# Transition without change: taxation by the Irish Free State

## Introduction

The period from 1916 to 1923 was a critical time in the establishment of the modern Irish state and the climax of a dispute between nationalism and unionism that had been active, to varying degrees, from the very date of the Act of Union in 1801.[[1]](#footnote-2) These tumultuous years encompassed the Easter Rising of 1916, the General Election of 1918 which saw nationalist Sinn Fein take a decisive majority and form a separatist parliament, Dáil Éireann. While Dáil Éireann met intermittently from January 1919, a war of independence was waged by the Irish Republican Army (IRA) and the British military and police forces. This war of independence was ended by the signing of the Anglo-Irish Treaty in December 1921 and the establishment of the Irish Free State in 1922. Differing Irish views towards that treaty were expressed in a civil war, which began in June 1922 and ended in May 1923.[[2]](#footnote-3)

This paper looks at taxation in the counter-state (from 21 January 1919 to 6 December 1922) and in the Irish Free State, formed after 6 December 1922 by the Anglo-Irish Treaty.[[3]](#footnote-4) It looks at both legislation relating to tax and also the administration of taxation by the state. It examines the highly significant degree of continuity between the old and the new states in the sphere of taxation. It concludes that taxation was not a central motivation for a move to self-determination by Irish nationalists, and that the political impetus in the early years of the modern Irish state was strongly in favour of maintaining the tax status quo. Finally, there is some tentative analysis of how the ramifications of choices made by the early governments of the modern Irish state continue to reverberate in the administrative operations of the state.

## Limitations of taxation

It is important to bear in mind that, although the paper focusses solely on legislative and executive treatment of taxation, these activities took place against the backdrop of military and political resistance to British rule in Ireland and, upon that being achieved (at least in southern Ireland) a subsequent civil war in 1922-23.[[4]](#footnote-5) Such a limited focus on legislation and executive activity, and within that, the even narrower category of tax law, can be criticised as being the product of a solipsistic tax lawyer.

Nonetheless, the choices of what to tax, and what not to tax, are reflective of broad philosophical ideas as to the function of taxation: its redistributive capacity, its role in social welfare and even the political legitimacy of the state. The architecture of the tax system, whether developed organically or by rupture, embodies ideas about the role of the state and the rights of individuals, on which diametrically opposing views are tenable.[[5]](#footnote-6) Murphy and Nagel pose a fundamental question in the context of political legitimacy and justice, asking: “what kind of concern do we owe our fellow citizens, and what in our lives should remain free of collective control?”[[6]](#footnote-7) Nozick, at the other end of the political spectrum, addresses a similar issue: “Individuals have rights, and there are things no person or group may do to them (without violating their rights)”.[[7]](#footnote-8) These opposing philosophical understandings are quite abstract, and it can be challenging to decipher the philosophical underpinnings of a tax system in sufficient detail to be meaningful, without drowning in the minutiae of legislation, judicial and executive interpretation of law and norms.[[8]](#footnote-9) Such abstraction also comes up against the economic imperative to raise revenue, in the most efficient and convenient way possible. In the case of a new state, hewn in violence from a much larger and more powerful state, raising revenue has a pragmatic relevance which can elevate itself over more a more abstract collective gaze on tax policy.

Accepting that tax law has greater meaning than simply raising revenue acknowledges the strength of Schumpeter’s observation of the “hard, naked facts” of fiscal policy which manifest as a “formative influence” or “cause” which actively shape society, particularly at turning points when “existing forms begin to die off and to change into something new, and which always involve a crisis of the old fiscal methods”.[[9]](#footnote-10) This observation begs the question, of course, as to whether there was a change in forms, from old to new, culminating in the formation of the Irish Free State in 1922. Formal change, accompanied by normative consistency, is a theme also addressed in the debate about what to call the period from 1916 to 1923 in Ireland, which is further explored in section [Historiography of a revolution].

Understanding taxation as a system that can both transform and reflect society – particularly at a crisis point – is taken as justification for examining a tax system at a violent inflection point, as in Ireland from 1916 to 1923. Such an approach is based on an assumption that tax law reflects and sculpts the economic, social and cultural building blocks of society. Addressing the theme of tax policy at a moment of political crisis recognises the socially adhesive quality of taxation, but also facilitates an examination of just what priority the ‘counter state’ accorded taxation, and what ideas surrounding taxation – involving the state and the individual – were developed by the new state.

Irrespective of the philosophical claims made for taxation, it also has a political importance and is often assumed to be a fundamental component of national sovereignty.[[10]](#footnote-11) This has been recognised in other revolutionary periods: Burg (while noting that tax may be an ostensible rather than underlying cause) recognises the Magna Carta, the American Revolution of 1776 and the French Revolution of 1789 as originating in tax revolts.[[11]](#footnote-12) The domestic debate about taxation in the new state is placed in the context of the valiant efforts by Sinn Fein to interest the Paris Peace Conference in the Irish question in 1919 and 1920. This drama of sending envoys to Paris, striving for international recognition of Ireland’s rights to self-determination, can obscure a fundamental question as to the content of self-determination. At the very moment when the counter state is struggling for international recognition and domestic legitimacy, exploring tax as a manifestation of sovereignty may shed light on what Daly labelled the “Triumph of Continuity”, the persistence of a private and public sector elite and the dearth of alternative expertise to that provided by the former British civil service.[[12]](#footnote-13) In the microcosm of taxation, why was it acceptable, even praiseworthy, for a new state to succeed to the entire tax architecture of the old state?[[13]](#footnote-14)

