reduction in male unemployment. Gaffney believed that de Valera, conscious of the 'nightmare of unemployment', was using the cue of economic depression as a means further to restrict women's rights as workers. It was, for Gaffney, and many other women activists, a complete rejection of the principles of the 1916 Proclamation.

The two feminist organisations that sought changes to the draft constitution were the National University Women Graduates' Association [WGA] and the Joint Committee of Women's Societies and Social Workers. The WGA had been established as the Women Graduates and Candidate Graduates' Association in 1902, with the original aim that all advantages of a University education would be equally available to men and women. It later became involved in a number of campaigns relating to the status of women. In 1925, for instance, they campaigned against the Civil Service Amendment Bill. The active core of the WGA was small; in 1930 it had a membership of sixty seven, less than half the number of women who graduated from University in 1929–30. However, the association had a number of distinguished female scholars who were publicly recognised and respected for their opinions. These included Professors Mary Hayden, Agnes O'Farrelly and Mary Macken. The second organisation, the Joint Committee of Women's Societies and Social Workers, had been formed in March 1935. The Joint Committee was made up of representatives from a number of women's organisations, including the Irish Women Workers' Union, which met initially to discuss

<sup>7</sup> The 1935 Conditions of Employment Act gave the minister for industry and commerce power to restrict the employment of women.

a response to the rejection of proposed amendments to the Criminal Law Amendment Act of 1935.<sup>8</sup>

### **The response: Women Graduates' Association**

Within a few days both the Joint Committee and the Women Graduates' Association took up Costello's and Gaffney's points. At a meeting of the WGA it was noted that 'the omission of the principle of equal rights and opportunities enunciated in the Proclamation of 1916 and confirmed in Article 3 of the Constitution of Saorstát Eireann [Free State] was deplored as sinister and retrogressive'.<sup>9</sup> It was clear to the WGA that articles 40, 41 and 45 opened the possibility of reactionary legislation being enacted against women. It was decided to appoint an emergency committee to publicise the issues relating to women arising from the draft constitution, to work with other groups to delete the 'offending' articles and to restore article 3 of the Free State Constitution. A deputation was appointed to meet with de Valera, and other influential Dáil members, and a subscription fund inaugurated.<sup>10</sup> The republican, Dr Kathleen Lynn, was to note in her diary that 'women are rizz and rightly'.<sup>11</sup>

Mary Hayden, referring to Gaffney's article, wrote that the new constitution was not a return to the middle ages but something worse:

Let not the empty promises of needless 'safeguards' and vague declarations of the value of 'her life within the home' blind our women to the fact that under this proposed Constitution her opportunities of earning, her civil status, her whole position as a citizen, will depend on the judgement of, perhaps, a single minister or a single state department as to her 'physical or moral capacity' and that even ministers and departments are not always infallible or unprejudiced.<sup>12</sup>

Mary Kettle, chairwoman of the Joint Committee, called upon women to examine carefully the so-called 'protection' clauses of the new constitution. She maintained that, if these articles became law, no working woman, whether she worked in trade, factory or profession, would have any security whatever. Since the establishment of the state, she added, women had become accustomed to regard article 3 of the 1922 constitution as the charter of their liberties. If de Valera disliked

<sup>8</sup> The Joint Committee was disbanded in 1993, after fifty-eight years in existence. Throughout this time, the number of organisations on the committee fluctuated, but initially comprised nine societies, and later rose to fourteen.

<sup>9</sup> *Irish Times*, 11 May 1937.

<sup>10</sup> National University Women Graduates' Association, minute book, 11 May 1937, 2/21, University College Dublin Archives [hereafter WGA, UCDA]. *Irish Times*, 17 May 1937.

<sup>11</sup> The diaries of Kathleen Lynn, 21 June 1937. Royal College of Physicians of Ireland, Dublin [hereafter, Lynn diaries, RCPI].

<sup>12</sup> *Irish Independent*, 12 May 1937. In an article in the *Cork Examiner*, 26 June 1937, Hayden noted that this new constitution, 'with all its possibilities of injustice', contained a 'mixture of flattery and insult'.

the phraseology of that article so much he could always fall back on the 'classic simplicity' of the proclamation of the republic, which stated: 'The Republic guarantees religious and civil liberty, equal rights and equal opportunities to all its citizens.' Such a statement, Kettle concluded, was unequivocal and would satisfy all women.<sup>13</sup>

The suffrage and republican activist Hanna Sheehy Skeffington wrote to the *Irish Independent* stating that the rights guaranteed to all citizens in the 1916 proclamation were being scrapped for a 'fascist model' in which women would be relegated to permanent inferiority, their avocations and choice of callings limited because of an 'implied invalidism as the weaker sex'. She believed that such rights had already been seriously encroached upon since the foundation of the Free State

first by the Cosgrave government, which deprived women of the right of trial by their peers by excluding women from jury service, discriminating against them in the civil service, and lately, in even more marked fashion, under the recent employment Act, excluding them, at the whim of the minister for industry, from work in industry.<sup>14</sup>

