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Anglo-Saxon/Celtic/Global: The Tax-Driven Tale of Ireland in the European Union

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I. Introduction: The Paradox of Ireland in the European Union

This article will examine the peculiar history of Ireland's position within the European Union (EU). It will argue that

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1 Ireland became a member of the European Economic Community (a precursor to the European Union) in 1972. Actes relatifs à l'adhésion aux Communautés Européennes du Royaume de Danemark, de l'Irlande, du Royaume de Norvège et du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord [Treaty of Accession of Denmark, Ireland,
Ireland’s political personality, based on post-colonial dependency, has encouraged reliance by Ireland on a low corporate tax rate and American multinational investment as a supposedly acceptable strategy for pursuing a prosperity which had eluded Ireland for decades after independence. Ireland took the easy route in that, when it joined the European Economic Community (EEC) (later the European Community (EC), now the EU), instead of actually making products of interest to European and international markets, it took advantage of its location within the common market to single-mindedly “lure” multinational corporations through tax savings. It is fair to say that Ireland’s approach has lacked the kind of loyalty to an idea that has been characteristic of the EU from its founding.


4 James Somerville, Ireland: The Ten Percent Manufacturing Corporation Tax Rate and other Potentially Harmful Measures, 28 INT’L BUS. L. 346, September 2000 (noting that since 1980, a high percentage of U.S. high-tech manufacturing, software development, and pharmaceutical industry investment in Europe came to Ireland. Somerville describes the evolution of Ireland’s 10% corporate tax rate for these businesses, and for companies set up within Dublin’s International Financial Services Center (hereinafter IFSC), there is a 12.5% rate on corporate earnings).
In exploring the nature of Ireland’s anomalous presence in the EU, this article will describe the usual manner in which the EU “transforms” national history and the corresponding manner in which national history impacts the EU. Ireland has resisted this kind of transformative interaction. Although Ireland played the part of an enthusiastic participant in the European project, it did not in fact internalize EU values of solidarity and cooperation. Rather, Ireland treated its access to the European market, and the extremely low tax environment for U.S.-based multinationals, as a kind of get-rich-quick scheme. While Irish behavior was inconsistent with the EU “ideal” of mutual solidarity, it also damaged the United States’ obvious need for increased public investments, which required adequate revenue from sources such as corporate taxation.\(^5\) Under this analysis, Ireland also short-changed its own culture (including its indigenous business culture) and physical environment.\(^6\) Over a long period of time, the EU inexplicably allowed Ireland to use purely tax-based techniques which, if widely imitated by other EU states, would have caused a fiscal crisis for the Union.\(^7\) Despite a severe economic downturn

\(^5\) See Killian, supra note 3, at 1067, 1080-81 (“[T]he build-up of earnings in profitable locations, such as Ireland will continue”). Id. at 1079. It should not be assumed that European thinkers were unaware of the contradictory Irish position with respect to EU “solidarity.” Rather, the European Commission in particular struggled with the question of how to stop Irish tax practice without creating a crisis. See generally Colm Keena, Irish low-tax regime problematic—EU adviser, IRISH TIMES, May 12, 2009 at 20 (covering the speech given in Ireland by a prominent European intellectual, who stated that “Ireland’s use of competitive tax policies was in conflict with the concept of European solidarity”).

\(^6\) See Killian, supra note 3, at 1079.

\(^7\) Ireland established corporate taxation rates that were and continue to be “among the lowest in Europe.” Julia R. Blue, Note, The Celtic Tiger Roars Defiantly: Corporation Tax in Ireland and Competition within the European Union, 10 DUKE J. COMP. & INT’L L. 443, 455 (2000). In 1980, Ireland introduced a 10% tax rate on corporations involved in “manufacturing” and “manufacturing related services,” with the term “manufacturing” defined broadly. Id. at 455. The 1980s also saw the Irish legislature add a vast range of economic sectors to the list of those entitled to benefit from the lower 10% taxation rate. Id. at 456. Germany and France led efforts to “harmonize” taxes within the EU, arguing that Ireland’s low corporate tax rates had anticompetitive effects among Member States. Id. Despite these protests from Germany (with a 45% tax rate) and France (with a 33.33% tax rate), the EU continued to provide Ireland with disproportionate amounts of economic aid. See id. at 458. In addition, the European Commission allowed the continuation of a 10% corporate tax rate in areas known as the Shannon-Customs Free Airport Zone [hereinafter SCAZ] and the IFSC
that began in 2009, it appears that Ireland will, if at all possible, maintain a passive and tax-dependent approach to economic development.  