## General Election 1918: forming the counter state

The general election of 1918 indicated that the apathy which had initially greeted the Easter Rising in 1916 in Ireland had well and truly disappeared by 1918.[[14]](#footnote-15) What Foster labelled “the minority of the minority”[[15]](#footnote-16) had succeeded in turning a poorly organised military revolt into public support for a much more extreme version of national self-determination than the constitutional nationalism of the Irish Parliamentary Party.[[16]](#footnote-17) In 1918 Sinn Féin, campaigning on separation from the United Kingdom, won a resounding victory, defeating the Irish Parliamentary Party and dwarfing the unionist parties. Of the 105 Westminster seats available, Sinn Fein won seventy three, the Irish Parliamentary Party won six and Unionist parties won twenty six.

These seventy three Sinn Fein politicians, elected in 1918, declined to take their seat in Westminster and instead formed a separatist parliament, Dáil Éireann, the democratically elected legislature of a ‘counter state’ which first met in January 1919.[[17]](#footnote-18) This was the genesis of the modern Irish state, the resounding electoral victory sustaining democratic legitimacy. While Dáil Éireann had democratic legitimacy, this did not translate into a neat history of legislative act informing civil service execution and state enforcement. The story is instead a messy legal story of one legislature, Westminster, being challenged by a new legislature, with competing legislative pronouncements and competing administrations sometimes employing a skilful obfuscation. All this took place within the context of a bid by the new state for international recognition of its right to self-determination.

The road to independence was rendered complex by the British prohibition (after September 1919) on the separatist parliament meeting and the first Dáil Éireann met only irregularly. It did, however, establish a number of ministries, including a ministry of finance.[[18]](#footnote-19) The second Dáil Éireann sat from 1921 to 1922 and followed the enactment of The Government of Ireland Act 1920 by the Westminster parliament.[[19]](#footnote-20) This enshrined partition of Ireland into law, and created a Parliament of Southern Ireland and a Parliament of Northern Ireland. These institutions were ignored by Sinn Fein (although Northern Ireland continued to claim its legitimacy from this statute) but the 1921 elections were used by Sinn Fein to install a second Dáil Éireann. A further general election in Ireland in 1922 saw the third Dáil Éireann convened in September 1922 but composed of the pro-treaty majority of Sinn Fein. The anti-Treaty faction, Sinn Fein, abstained from the Dáil from 1922 to 1927. Irish politics during this era were violent and bitter: the civil war saw the pro-Treaty Cumann na nGaedheal party, under WT Cosgrove, form a government which held power until 1933.

## Legislation and parliamentary debate on taxation

The first mention of taxation in Dáil Éireann took place during a debate in June 1919. The questions to the Minister for Finance were pithy: “How can a person best fight the British Income Tax?” and “"Has [the Minister for Finance] any proposals to set before the Dáil regarding a National Taxation Campaign?"[[20]](#footnote-21) The response of the Minister for Finance, Michael Collins, was that the question of income tax was under investigation. He went on to say:

“The principal difficulty in the case is to secure sufficient support for an agitation against the imposition. Income Tax is illegal, and an evasion of the 7th Article of the ‘Act of Union,' but it has not been objected to in time. If there were a general strike against it we would have some hope of defeating it, but the bulk of the income tax is payable by those who are against us."[[21]](#footnote-22)

Unpicking Michael Collins’ answer yields certain insights into the salience of tax in Irish society, and the view of Sinn Fein towards taxation. First, there is acute awareness on behalf of the Minister for Finance, a Sinn Fein representative, as to who supported the separatist parliament: income tax was perceived as being payable by those who did not support nationalism but instead supported the colonial status quo. Only if there was to be a general strike would there be “some hope” of resisting income tax. Classifying income tax as relevant only to people who did not support Sinn Fein is a tacit dismissal of the possibility of a national tax campaign.

Secondly, Collins’ invocation of the illegality of income tax under the Act of Union of 1801 illustrates the long-standing grievances of Irish nationalists to British rule.[[22]](#footnote-23) Nationalist sentiment was strongly of the view that the Act of Union of 1801 between Ireland and Great Britain had been financially disadvantageous for Ireland, although McCavery argues that debt arrangements were intended to be generous to Ireland.[[23]](#footnote-24) This is a much-visited, but not very nuanced, debate. The emphasis on different taxes changes the complexion of the tax burden. Hynes notes that, just prior to the First World War, most taxes in Ireland were customs and excise and that income tax per capita in Ireland was less than half that of Great Britain.[[24]](#footnote-25) While Collins’ reference to the 7th Article of the Act of Union is a clear invocation of political and tax unfairness by Great Britain to Ireland, it sits uneasily with the parallel belief that income tax was not paid by Sinn Fein supporters.[[25]](#footnote-26)

Thirdly, Collins notes that income tax, while illegal, “has not been objected to in time”. Given that this is said in June 1919, the cut-off for objecting to income tax is unclear. True, income tax had not played a role in the Sinn Fein manifesto in the 1918 general election, which had been focussed on independence and opposition to army conscription with only a tangential argument about Sinn Fein’s ability to resist a proposed land tax.[[26]](#footnote-27) The meaning of “in time” is opaque but possibly a sign of the low priority accorded by Sinn Fein to reform of the tax system.