While many of the letters written by the Joint Committee and the Women Graduates' Association appeared in all three national papers it was the *Irish Press* which responded most vociferously to the women's demands.<sup>15</sup> The *Irish Press*, of course, was the paper owned by de Valera and the organ of the Fianna Fáil party, and as one commentator has noted, it was the 'necessary coping stone to all the speeches, lectures and propaganda of the Fianna Fáil party'.<sup>16</sup> The paper reacted immediately to Gaffney's column. It maintained that the *Irish Independent* had found a new angle from which to attack the constitution and that it aimed 'by the methods of prejudice and distortion' to enlist the women of the country in opposition against it. It claimed that the *Irish Independent* had purposely employed Gaffney to attack the constitution as 'sounding the death knell of the working woman', though it noted that such a view was 'a distortion of the constitution' and a 'figment of Miss Gaffney's imagination'. It continued:

On Miss Gertrude Gaffney's competence to chronicle the movements, the vagaries, and the tittle tattle of what is called Society, or to deal with the nuances of fabrics, the fashion of garments, the models of hats, or the style and ensemble which constitute the last word in chic, we are not qualified to express an opinion, but at the risk of being unpolite we must tell her that she makes a sorry exhibition of herself when she ventures on an incursion into politics, of which she has yet to learn the rudiments.<sup>17</sup>

<sup>13</sup> *Irish Times*, 11 May 1937. The letter was published in all of the national newspapers.

<sup>14</sup> *Irish Independent*, 11 May 1937.

<sup>15</sup> The *Cork Examiner*, while supportive of the women's campaign, regarded it as entirely their affair noting that if the women graduates can convince two-thirds of their non-graduate sisters the 'fate of the constitution will be decided', 26 June 1937.

<sup>16</sup> Tim Pat Coogan, *Ireland in the Twentieth Century* (2003), 146.

<sup>17</sup> *Irish Press*, 8 May 1937.



The anti-feminist tone of the *Irish Press* was symptomatic of its entire coverage of the women's campaign.

De Valera met a deputation from the Joint Committee and a separate deputation from the Women Graduates' Association on 14 May. He informed the deputations that 'Whilst he did not at all share their apprehensions, he would nevertheless give careful consideration to have a barrier set up against the possibility of the enactment of any law discriminating against women in the matter of citizenship and the franchise.'<sup>18</sup> He had already, on the previous evening in the Dáil, indicated to Deputy Costello that he would make such a change. It appears that the women's opinions had little real impact on him. A meeting of the WGA on 18 May heard a report by Mary Macken on the deputation's meeting with de Valera. It was noted that over two hours had been spent with him, and his assurance had been received about clauses to safeguard the political rights of women to be inserted in articles 9 and 16. He had given no hope, however, of amending or deleting the clauses in articles 40, 41 and 45, which the WGA regarded as threatening to women.<sup>19</sup> With this result the WGA decided to campaign for a complete rejection of the constitution by the public. But even on this there was a dilemma. The vote on the constitution was to take place on the same day as a general election. The WGA were determined that the campaign would not be fought on party political lines, what they wanted was a vote against the constitution. However, they were aware of the reality of Irish political life where party loyalty often overrode concerns about party policy. The WGA tried to get the message across that voters could vote against the constitution without voting against Fianna Fáil. The *Irish Press* however, attacked the feminists' campaign because they saw it as hostile to the government and the Fianna Fáil party.<sup>20</sup>

### Dáil response

The women's organisations lobbied all the Teachtaí Dála [TDs] with regard to the contentious articles. However, it would be an exaggeration to say that women's rights commanded much attention on the part of deputies, who were far more concerned with other aspects of the constitution. Reporting on 26 June the *Irish Independent* noted that de Valera had shelved the 'fair sex' question, and as an amendment supportive of the feminists got pushed aside, the 'deputies took off their metaphorical coats and got down to the most controversial issue of the debate – the powers of the President'.

<sup>18</sup> *Irish Press, Irish Independent*, 15 May 1937.

<sup>19</sup> WGA, minute book, 18 May 1937, UCDA.

<sup>20</sup> Rosamond Jacob diary, 27 May 1937. MS 32,582 (81), National Library of Ireland, Dublin [hereafter Jacob diary, NLI]. WGA minute book, 11 May 1937, UCDA.