Part I of the article will focus on the political background of Ireland’s 2008 rejection of the EU’s Lisbon (Reform) Treaty, a set of treaty amendments designed to allow for greater ease of decision making within an enlarged EU.  

In this regard, the EU’s duty of sincere cooperation, a kind of loyalty requirement imposed on Member States, will be contrasted with Ireland’s own strategic and inward looking behavior within Europe. The Irish rejection of the Treaty of Lisbon took place during a wave of Euroskepticism that swept Ireland in the period leading up to the first vote on the treaty. This article will argue that as Ireland saw an end to its special, highly-indulged place within an EU that had recently expanded to the East, a number of forces in Ireland concluded that blocking the legal changes necessary for

under an exception that categorized Ireland as “underdeveloped” in order to qualify for special treatment. See id. In response to outcries that Ireland’s tax rate was “unfair,” the EU secured Ireland’s promise to raise corporate tax rates to 12.5% beginning in 2003 with the passage of its Finance Act of 1999. Id. at 459-61. Most foreign corporations will receive this 12.5% rate on “trading income” through 2025, thus allowing Ireland to continue to boast some of the lowest corporate tax rates in the EU. See id. Further, Ireland has a generous tax credit for expenditures on research and development as well as an intellectual property deduction. Adrian Crawford, Ireland’s Tax Regime Continues to Impress, 17 INT’L TAX REV. 38, 39 (2006).

8 See Irwin Telzer, Ireland Stakes Own Recovery Path, WALL ST. J. (Europe) (2009), available at http://online.wsj.com/article/NA_WSJ_PUB:SB10001424052748703523504574603870922982770.html (putting a positive spin on the fact that Ireland has decided to pursue economic recovery by emphasizing its low tax benefits for multinational investors, cutting public spending, and lowering labor costs). See also John Murray Brown & Sophia Greene, Dublin to Open Door for Hedge Funds, F. TIMES, December 19, 2009, at 15 (explaining that Ireland has recently passed legislation “to make it easier for hedge funds based in the Cayman Islands and other tax havens to move to Dublin”).


enlargement would be an appropriate stance. Following the 2008 vote, however, the Irish economy began to experience a set of severe shocks. This in turn caused a rapid disintegration of national self-confidence and a wish to return to the safety of the European “fold.” A second Lisbon vote was called for, and the “reform treaty” passed by a wide margin on October 2, 2009.

As context for this, Ireland, once held up by the EU as its greatest success story, had lost some of its luster since the EU’s 2004 and 2007 enlargements into Eastern Europe. A number of the new entrant countries, including Poland, Latvia, and others, appeared to be following Ireland’s lead, enticing multinational investment through low tax rates, while simultaneously accepting European assistance in the development of infrastructure. As these self-interested techniques have proliferated, the unsustainability of allowing this kind of opportunistic use of the EU has become increasingly apparent. At the same time, the EU

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18 See Coleman, supra note 2, at 856-70 (noting the negative consequences of Ireland’s boom, including struggles with the EU, labor problems, cultural disintegration, and environmental degradation). See also Michael Mikiciuk, *Foreign Direct Investment*
institutions have displayed continuing reluctance to interfere with Member State autonomy with respect to levels of direct taxation.\textsuperscript{19}

Part II of this article will examine reasons why Ireland never integrated its national consciousness with that of the EU's overriding ideals. It will argue that the EU normally transforms the vexed national histories of its Member States, and it will suggest why Ireland was resistant to this process. It will also discuss the fact that one of Ireland's key motivations in turning to the EU was casting off its dependence on Britain.\textsuperscript{20} Meanwhile, the EU viewed Ireland in friendly terms because of its historical conflict with Britain.\textsuperscript{21} However, unlike most of the other EU Member States, Ireland has never internalized key elements of altered political consciousness as a result of EU membership.\textsuperscript{22} Part III will look more closely at the actual techniques that Ireland has used throughout its membership in the EU, in particular, at the tax-related vehicles by which Ireland delivered benefits to primarily U.S.-based multinationals. Ireland has

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as far as other [direct] taxes are concerned, Article 94 provides for the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the approximation of such laws, regulations or administrative provisions of the [m]ember States as directly affect the establishment or functioning of the common market." It also notes that "[t]he Commission considers that retaining unanimity for all taxation decisions will make it difficult to achieve any of the tax coordination necessary for Europe and has made proposals for a move to qualified majority voting in certain tax areas.

\textsuperscript{20} \textit{See}, \textsc{Fintan O'Toole, Ship of Fools: How Stupidity and Corruption Sank the Celtic Tiger} 171-72 (2009) (discussing Ireland's historical dependence on Britain, and its continued adherence to British and American ideas of the free market).