In any event, Collins’ depiction of income tax as of minority interest was disputed by Joseph MacDonagh. MacDonagh’s contribution is interesting because of his tax background. He had been a customs and excise officer with the Inland Revenue, but had been compelled to retire after Thomas MacDonagh, his brother, was executed because of his involvement with the Easter Rising. Joseph MacDonagh subsequently entered into private practice as owner of the “Irish Income Tax Recovery Agency”, in which he described himself as late of Inland Revenue and Excise Departments.[[27]](#footnote-28) MacDonagh was elected in 1918 as a Sinn Fein representative for Tipperary North and was a fierce opponent of the Anglo-Irish Treaty who died while on hunger strike in December 1922.[[28]](#footnote-29) Responding to Collins in the Dáil in June 1919, MacDonagh states that tax assessments were due from 30,000 manual workers, and suggested that action on a national taxation campaign could be taken in conjunction with these taxpayers.

The Dáil debate ended with a breakdown of tax revenue from Ireland: of a total revenue of £26,865,000 for the prior fiscal year, income tax amounted to £6,000,000. Of this amount, more than £4,000,000 was paid by people “out of sympathy” with nationalism, and only £500,000 was paid directly by taxpayers to the Inland Revenue. A national tax campaign would have to be directed at customs and excise revenue and this could only be done through ceasing consumption of alcohol and tobacco, something which would reduce “England’s revenue [and] also hit Ireland’s trade, as that trade was largely in tobacco, beer and whiskey”.[[29]](#footnote-30) In short, no national taxation campaign was run, an approach which was lauded by the minister for Home Affairs, Kevin O’Higgins, when he said in parliament in 1923: “I think we were probably the most conservative-minded revolutionaries that ever put through a successful revolution. It was stated in [parliament] that we had advocated the non-payment of particular things; that we had told people that they ought not to meet their liabilities. We never did. Neither in the case of income tax nor land annuities nor any other legal payment did we give such advice.”[[30]](#footnote-31)

### Dáil Decree on Income tax, 1920

The next substantial consideration of taxation by Dáil Éireann was the enactment of an unusual legislative instrument, known as a Dáil Decree, in June 1920.[[31]](#footnote-32) This decree was in the following terms:

"That a Department for the collection of Income Tax be instituted by Dáil Éireann, and that all persons who pay the Income Tax to that Department which otherwise they would pay to the British Government be indemnified against losses caused by distraint or otherwise in agreed circumstances, discretionary power being given to the Dáil Income Tax Department to refuse such taxes as it deems inadvisable to accept."[[32]](#footnote-33)

This is a fascinating act of the counter-state, the establishment of a discretionary tax collector by a democratically elected assembly which was not recognised under British law (and was illegal after September 1919). The rationale for establishing an income tax department is clear. It reflects the reality of a new state needing to fund itself.[[33]](#footnote-34) But the framing of the decree is quite negative: there is a realistic assessment of the collection capacity of Great British in Ireland, articulating that the balance of tax-collecting power remained very much with the British state. Allied to this is an open-ended indemnity offered to taxpayers who choose to pay tax to the ‘counter state’, together with a discretionary power to the new income tax department to refuse a payment of tax. All in all, the decree illustrates the tentative nature of tax collection at a juncture where an unrecognised state was in violent dispute against the Westminster government. The Dáil Decree is not a polished piece of legislative drafting: it is the product of a hurried consideration by men engaged in a violent struggle.

The debate on the decree, in June 1920, is informative. The proposer of the decree was the Minster for Finance, Michael Collins, while the seconder of the decree was Joseph MacDonagh, the former Inland Revenue officer.[[34]](#footnote-35) MacDonagh estimated that the new income tax department would raise £1,000,000 per annum, even where taxpayers paid less than would have been due under the British demand. Paying less than would be due under the British law was “preferable to giving a rebate afterwards. It would be an easy matter for [the Dáil] collectors to take up the money that Republicans did not wish to pay into the English Government”.[[35]](#footnote-36) This is tax collection in a most pragmatic and expedient form.

Referring to the likelihood that the “English Department” would make examples of those paying to the “Irish Republican Treasury”, MacDonagh specifies that “arrangements could be come to whereby there could be no sale of the goods seized and no transit.”[[36]](#footnote-37) The passive articulation of future resistance to collection by the English department is redolent of a boycotting technique with which MacDonagh is strongly associated, as he was appointed substitute Minister for Labour and in charge of the Belfast Boycott in 1921. This was an economic attempt to “bring Belfast to its knees”[[37]](#footnote-38) as a riposte to the sacking of Catholic workers from Belfast shipyards and sectarian violence in Belfast.[[38]](#footnote-39) Threatening that the English tax collector would not be able to sell or transfer seized goods hints at the means of establishing a new tax administration, which necessarily involves the defenestration of the old administration.