Opposition contributors to the debate included John Costello, Patrick McGilligan, John Marcus O'Sullivan and Robert J. Rowlette. Amongst the three women TDs, Margaret Pearse, Fianna Fáil, did not speak in the debate. Helena Concannon, Fianna Fáil, a member of the Women Graduates' Association and elected by the National University of Ireland constituency, mentioned the concerns of women to the president and asked de Valera to satisfy himself that future interpretations of the constitution could not lessen the status of women.<sup>21</sup> She informed the WGA deputation that as a disciplined member of the Fianna Fáil party she could not propose any amendments to the draft constitution.<sup>22</sup> Bridget Redmond, Fine Gael, put forward an amendment to article 9 (that no citizen shall be placed by law under any such disability or incapacity by reason of sex, class or religion) which failed, and on which she spoke only briefly.<sup>23</sup>

Deputy Rowlette noted that 'there has not been for many years such a condition of alarm among the women, as to their rights as citizens of the country, as has been aroused by certain clauses in the constitution'.<sup>24</sup> Deputy O'Sullivan declared that women were much more afraid of economic discrimination than political discrimination. He also noted that 'these women are not all of the class who hold advanced views. Many of them are moderate, conservative women, who hold views which are by no means advanced'.<sup>25</sup> These women, he said, feared 'for their political position' but they were much more afraid of what may happen in practice as to the taking away of opportunities to work.<sup>26</sup> Mrs Concannon observed on 12 May that 'it would be unfitting that this debate should close without a woman's voice being heard in connection with this matter'. She then noted the concerns raised by the Joint Committee and the Women Graduates' Association and asked de Valera to satisfy himself that any future interpretation of the disputed articles could not lessen the status of women. It was clear to her, at least, that 'the framers of the constitution had no intention in their minds to interfere in the slightest way with the rights of women and I am glad to have that assurance'.<sup>27</sup> Deputy McGilligan was later to observe that Concannon would 'walk blindly' behind her leader into the lobby and proclaim to all the world that there was no question of sexual discrimination.<sup>28</sup>

<sup>21</sup> Dáil Debates, cols. 241–7, 12 May 1937 [hereafter DD].

<sup>22</sup> WGA, minute book, 8 May 1937, UCDA.

<sup>23</sup> DD, vol. 67, col. 1307, 28 May 1937.

<sup>24</sup> DD, vol. 67, col. 1587, 2 June 1937.

<sup>25</sup> DD, vol. 67, cols. 1594–5, 2 June 1937.

<sup>26</sup> DD, vol. 67, col. 1594, 2 June 1937.

<sup>27</sup> DD, vol. 67, cols. 241–7, 12 May 1937.

<sup>28</sup> DD, vol. 68, col. 177, 9 June 1937.

During the Dáil debate on the draft constitution articles 9 and 16 were, amongst others, amended. The phrase ‘without distinction of sex’ was inserted in article 16,<sup>29</sup> and a clause was added to article 9 which read that ‘No person may be excluded from Irish nationality and citizenship by reason of the sex of such person.’<sup>30</sup> De Valera had been resolute that the phrase ‘without distinction of sex’ was superfluous. He saw it, he said, as a badge of women’s previous inferiority, an inferiority he insisted that no longer existed under the draft constitution, but his subsequent decision to include it in article 16 was an acknowledgement of the pressure brought to bear by campaigners on this issue.

### The Catholic Church

On 6 May Dr Kathleen Lynn noted in her diary that the newspaper the *Irish Catholic* says constitution is a noble document! That damns it if nothing else.<sup>31</sup> The writer Rosamond Jacob also observed in her diary on 24 May 1937 that ‘de Valera [was] too damn Catholic’.<sup>32</sup> Whatever views might have been expressed in private about the Catholic nature of the draft constitution it would have marked the death of the women’s campaign to air such views in public. Much has been written about the role of the Catholic hierarchy in constructing and advising de Valera on the constitution. Ultimately, however, it was, as one commentator has noted, ‘de Valera who decided what should or should not be included in the draft Constitution’.<sup>33</sup> The Catholic press strongly supported the draft constitution. The *Irish Catholic*, on 6 May, concluded that ‘Irish Catholics will rejoice in the fact that the fundamental principles of the new Bunreacht are in close accord with Catholic social teaching.’ A statement from the Catholic organisation, An Rioghacht,<sup>34</sup> quoted extensively from Papal Encyclicals and noted that for anyone who ‘reads

<sup>29</sup> Also inserted in article 16 was the guarantee that ‘No law shall be enacted placing any citizen under disability or incapacity for membership of Dáil Eireann on the grounds of sex or disqualifying any citizen from voting at an election for Dáil election on that ground’. DD, vol. 68, col. 153, 9 June 1937.

<sup>30</sup> DD, vol. 67, cols. 1305–7, 28 May 1937.

<sup>31</sup> Lynn diaries, 6 May 1937, RCPI. The following were also noted by Lynn in her diary, ‘13 May, Mrs Kettle says she works night and day with protest against new constitution’s rules for women, of course they are reactionary. 18 May, evening meeting of women graduates to hear deputation’s reports. Dev [de Valera] much pained we should not think his constitution perfect for women when there is so much discrimination in many sections. What could be expected from man made laws, however, he said he approved of equal pay for equal work, wonderful he doesn’t apply it. Women will fight.’

<sup>32</sup> Jacob diary, 24 May 1937, NLI.

<sup>33</sup> Faughnan, ‘The Jesuits and the Constitution’, 102.