The debate is also noteworthy because of what is not articulated: while there is reference to quantifying the tax payable to the counter state as less than the British demand, there is no discussion of changing the tax base, or shifting the mix from indirect taxation to direct taxation. There is simply an attempt, incentivised through a lower level of taxation than would otherwise have been due, to switch the identity of the tax collector to the counter state.

### Legislative continuity

Effectively, switching the identity of the tax collector was the route taken by the Irish Free State. There was general preservation of the law of the previous regime under Articles 73 of the Constitution of the Irish Free State (Saorstát Éireann) Act, 1922, subject to the compatibility of the law with the Free State Constitution.[[39]](#footnote-40) Article 74 of the Constitution provides for fiscal continuity, specifying that “all taxes and duties and arrears thereof shall continue to be assessed, levied and collected in like manner in all respects as immediately before this Constitution came into operation”.[[40]](#footnote-41) This constitutional principle was given legislative effect by Adaptation of Enactments Act, 1922, which provided for the continuation of all legislation in force under British law on 6 December 1922.[[41]](#footnote-42)

The Supreme Court considered the implications of Article 73 of the Free State Constitution in the context of a disputed payment of excess profits tax for 1917-1920 in In re Reade, a Bankrupt.[[42]](#footnote-43) The taxpayer argued that the Irish Free State had no claim in law to the tax, and objected to a bankruptcy petition by the Attorney General on these grounds. Affirming the decision of the High Court, Kennedy CJ outlined the constitutional status of the Irish Free State and held that the Article 73 of the Free State Constitution, together with various legislative enactments of both the UK and Irish parliaments, had divided the taxation code “into two codes or series of separate and identical Acts, one for each of the two new units of taxation which had taken the place of the former unit of the United Kingdom”. The unit of taxation for Ireland was, “unless and until [Parliament] otherwise determines” identical to the prior tax code in force in Ireland. The legislative position was, therefore, quite clear: continuity trumped any desire for political change to the tax system.

It is unfair to place too great an emphasis on inertia, however, as the Irish Free State had the overriding imperative of maintaining some degree of financial stability. The degree of continuity allowed Ireland to escape much of the turmoil experienced by other small, new states during the 1920s and 1930s.[[43]](#footnote-44) Doing this by leaving in place a tax system, which had previously been argued to result in over-taxation of Ireland, was simply a pragmatic response to an economic necessity of raising revenue and preventing capital flight.

Nonetheless, there were missed opportunities to pursue a more fundamental re-ordering of tax. At a political level, the execution of James Connolly, a socialist leader of the Easter Rising in 1916, cut off a view of revolution as class warfare requiring a “graduated income-tax upon all income derived from capitalist property”.[[44]](#footnote-45) Connolly was of the view that movements for Irish freedom had failed, and would again fail, unless patriotic revolution was accompanied by arresting class exploitation. In Socialism made Easy, Connolly can be interpreted as foreseeing the conservatism of revolution without a socialist component:

“After Ireland is free, says the patriot who won’t touch Socialism, we will protect all classes, and if you won’t pay your rent you will be evicted same as now. But the evicting party, under command of the sheriff, will wear green uniforms and the Harp without the Crown, and the warrant turning you out on the roadside will be stamped with the arms of the Irish Republic.

Now, isn’t that worth fighting for?”[[45]](#footnote-46)

Connolly, of course, died in 1916 and one natural proponent of his vision of a socialist revolution, the Labour Party which Connolly had co-founded, did not offer candidates in the general election in 1918 in response to pressure from Sinn Fein that the contest should be presented as a referendum on nationalism. The absence of the Labour Party enabled the election to be construed as a referendum on the question of national independence, to the exclusion of a discussion on how a post-war society should be organised. Leaving the pitch to other political players meant that the Labour Party’s vision of society was neither put to the electorate or tested in government.

Arthur Griffith, founder of Sinn Fein, also had plans for a new economic order.[[46]](#footnote-47) These were based on economic nationalism, a type of protectionism which was consistently advocated by Darrell Figgis, an independent pro-Treaty representative of Dublin, who had written a book based on Griffith’s work advocating protectionism, entitled ‘The economic case for Irish independence’. Figgis committed suicide in 1925.[[47]](#footnote-48) Figgis was resistant to the continuation of the British tax code, a view that was shared by others. George Gavan Duffy, speaking about a Finance Bill in 1923, argued:

“The first and most important question is what you propose to do to put the taxes on the shoulders that can bear them. That, I trust, is the intention, but it was not made plain. We all know that every Government is tempted to get as much money as it can by indirect taxation. It would be a salutary thing if a Commission of this kind, outlining a special fiscal policy for Ireland, emphasised the fact that by far the justest tax is the graduated direct tax.”[[48]](#footnote-49)

This 1923 Dail debate harked back to the acceptance in 1919 that taxes in Ireland were mainly indirect, with only a relatively small percentage arising from direct income tax. Changing the mix between direct and indirect taxes came up against the contrary impetus to prevent capital flight. This was because the class of people – those who Michael Collins had noted in June 1919 were “out of sympathy” with nationalism – were the most likely to deploy their capital in Britain. To woo these taxpayers, it became a point of Free State tax policy that Irish income should be less than British income tax. Income tax was reduced in 1926/27 and again in 1927/28 to a level lower than the United Kingdom. Lee remarks that this was designed to prevent capital flight from Ireland, although it did not encourage the Anglo-Irish to keep their money in the new state.[[49]](#footnote-50) Blythe, the Minister for Finance from 1923 to 1933, was obliged to maintain a tax system which followed the British system in cutting income tax, and continued to rely heavily on indirect, and regressive, taxes.