<sup>34</sup> An Rioghacht, the League of the Kingship of Christ, was established in Ireland in 1926. It was modelled on associations such as Action Populaire in France and the Catholic Social Guild in Britain.

these and other similar passages of the encyclicals and compares them with the passages of the draft constitution which touch on the same subject, it is impossible to escape the conclusion that the draft constitution, in this matter, derives its inspiration from the encyclicals'.<sup>35</sup> While the statement from An Rioghacht admitted that women might have some grievances,<sup>36</sup> it believed that a satisfactory solution could only be found in the acceptance of Catholic social teaching, basically that women should be wives and mothers.

The WGA felt the need to respond to this statement but had to be very careful not to appear anti-Catholic or anti-clerical. The response, printed in all the national papers,<sup>37</sup> came from Professor Mary Macken. She stated that Catholic women were in 'whole-hearted agreement' with the principles of the encyclicals. 'These women', she added, 'are practical Catholics, devoted to the Church and the Holy Father.' Macken observed that 'Encyclicals and Constitutions move in very different spheres.' An encyclical was an exhortation issued by the Holy Father to the Faithful. It was designed to meet certain definite situations in the world of morals, economics, education, etc., 'when such situations seem to him to call for exhortations or instruction'. However, a constitution was, she wrote, 'a charter of the rights and liberties of the citizen within the framework of the State'. It was amenable to interpretation in the courts of law, and 'it implies (for the implication of those clauses that have aroused the fears of women) legislation which may be exploited to the detriment of those it is supposed to protect'.<sup>38</sup> Women supported the encyclicals, she argued, because they 'had a vital interest in the purity of conjugal life, in the happiness of the home and the bringing up of children'. She made it absolutely clear that women's objections to certain clauses in the constitution did not imply any opposition to the teachings of the church. Women were simply 'wary of legislation and nervous of directives to such legislation' which might 'restrict unfairly under cover of "protection"'.<sup>39</sup>

The debate with An Rioghacht occupied the newspapers from 20 to 28 May. An Rioghacht went on to accuse Macken of 'unchristian liberalism believing that religion must be excluded from public life'.<sup>40</sup> It claimed that the feminist groups were 'mixed or neutral' bodies. Lacking an exclusive Catholic membership such groups of women were suspect on many levels. Similar views were expressed by the *Standard*, which deemed that many of the country's 'spokeswomen' were steeped in the spirit of

<sup>35</sup> *Irish Catholic*, 27 May 1937.

<sup>36</sup> See for instance, letter from B. B. Waters, chairman of An Rioghacht in *Irish Times*, 22 May 1937.

<sup>37</sup> *Irish Independent*, 26 May 1937, *Irish Times*, *Irish Press* 27 May 1937.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Irish Independent*, 27 May 1937, *Irish Press*, 28 May 1937.

'neo-paganism'. 'Who', the *Standard* asked, missing the main point in the women's argument, 'would question the right to private property? Who would object to the forbidding of divorce? Who, with any knowledge of Catholic tradition and Catholic teaching, would dispute that woman's place was in the home?' It was, the article concluded tellingly, the duty of the state to assist the church in all these matters.<sup>41</sup> Though it is difficult to assess the impact of such views, the reaction of the Catholic press may well have harmed the women's campaign.

That there was some clerical concern with the women's campaign is evident in the McQuaid papers. Father John Charles McQuaid, in an undated note to de Valera, observed:

The feminists are getting angry and are moving into action. They seem stung by the suggestion that the normal place for a woman is the home. I shall shortly have another note to meet these persons. Their thoughts are very confused. Both *Casti Connubii* and *Quadraesimo Anno* answer them.<sup>42</sup>

He later noted that

It is to misconstrue Art. 40.1 to read into it an attack on women, or any special class, or a threat of future attack. It is a graver error still to see in it any tincture of modern fascism. No article of the draft constitution even attempts to deny women's fundamental rights as a human being.

However, he also noted, it is 'an unreality to imagine that the possession of an electoral vote abolishes for either men or women or for both diversity of social function. Nothing will change in law and fact of nature that woman's natural sphere is in the home.' As Cairiona Beaumont has observed this statement suggests that under the draft constitution men and women were not considered equal citizens.<sup>43</sup> Ultimately, the women got no support for their campaign from the Catholic Church. Within the women's camp the most significant response to the draft constitution came from the Irish Women Workers' Union, the most notable group of women trade unionists in the country.

### **Irish Women Workers' Union**

Louie Bennett, leader of the union, wrote to de Valera as president of the executive council stating the views of the Irish Women Workers' Union [IWWU] on the draft constitution.<sup>44</sup> She noted that their objection

<sup>41</sup> Cited in *Irish Press*, 14 May 1937.

<sup>42</sup> McQuaid to de Valera, undated. De Valera papers, 1091, cited in Sean A. Faughnan, 'De Valera's Constitution: The Drafting of the Irish Constitution of 1937' (MA thesis, UCD, 1988), 106.

<sup>43</sup> 'Rights of women', John Charles McQuaid Papers, section 5, file 48, Dublin Diocesan Archives. See also, Beaumont, 'Women, Citizenship and Catholicism', 575.