There was a certain amount of debate as to the shape of the tax system, although ultimately the status quo largely obtained. These occasional forays into the architecture of the tax system were accompanied by vastly more complaints about tax collection and the heavy-handed tactics of the Inland Revenue.[[50]](#footnote-51) In the Dáil in May 1923, Cosgrave, the government leader, answering calls for a reconsideration of tax on motor vehicles, stated:

“I am not very keen on the re-consideration of the whole fiscal system until there is an opportunity of considering it in the widest aspect. It is not a matter that can be dealt with any degree of satisfaction in a haphazard way. We have not been able to give it any such consideration as it deserves, and it is not wise to make experiments.”[[51]](#footnote-52)

This was a counsel of perfection: nothing must be done until everything is considered. There were no reasons given for the assertion that the government had not been able to give taxation the consideration it deserved, although all listeners understood that a civil war was raging. In the event, very little was done other than tinkering with rates to maintain tax competitiveness with Great Britain.

### Continuity of tax collector

Josephy MacDonagh surfaces again in May 1922, asking the Minister for Finance, Michael Collins, whether the Irish people were liable to pay income tax in respect of the tax years April 1919 to April 1921. The question is posed in quite tendentious terms, prefaced by an observation that the “British Government ceased to have any right, moral or otherwise, to levy taxes on the Irish people”. Collins skirted this question, saying that the Anglo-Irish Treaty resulted in income tax for all prior years belonged to the Irish Government. Collins also replied that “Income tax, for obvious reasons, is collected under the direction of the British Board of Inland Revenue, as agents for the Irish Government.” [[52]](#footnote-53)

The backdrop to this discussion is that MacDonagh and Collins were on opposing sides of the debate on the Anglo-Irish Treaty: Collins, as negotiator of the treaty in London, was a strong proponent of it, while MacDonagh was a vociferous opponent. The Treaty had been ratified (narrowly) by Dáil Éireann on 7 January 2022 so, by May 1922, it was equally clear to both MacDonagh and Collins how prior tax obligations were subsumed into the Irish Free State. There were trenchant views on both sides of the Dáil debates on the Anglo-Irish Treaty. Ultimately those in favour of the treaty, perhaps accepting it as a stop along a road rather than the final destination, voted with Arthur Griffith’s depiction:

“We have brought back the flag; we have brought back the evacuation of Ireland after 700 years by British troops and the formation of an Irish army. We have brought back to Ireland her full rights and powers of fiscal control. We have brought back to Ireland equality with England, equality with all nations which form that Commonwealth, and an equal voice in the direction of foreign affairs in peace and war.”[[53]](#footnote-54)

The rhetoric of the return of the flag and evacuation of the occupying army are stirring images, and fiscal control indicates economic power. These indicia of self-determination are to be contrasted with Collins’ admission that “for obvious reasons”, the old state acted as agent for the emerging state in the collection of income tax. These obvious reasons are unexplained but presumably relate to the necessity of having knowledgeable men, even those previously associated with the British Inland Revenue, to collect tax on behalf of the Irish Free State during 1922 when the state was in a transitional phase.[[54]](#footnote-55)

Fanning accepts the conservatism of the Department of Finance as being derived from the continuity of personnel and unchanged policies.[[55]](#footnote-56) Some 20,000 former British civil servants transferred to the Irish Free State in 1922. The British influence was maintained by secondments of senior personnel from London to Dublin, something which continued through the early 1920s. The first four secretaries of the Department of Finance had served as British officials. Chief amongst those involved in the formation of the Irish Revenue Commissioners was Cornelius Gregg, born in Ireland in 1888 and employed by the Inland Revenue in London since 1911. Between 3 April 1922 and 1 October 1924, Gregg was seconded to the Department of Finance in Dublin, and used the Whitehall civil service as the blueprint for the Irish Free State civil service.[[56]](#footnote-57) While Fanning explains these civil service links as forming of mutual professional respect and co-operation lasted throughout the interwar years, the more lasting legacy was a close continuation of British tax policy and administration. It is also of note that certain politicians had been involved in the British civil service: Joseph MacDonagh in the Inland Revenue, Michael Collins in the Post Office.[[57]](#footnote-58)

The key functions of the Inland Revenue in Ireland were transferred to the Irish Free State in December 1922. Mohr notes that other functions had been transferred earlier in 1922 but that the government was not in a position to collect taxes during this period.[[58]](#footnote-59) In February 1923, the Inland Revenue and Customs and Excise were merged to form the Revenue Commissioners. Reamonn outlines the difficulties of collecting tax arrears, as many taxpayers had not made any payments for some time and certain records were lost due to the burning of tax offices after 1919.[[59]](#footnote-60) Missing records were clearly a difficulty but Gavan Duffy’s teasing remarks in the Dáil in May 1923 appear to be as much about the culture of silence on income tax as about the administrative difficulties of lost records.

“I notice it is always dangerous to tackle the Minister for Finance on the question of his collection of the arrears of income tax. We must not remind him of the income tax offices that were burned. That is ancient history. We must not say anything about what happened two or three years ago.”[[60]](#footnote-61)

The wholesale adoption of the existing civil service by the new Sinn Fein government in 1922 was without nuance. The government ordered that “civil servants and all public servants and functionaries hitherto acting under the authority of the British government shall continue to carry out their functions unless and until otherwise ordered by us pending the Constitution and Government of Saorstat Éireann and we do further prohibit the removal, tapering with or destruction of any records, documents, correspondence, accounts, books, writings or papers of a public nature or relating to , or which come into existence for the purposes of government or public administration in Ireland”. Furthermore, changes in the employment status of any civil servant of the state was also prohibited.[[61]](#footnote-62) This was a hugely influential action, and the Commission of Inquiry into the Civil Service (1932-1935) concluded there was “no immediate disturbance of any fundamental kind in the daily work of the average Civil Servant. Under changed masters the same main tasks of administration continued to be performed by the same staffs on the same general lines of organization and procedure”. Fanning points to the Department of Finance suffused with a respect for British values and procedures.[[62]](#footnote-63) McGarry notes that senior civil servants and government ministers saw a strong link between administrative continuity and state stability.[[63]](#footnote-64)

In summary, the Irish government from 1919 to 1923 was essentially without a meaningful opposition on economic issues and nationalism was its defining characteristic. This was allied to political expedience on raising revenue and a civil service pattern of conservatism and institutional deference to Great Britain. These factors conspired to perpetuate a tax system which had been recognised, by the nationalists themselves, as resulting in over-taxation. Furthermore, the difficulties with collection during the violence from 1919 to 1923 did not abate but continued to rumble for many years. But little changed and the inconsistencies between advocating for revolution and the content of the revolution went unchallenged.

## International backdrop

The violent birth of the Irish state took place against the backdrop of the First World War, and its aftermath at the Paris Conference in 1919 and 1920, leading to the redrawing of maps in Europe and parts of Asia, Africa and the Pacific Islands. Woodrow Wilson, president of the USA, painted the First World War as a push for democracy and the right of small nations to self-determination. This political concept was winningly encapsulated in Wilson’s ‘Fourteen Points’, which stirred what HG Wells labelled the “political imagination”.[[64]](#footnote-65)

President Woodrow Wilson was commonly seen as being unsympathetic to the cause of Irish nationalism, being associated with Scots Ulster Presbyterianism. Notwithstanding this lack of sympathy to a cause violently resisted by the wartime ally of the USA, Great Britain, there is one tenet of President Wilson’s philosophy that was enthusiastically embraced by the Irish nationalist movement. This was the right to self-determination.[[65]](#footnote-66) As a nascent “small nation”, Irish nationalists made strong efforts to present themselves to the Treaty of Paris in 1919 and 1920, and to press the redrawing of the map of Ireland by severing the union with Great Britain. A map published by the India Home Rule League of America, published in 1919, adds Ireland to those other nations seeking self-determination: East-central Europe and practically all of Asia and Africa.[[66]](#footnote-67) It is fascinating to read of how President Wilson came to a certain consciousness of the impossible hopes raised by his emphasis on self-determination. Manela writes about the US international law expert delegate to the Paris conference warning President Wilson that pursuing an international arbitration mechanism on self-determination, through the League of Nations, would legalise “irredentist agitation”.[[67]](#footnote-68) Certainly, the Irish Sinn Fein presence in Paris quoted President Wilson speeches to support their demands for independence.

President Wilson did not support the cause of Irish nationalism, did not mention Ireland as a potential small nation seeking self-determination, and there was no official recognition of Irish nationalists at the Paris Conference.[[68]](#footnote-69) This was a blow to the cause of Irish nationalism, particularly given the active support for the Irish cause amongst the Irish diaspora in the USA.[[69]](#footnote-70) But resistance to giving Ireland a seat at the treaty table must be seen in the context of France and Great Britain’s alliance during the war. Tardieu, commissioner for Franco-American affairs, published a book in 1921 entitled, The Truth about the Treaty, and dealt brutally with the Irish question:

“how can I avoid the Irish question? I remember a day in the very midst of the war when my colleague, the British High Commissioner in the United States, asked me to place at his disposal to speak at Catholic meetings one of the military priests attached to my service. America will need to be informed to-morrow - as yesterday. America will need to be told - to-morrow as yesterday - and to be told by others than the British themselves without reference to possible solutions of the Irish problem - that during the war the Sinn-Feiners harboured and supplied German submarines and took German gold to pay for Casement's treason. Here too Great Britain needs France---needs France on whose soil was sealed in blood the Anglo-American brotherhood of arms, France best qualified and most authorized to recall the higher interests of democratic unity which demand of the three nations ever greater faith and ever greater harmony.”[[70]](#footnote-71)