<sup>44</sup> The letter was published in the *Irish Press*, 12 May 1937.

to certain clauses in the constitution was 'inspired by a real anxiety to safeguard the position of women irrespective of class or party prejudices'. 'Most of us', she continued, 'would wish to subscribe without cavil to the proposed constitution, but for many of us it contains points of serious danger', not for what it actually expressed but for the ambiguity of the clauses and the danger of multiple interpretations. The IWWU believed that article 40.1 'tends to place women in a different category of citizenship from men and in a different position from men' with regard to the law. Given the evidence of fascist governments Bennett argued that this clause gave power to the government to initiate legislation that would be detrimental to women's equality. The letter went on to suggest that article 41.2 (1) should be amended to acknowledge 'women's work for the home' rather than within it. It was, she declared, invidious to have in the constitution a clause that makes it 'appear that only the women *within* the home can contribute to the common good'. She also argued that section 2.2 of article 41 would become superfluous if the 'principles of just distribution of wealth contained in article 45 are put into practice. Abolish poverty and unemployment and the need to protect mothers disappears.' The 'most indefensible' clause, however, was section 4.2 of article 45. It took from women the right to choose their own avocation in life. The letter argued that this clause would give the state power to decide what avocations were suited to a citizen's sex and strength. 'It would be hardly possible', the letter continued, 'to make a more deadly encroachment upon the liberty of the individual than to deprive him or her of this right.' The union urged the deletion of this clause because it offered 'a false solution of one of the problems of poverty' and as being offensive to a large number of citizens. The same clause, it argued, opened the door to 'fascist legislation of a very objectionable type'.<sup>45</sup> A deputation from the IWWU met with de Valera on 14 May, and on 24 May Bennett wrote to de Valera reminding him of his commitment to amend article 45.4 in line with the union's suggestion. She also reiterated her dissatisfaction with article 40.1 which, she stated, carried 'interpretations offensive to a large section of the community and [is] fundamentally different from your own intention'.<sup>46</sup> After another meeting with de Valera on 27 May what the IWWU referred to as the obnoxious phrase, 'the inadequate strength of women', was deleted from the draft constitution. The IWWU also secured the substitution of the word 'citizen' for 'women and children' in article 45.4.2. With this success the IWWU withdrew from the women's campaign. The minutes of the union for June of 1937 record that:

We have had rather a victory in getting our amendment to clause 45 through in practically the form we suggested. Dr Rowlette piloted it, and we wrote thanking him... there is

<sup>45</sup> *Ibid.*

<sup>46</sup> Quoted in Rosemary Cullen Owens, *Louie Bennett* (Cork, 2001), 88–9.

hope of an amendment to clause 40, the second paragraph of which is undesirable. The other women's societies were rather disappointed that we did not go on with the public meeting, but after our interview with the president we thought it wiser to hold our hand. The result justified our judgement. We have written to the other societies, explaining all this.<sup>47</sup>

While the Union was still prepared to co-operate with the women's societies they were not officially represented at the mass meeting organised by the Women Graduates' Association in the Mansion House in Dublin on 21 June. In later minutes Bennett referred to the censure of the women graduates on their action in not going on with the campaign against clauses in the new constitution which were not amended. While 'we agree', she wrote, 'that the social formation clause, for instance, to being undesirable', the fact that they had secured amendments to the constitution meant that now 'the matter is to be allowed drop'.<sup>48</sup> Even with their withdrawal from the campaign Bennett still wrote letters to the press on the draft constitution. On 7 June, for instance, she wrote that 'The tribute to women in the home contained in article 41.2 is superfluous.' 'A constitution', she declared, 'is hardly the place for the expression of vague and chivalrous sentiments. Mothers would prefer concrete proposals, which would release them from the pressure of economic necessity to work outside the home.' The real danger with this clause was it might be used as a pretext for undue interference with the liberty of women.<sup>49</sup>

The withdrawal of the IWWU certainly weakened the campaign. Bennett publicly explained the reasons why the IWWU had withdrawn. While they still supported the fight for equal rights there was a disagreement about the best means to carry that fight through. 'My committee', she noted, 'consider that amendments to articles 9, 16 and 45 have removed the really serious menace to the position of women.'<sup>50</sup> While there were important issues on which to campaign she believed that a woman's trade union owed its first allegiance to the trade union movement. It was now up to the women's union to make male trade unionists and the labour movements fight for the principle of equal pay and equal opportunities for men and women. What is also crucial to the position of the IWWU was that Bennett, and many women trade unionists, believed that women's place was in the home and Bennett, like

<sup>47</sup> Irish Women Workers' Union minute book, June 1937. Irish Labour History Museum, Dublin. My thanks to Theresa Moriarty for facilitating access to these records. Rosamond Jacob was to note the withdrawal of the IWWU from the campaign because Bennett 'had a private talk with DeV [de Valera] and he was going to alter certain wording, but not apparently, anything vital'. Jacob diary, 28 May 1937, NLI.

<sup>48</sup> Irish Women Workers' Union minute book, 8 July 1937.