This is the great state theory of international relations in embryonic form: France a necessary foil between two other great powers and Sinn Fein experiencing “a bruising encounter with the hard-nosed reality of great power diplomacy”.[[71]](#footnote-72) In this equation, the call for recognition of a small state seeking, in Michael Collins’ words, “freedom, not the ultimate freedom that all nations desire and develop to, but the freedom to achieve it”,[[72]](#footnote-73) was likely to fall on deaf ears. The seriousness with which the Sinn Fein government took the symbolic and political worth of being present in Paris during the post-war settlement is shown by the profile of delegates despatched to Paris. Sean T. O’Kelly, George Gavan Duffy and, briefly, Erskine Childers all spent time in Paris, attempting to interest the French public, newspapers and government delegations in the Irish question.[[73]](#footnote-74)

What is the relevance of the Sinn Fein attempts to gain a seat amongst the peacemakers of the Paris Conference in 1919? The seriousness with which the unsuccessful attempt was made speaks to the importance of the Sinn Fein self-image as a small nation seeking to benefit from Woodrow Wilson’s rallying call to self-determination. Paris was seen as the venue to express that self-determination. Yet, at the same time, there was a rush, on the domestic front, to preservation and continuity. These are not incompatible: self-determination can take the form of a nation deciding for itself, there is no minimum content on the substance of what is to be determined. Nonetheless, it does throw a light on the peculiar Irish form of revolt, where the revolt is against the identity of the governor rather than the content of the government.

## Historiography of a revolution

No new system of taxation was introduced in Ireland after the establishment of the Free State in 1922. In tax terms, this allows the characterisation of the Irish secession as a conservative revolution, something agreed to by the Minister for Home Affairs, Kevin O’Higgins in 1923.[[74]](#footnote-75) In tax terms, the secession from the United Kingdom was a damp squib, a continuation of both the architecture and enforcement mechanism of the UK tax system in the new Irish state. This cautious approach was explicable on the basis that the economic impetus was in favour of steadiness: Lee refers to fiscal responsibility and low taxation being designed to reassure English doubters as to Ireland’s capacity for self-discipline.[[75]](#footnote-76) The biography of the Department of Finance, Ronan Fanning, concluded that “the new state was marked, not by a commitment to cast off British influence, but by an extraordinary fidelity to British models”.[[76]](#footnote-77) It is difficult to disagree with this conclusion in a tax context.

The movement towards independence was undoubtedly popular, as demonstrated by the Sinn Fein victory in the 1918 General Election. It was a violent affirmation of a move to self-determination, followed by an internal violent disagreement as to whether the degree of self-determination negotiated with Great Britain was sufficient . It was not particularly a move towards any particular content of self-determined legal norms, certainly so far as taxation is concerned. It would be difficult to describe taxation as a fundamental manifestation of national sovereignty in the course of the Irish movement towards becoming a nation state. This lack of reforming zeal in the area of taxation could be seen as informing a doubt as to whether the formation of the Irish Free State is a revolutionary epoch. Townshend lists several references to war, or rebellion or a struggle for independence, and notes the absence of consistent treatment of this period in Ireland as a revolution.[[77]](#footnote-78) Ireland’s rebellion in 1916 against rule from Westminster is often known as a rising, rather than a revolution. The historiography is interesting and, in a tax context, could perhaps be distinguished from other revolutionary movements which were somewhat more intimately involved with the democratic movement away from taxation without representation.

## Conclusion

It is difficult to pinpoint any single reason for the stasis of the Irish Free State in the area of taxation. Certainly, economic conservatism as an instrument of demonstrating a worthiness to govern was a strong factor in favour of the status quo, as was the need to avoid experiments which might reduce the revenue raised. An emphasis on nationalism, to the exclusion of other debates on economic, religious or social decisions, also saw government in terms of its nationalist identity rather than its energy in government. There is one other factor: so many people died. James Connolly, leading European Marxist, was executed after the Easter Rising in 1916. His vision of a post-independence state was quite different to the nationalist fervour of other 1916 leaders, such as Padraig Pearse. Michael Collins, an energetic leader, might have had more time to devote to being Minister for Finance, but was assassinated in 1922. Arthur Griffith, arch-protectionist, died in 1922 as did his acolyte, Figgis. Joseph MacDonagh, formerly of the Inland Revenue, died in 1922. Kevin O’Higgins was assassinated in 1927. The roll call of a war of independence and a civil war took a heavy toll on leaders.

The conclusions to be drawn from the conservative continuity of the Irish Free State in the area of taxation are of necessity tentative. First, the failure to address the admitted problem of over-taxation, and the particular issue of reliance on indirect taxes to raise revenue, could be argued to alienate the taxpayer from the state and weaken the civic responsibility to pay tax. Non-payment of tax was a problem which persisted from the foundation of the modern Irish state to at least the 1980s. There was persistent unwillingness to pay, leading the Commission for Taxation in 1985 to say: “The administration of taxation in Ireland has virtually broken down. Non-compliance is a major problem”.[[78]](#footnote-79) This weakness was also noted by McGarry who argued that one benefit of the strongly centralised administration was to make up for a deficit in civic responsibility and the absence of a tradition of ethical behaviour.[[79]](#footnote-80)

Second, taxation was not particularly seen as a means of sculpting a new society, instead it was simply a means to collect funds to support the state. The fact that the state was now a self-run democracy was sufficient validation for parties which had long argued that Ireland had been overtaxed. The over-taxation persisted, but it was now exacted by a national government. On this reading of self-determination, it was sufficient that there was transition to a new identity of government, without much change in underlying norms of taxation.

This paper began by pointing to the deeper truths to be gleaned from choices of what to tax, and what not to tax. It assumed that, within the microcosm of tax law, certain deeper truths can be determined about the revolutionary import of events in Ireland from 1916 to 1923 and what class of self-determination was embodied in the Irish Free State. It concludes by classifying Irish self-determination as a concern with the identity of the rulers, rather than with the content of the rules. This harsh, possibly revisionist conclusion, is tempered by an awareness that the politicians embarking on government in a new state in 1919 had virtually no administrative experience.[[80]](#footnote-81) But it is bolstered by the Labour Party’s withdrawal from the fray in the general election in 1918, a stance that arguably has enabled politics to identify with nationalist approaches, rather than economic policies. The Irish question did not present itself from 1916 to 1923 as an issue of taxes which required transition to a new state. It was dealt with as a problem with the identity of a colonising tax collector.

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2. Joseph J Lee, *Ireland, 1912-1985: politics and society* (Cambridge University Press 1989) [↑](#footnote-ref-3)
3. There is a certain degree of ambiguity as to the exact date of the foundation of the new state, but 6 December 1922 is treated as the de facto date under Irish law. See Thomas Mohr, 'Law and the Foundation of the Irish State on 6 December 1922' (2018) 59 Irish Jurist 31. There is also a substantial degree of ambiguity as to what to label the new state: the Irish Free State, established in December 1922, became a derogatory term, see [Daly]. For the purposes of this paper, the term Irish Free State refers to the modern Irish state established in 1922 while Great Britain is used to refer to the remaining tax jurisdiction. [↑](#footnote-ref-4)
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10. This debate is currently particularly acute in the context of international tax, and the negative externalities of state sovereignty on other states. See, for example, S. Picciotto, *International Business Taxation: A Study in the Internationalization of Business Regulation* (Quorum Books 1992) and Alex Mills, 'Rethinking Jurisdiction in International Law' (2014) 84 British Yearbook of International Law 187 [↑](#footnote-ref-11)
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13. See, for example, where Fanning praises the first two secretaries of the Department of Finance as being truly patriotic in “being wedded to the classic orthodoxies of British financial administration”, seeking to prove that “native Irish government could be good government”. R. Fanning, *The Irish Department of Finance, 1922-58* (Institute of Public Administration 1978), page 628. There is no discussion of the linkage between good government and British government. [↑](#footnote-ref-14)
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15. Roy Foster [↑](#footnote-ref-16)
16. Both John Redmond, leader of the Irish Parliamentary Party, a constitutional nationalist party and Edward Carson, leader of the Ulster Unionists, supported engagement with the British war effort in 1914. See D. Fitzpatrick, 'Ireland and the Great War' in Thomas Bartlett (ed), *The Cambridge History of Ireland: 1880 to the Present*, vol Volume 4 (Cambridge University Press 2018) for a general account of political reaction in Ireland in 1914 and the numbers of Irish who enlisted in the British Army during the First World War. 200,000 Irish men served in the British Army, which can be compared to 1,200 who fought in the Easter Rising in 1916. [↑](#footnote-ref-17)
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20. Questions posed by MP Collivet and Sean MacEntee respectively <https://www.oireachtas.ie/en/debates/debate/dail/1919-06-19/14/#s15> [↑](#footnote-ref-21)
21. Dáil Debates, 19 June 1919 <https://www.oireachtas.ie/en/debates/debate/dail/1919-06-19/14/#s15> [↑](#footnote-ref-22)
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57. Michael Collins, during a debate on the Anglo-Irish Treaty on 19 December 1921, replied to an accusation of having been captured by the “atmosphere of London” and “slippery slopes” during the negotiation of the treaty, and replied that “I knew the atmosphere of London of old and I knew many other things about it of old”. <https://www.oireachtas.ie/en/debates/debate/dail/1921-12-19/2/> [↑](#footnote-ref-58)
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71. Keown, *First of the Small Nations: The Beginnings of Irish Foreign Policy in the Inter-War Years, 1919-1932*, p 76 [↑](#footnote-ref-72)
72. Michael Collins’ invitation to the Dáil to accept the Anglo-Irish Treaty in December 1921, Dáil Debates, 19 December 1921 <https://www.oireachtas.ie/en/debates/debate/dail/1921-12-19/2/> [↑](#footnote-ref-73)
73. Sean T O’Kelly was elected President of Ireland in 1945, George Gavan Duffy was President of the High Court while Erskine Childers was executed by the Irish Free State in December 1922, McGuire, Quinn and Academy (eds), *Dictionary of Irish Biography: From the Earliest Times to the Year 2002* [↑](#footnote-ref-74)
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