<sup>49</sup> *Irish Independent*, 7 June 1937.

<sup>50</sup> *Labour News*, 26 June 1937.

de Valera, believed that male breadwinners should earn enough to allow wives to remain in the home.<sup>51</sup>

### Republican women

While the actions and views of the major groups involved in the debates on the position of women in the draft constitution have been noted there is one other group that deserves mention. Where did activist republican women stand on this matter? Kathleen Clarke, Kate O'Callaghan and Maud Gonne, while not actively involved, noted their support for the women's campaign. Republican women's opposition was motivated by what they saw as a betrayal of the principles of the 1916 proclamation. Maud Gonne, for instance, wrote in *Prison Bars*, in July 1937:

With one of our provinces cut off, and the Republican Army outlawed and 44 Republicans in jail and hundreds of good men in their keeping, it seems absurd to talk of a permanent constitution for Ireland. We have the Proclamation of the Republic – a noble, clear concise document – as our charter of liberty. It has been endorsed by the whole nation. The substitution of another document is a weakening of our national position. If, when Ireland is free, a more detailed constitution were needed the articles concerning women and the articles providing for special courts [art. 38.3] in Mr de Valera's draft constitution would damn it in my eyes.

A statement from Cumann na mBan observed that

This constitution does not satisfy the aspirations of the Irish people. If the Proclamation of Easter Week meant anything, it meant the end of capitalism and the introduction of equal rights and opportunities for all. Our charter of freedom was laid down in the proclamation of Easter week. Only the establishment of a republic in accordance with that proclamation will satisfy our aspirations.<sup>52</sup>

They called on the men and women – whose rights were being threatened under the proposed new constitution 'to abstain altogether from voting at this election'. Cumann Poblachta na hEireann (the Irish Republican Party), seeing no great difference between the 1922 Free State Constitution and de Valera's draft constitution, observed that 'The present Free State constitution at least has the advantage in that it does not permit us to forget our slavery: the proposed new one would cover our chains with a faded tricolour.'<sup>53</sup>

Margaret Buckley, president of Sinn Féin, observed that no one took the new constitution seriously, but if she did take it seriously she would have had something to say of the way in which de Valera treated women as if they were 'half-wits'.<sup>54</sup> Cumann na mBan was deeply engrossed in organising a protest against the coronation of George V and, as it did

<sup>51</sup> Cullen Owens, *Bennett*, 89–90.

<sup>52</sup> *Irish Independent*, 26 June 1937.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Irish Independent*, 30 June 1937.



not recognise the state, could not therefore legitimately campaign against the constitution. Old Cumann na mBan,<sup>55</sup> which did recognise the Free State, wrote to de Valera, objecting to articles 9, 16 40(1), 42 (2) and 45 (2), for the same reasons they had been objected to by the Joint Committee and the Women Graduates' Association. Old Cumann na mBan were particularly annoyed with the 'inadequate strength of women' phrase noting that in the Anglo-Irish and Civil Wars they engaged in 'heavy muscular toil' conveying machine guns, heavy explosives and rifles'.<sup>56</sup> They were also incensed by their unequal treatment under the Military Service Pensions Act of 1934. Overall, the protest of Republicans did not receive wide press coverage. On the eve of polling, however, a letter on behalf of Old Cumann na mBan appeared in the *Irish Press*, addressed to de Valera, observing

we wish you to know that your amendments to the clauses regarding women in Bunreacht na hÉireann meet with our complete approval. Further, you have stated that the rights of women are not restricted, and we accept your word. Our association unanimously accepts Bunreacht na hÉireann and advocates all Irish women voting for it.<sup>57</sup>

Kathleen Lynn was to record in her diary that the letter, signed by Bridie O'Mullane, was 'well starred, saying how much C[umann] na mB[an] think of Dev's constitution. [We are] very worried over it, for some weeks ago she was quite sound. They got her to do it. Penance, they felt our opposition so much.'<sup>58</sup>

The level of disappointment amongst republican women was best expressed by Dorothy Macardle. Macardle, a respected writer and intellectual, member of Fianna Fáil, a staunch supporter of de Valera, and the author of *The Irish Republic*, a major work on the fight for Irish freedom, wrote privately to de Valera arguing against those clauses which appeared to limit women in society. She concluded that 'as the constitution stands, I do not see how anyone holding advanced views on the rights of women can support it, and that is a tragic dilemma for those who have been loyal and ardent workers in the national cause'.<sup>59</sup>

### **De Valera's response**

A cartoon on the cover of the June issue of *Dublin Opinion*, titled 'A Dream of Fair Women', shows de Valera dreaming that he was being threatened by Queen Maeve and Grainne O'Malley, with the caption, 'Say, big boy, what about those articles in the new constitution?'<sup>60</sup> De Valera certainly

<sup>55</sup> Cumann na mBan had split in 1933.

<sup>56</sup> Letter from Association of Old Cumann na mBan, 18 May 1937, S 9880, D/T, NAI.

<sup>57</sup> *Irish Press*, 30 June 1937.

<sup>58</sup> Lynn diaries, 6 May 1937, RCPI.

<sup>59</sup> Macardle to de Valera, 21 May 1937, S9880, D/T, NAI.

<sup>60</sup> *Dublin Opinion*, 16, 184 (June 1937).

found himself on the defensive when dealing with women's criticisms of the constitution and during the election and referendum campaign devoted considerable attention to refuting the arguments advanced by the women critics. De Valera remained incredulous to the women's fears and in the Dáil on 11 May stated:

Let us consider this whole question of women's rights. I seem to have got a bad reputation. I do not think I deserve it. I myself was not conscious at any time of having deserved all those terrible things that I am told I am where the rights of women are concerned. So far as I know, wherever there was a question of working to ensure that women would have equal rights, I have worked for it, and there is nothing in this constitution which in any way detracts from the rights which women have possessed here. I took out the phrase 'without distinction of sex' and I make no apology for this.<sup>61</sup>

De Valera knew, perhaps by looking into his own heart, that '99 per cent of the women of this country will agree with every line of this [constitution].' He also noted that Ireland had one of the most advanced Citizenship Acts in the world, 'with which women's associations are most satisfied'. There was, he claimed, no intention of weakening or interfering with the rights of women in any way.<sup>62</sup>

The *Irish Press* made extensive critiques of the position of women who opposed the constitution and rejected all the feminist arguments against it. It consistently came back with the argument that the women were deliberately distorting the character and content of the constitution. It even accused the feminists of being the dupes of political parties. De Valera, in a speech in Carlow in which he dealt at length with the position of women, said that the whole issue was started as a political move by the ex-attorney general, John Costello.<sup>63</sup> De Valera also noted that when Costello began the campaign he had his tongue in his cheek, never expecting it to be taken seriously by the feminists.<sup>64</sup>

### Conclusion

The referendum on the constitution was held on election day, 1 July 1937. Kathleen Lynn noted she 'voted early. We put no for constitution and Restore the Republic on voting paper.'<sup>65</sup> The constitution was accepted by 685,105 votes to 526,945, a majority of 158,160. In five constituencies there was a majority vote against the constitution: these were Dublin

<sup>61</sup> DD, vol. 67, col. 64, 11 May 1937.

<sup>62</sup> *Irish Press*, 3 June 1937. On the issue of citizenship see Mary E. Daly, 'Irish Nationality and Citizenship since 1922', *Irish Historical Studies*, 32, 127 (May 2001), 377–407, and *idem*, 'Wives, Mothers, and Citizens: The Treatment of Women in the 1935 Nationality and Citizenship Act', *Éire/Ireland*, 38, 2 and 3 (Autumn/Winter 2003), 244–63.

<sup>63</sup> *Irish Press*, 26 June 1937.

<sup>64</sup> *Irish Independent*, 6 May 1937.

<sup>65</sup> Lynn Diaries, RCPI, 1 July 1937.

township, Dublin County, Cork County West, Sligo and Wicklow.<sup>66</sup> It is impossible to know what impact the women's campaign had on the voting. Mary Kettle believed that in some of these constituencies 'largely owing to the fight women put up, the Constitution was defeated and certainly it reduced the number of votes cast for it'.<sup>67</sup> De Valera also believed that the women's campaign against the constitution had cost him votes.<sup>68</sup> However, in a recent television documentary on women in twentieth-century Ireland a number of women remarked that they remembered nothing about the women's campaign against the draft constitution, one adding that she was probably having a baby at the time.<sup>69</sup> How relevant it was to the 'ordinary' woman, may be seen in another *Dublin Opinion* cartoon, which depicts a woman surrounded by household chores and demanding children while her husband explains her position under the new constitution.<sup>70</sup> The number of women involved in the campaign was very small. It was a campaign organised and run by middle-class women, and very much confined to the Dublin area, reaching country districts primarily through the newspapers.

The argument over the constitution continued to the end of the year. In December 1937, at a Fianna Fáil meeting in Glynn, County Wexford, the minister for agriculture repeated the charge that women, when challenged to quote the articles in the new constitution which deprived them of privileges, failed to do so. At the same meeting the Revd P. Murphy said that the opposition to the new constitution had come mainly from a number of noisy women and from politicians.<sup>71</sup> Séan T. O'Kelly, minister for local government, addressing a meeting on the constitution in Dublin queried the nationalist credentials of the organisers of the women's opposition and said they would rather the country to be still 'under the Union Jack'.<sup>72</sup> Mary Hayden, and other women, responded to these speeches. Hayden defended the women's interpretation of the controversial clauses, and referred specifically to the Condition of Employment Act (1936), regarded when passed as of doubtful legality but now within the new constitution as perfectly legal. After the publication of these letters the *Irish Press* had a leading article headed 'Women Graduates Again'. This leader accused women of misrepresenting the implications of the constitutional articles. It invoked Pius XI and the encyclical *Quadragesimo Anno* in relation to article 45. The

<sup>66</sup> *Irish Press*, 17 July 1937.

<sup>67</sup> *Irish Independent*, 25 Nov. 1937.

<sup>68</sup> See his speech at the Fianna Fáil Ard Fheis in October 1937 in *Speeches and Statements by Eamon de Valera, 1917-73*, ed. Maurice Moynihan (1980), 334.

<sup>69</sup> Hoodwinked: Irish Women since the 1920s. Broadcast on RTÉ television in 1997.

<sup>70</sup> *Dublin Opinion*, 16, 184 (June 1937).

<sup>71</sup> *Irish Independent*, 6 Dec. 1937.

<sup>72</sup> *Irish Independent*, 14 Dec. 1937.

leader concluded by advising the women of the country to 'pray to be saved from the advocacy of the academic group who have constituted themselves their champions'.<sup>73</sup>

Mary E. Daly has noted that the constitutional emphasis on the importance of women's role within the home at a time when the 'overwhelming majority of Irish women – married, widowed and single, were based within the home' suggests that the constitution can be viewed as 'giving status to many members of Irish society who were otherwise ignored'.<sup>74</sup> However, the recognition of that status within the constitution had no practical benefits for women. Yvonne Scannell has observed that the effect of the constitution was to relegate women to a life of domesticity and powerlessness.<sup>75</sup> This, however, is an exaggeration. Irish women continued to engage in work outside the home; levels of emigration, fuelled by poor economic prospects in Ireland, forced many women to England and beyond.

The advent of a women's political party, founded on 24 November 1937 and named the Women's Social and Political League, was a direct consequence of the women's campaign against the draft constitution. It was to be non-party and non-sectarian and its aim was to promote and protect the political, social and economic status of women and to further their work and usefulness as citizens. Proposing the formation of the party Dorothy Macardle said she considered 'the organisation of the body a humiliating necessity and she never before thought that such a necessity would arise in Ireland. It had arisen because men had organised the sexes separately and to the detriment of women.'<sup>76</sup>

What did change, however, was the form of women's political activism. There was an increased emphasis on the needs and rights of wives and mothers. The formation of the Irish Housewives' Association [IHA] in 1942 saw campaigns to protect the housewife against rising prices and focused on women's rights as consumers. With a new generation of feminists the IHA was particularly influential in maintaining feminist protest in Ireland throughout the remainder of the twentieth century. The Joint Committee continued to call for equality of treatment between men and women. While the IHA managed at times to get publicity for their activities, for many of the other women's organisations this proved to be difficult. Political agitation became more hidden and evidence of that agitation can be found to a greater extent in departmental files and minute books than in the public domain.

<sup>73</sup> *Irish Press*, 17 Dec. 1937.

<sup>74</sup> Daly, 'Women in the Irish Free State, 1922–1939', 111–12.

<sup>75</sup> Yvonne Scannell, 'The Constitution and the Role of Women', in *De Valera's Constitution and Ours*, ed. Brian Farrell (Dublin, 1988), 123–36.

<sup>76</sup> *Irish Independent*, 25 Nov. 1937.

At a fundamental level the campaign against the draft constitution was about ambiguity in language, about the inadequate reflection of the reality of women's lived experience, about the mistrust that women had of male politicians. It was a protest against the discursive construction within the constitution that all women, whatever their marital status, and whether they were mothers or not, were enmeshed in traditional families. It is significant that the campaign was undertaken at all. It was the last high profile feminist campaign until the revival of feminism in Ireland in the 1970s.

## **Appendix**

### **CONTENTIOUS ARTICLES**

#### **Draft constitution 1937**

Article 9.1 The acquisition and loss of Irish nationality and citizenship shall be determined in accordance with law.

Article 16.1.1 Every citizen who has reached the age of twenty-one years, and who is not placed under disability or incapacity by this Constitution or by law, shall be eligible for membership of Dáil Eireann.

Article 16.1.2 Every citizen who has reached the age of twenty-one years who is not disqualified by law and complies with the provisions of the law relating to the election of members of Dáil Eireann, shall have the right to vote at an election for members of Dáil Eireann.

Article 40.1 All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

Article 41.2.1 In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

Article 41.2.2 The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

Article 45.4.1 The State pledges itself to safeguard with especial care the economic interests of the weaker sections of the community, and, where necessary, to contribute to the support of the infirm, the widow, the orphan, and the aged.

Article 45.4.2 The State shall endeavour to ensure that the inadequate strength of women and the tender age of children shall not be abused, and that women or children shall not be forced by economic necessity to enter avocations unsuited to their sex, age or strength.

**1922 Constitution**

## Article 3

Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State (Saorstát Éireann) at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents were born in Ireland or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State (Saorstát Éireann) enjoy the privileges and be subject to the obligations of such citizenship: provided that any such person being a citizen of another state may elect not to accept the citizenship here and termination of citizenship in the Irish Free State (Saorstát Éireann) shall be determined by law.

**1916 Proclamation**

'The Republic guarantees religious and civil liberty, equal rights and equal opportunities to all its citizens . . . '.