\textsuperscript{21} \textit{Id.}

\textsuperscript{22} \textit{See id. at 26-45} (providing a scathing vision of Ireland's political culture). O'Toole, a respected \textit{Irish Times} journalist, demonstrates how Irish politics rely on a crass and corrupt set of alliances between business and political operators, and how economic trickery is central to this reality. \textit{Id.} at 26-45.
managed to become a European base for U.S. multinationals in their quest to avoid an appropriate level of taxation, i.e., appropriate with regard to their responsibility to assist in social development within the United States or elsewhere. Ireland has presented its tax rates as simply part of healthy tax competition within Europe, but this is certainly a disingenuous position.

Part IV will set out some of the key themes in Irish political history as an aide to understanding how Ireland has attempted to use its position in Europe to further its own narrow needs. This section will also look at how the huge boom of the “Celtic Tiger” years in Ireland produced adverse effects on the Irish natural and cultural environment, which parallels earlier Irish willingness to abandon even its own language in the name of short-term prosperity.

The conclusion of this article argues that Ireland has placed itself in a false and unsustainable position in relation to the EU and the United States and speculates on whether the contradictions of Ireland’s approach may at last be forced into plain view. Political elites in Ireland appear to hope that tax avoidance vehicles aimed at global corporations, including such ingeniously devised ones as the “patent royalty exemption,” can continue to provide jobs from multinationals headquartered in Ireland and that, even assuming the levels of prosperity seen in the boom years will not


24 See Joshua D. Moore, The Economic Importance of Tax Competition for Foreign Direct Investment: An Analysis of International Corporate Tax Harmonization Proposals and Lessons from the Winning Corporate Tax Strategy in Ireland, 20 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 345, 370-72 (2007) (writing that “[m]any critics characterize government positions in tax competition as being either a prisoner’s dilemma leading to a race to the bottom or the similar winner’s curse phenomenon. Ireland stands in contrast to these claims, providing a model of active and practical involvement in a growth-oriented national economic policy”).

25 See generally, FRANK MCDONALD & JAMES NIX, CHAOS AT THE CROSSROADS (2005), asking the baleful, yet important, question, “[d]o we have any idea where we are going, any idea at all about the kind of Ireland being created during these years of prosperity?” Id. at 33.

return, crisis can be avoided.\textsuperscript{27} Further, there is no evidence that any more complex, culturally appropriate economic planning is taking place on the part of the Irish government.

\section*{II. Four Green Fields Meet Technocratic Cosmopolitanism}

\textit{A. Historical Incoherence and "European" Ireland}

The story of Irish economic and social development over the past two centuries is a potpourri of political themes, listed here in only rough chronological order: resistance to colonial domination; the rise of nationalism as a call to arms; civil war; the formation of a credible nation state; a vexed relationship with a "Catholic" political identity; nationalistic protectionism; identification with Third World (anti-colonial) liberation; entry into the European Economic Community as a "way out" of economic stagnation and underachievement; and the creation of a low tax environment within the European market that allowed Ireland to be one of the principal recipients of U.S. high-tech investment, along with a garbled championing of unfettered (ironically more British-style) capitalism at odds with the EU's social market.\textsuperscript{28}

Oppressed and manipulated by the British for generations, Irish political culture has found ways to embrace and exact benefits from the dominant systems within which Ireland has had to exist.\textsuperscript{29} This tradition has been carried on by the modern Irish state.\textsuperscript{30} Ireland as a political


\textsuperscript{28} \textit{See generally} ALVIN JACKSON, \textit{IRELAND: 1798-1998} (1999) (discussing Ireland's history over the past two centuries).

\textsuperscript{29} \textit{See JACOBSEN, supra} note 2, at 45-47 (explaining that "by 1703, only 14 percent of the land was in native (Catholic) hands," and describing the manipulation and coercion to which the Irish economy was subjected, based entirely on British economic and political needs). Jacobsen also notes the difficulties faced by a newly independent Irish state, which "presided over a primarily commodity-exporting economy." \textit{Id.} at 49.

\textsuperscript{30} \textit{See BRIGID LAFFAN & JANE O'MAHONY, IRELAND AND THE EUROPEAN UNION} 31-55 (2008). Laffan and O'Mahony write:

[T]he self-perception of Ireland in the EU was of a small, poor, peripheral member. As a net beneficiary of EU funds, successive Irish governments and negotiators sought to maximize receipts of EU funding . . . Ireland was said to be suffering from a 'sponger syndrome.'
collective has been quintessentially reactive but undeniably ambitious, and its role within the EU has reflected a self-interested passivity that Irish governments have worked hard to conceal.\(^{31}\) Such dissimulation was necessary because of the disharmony between the Irish "orientation" within Europe (fundamentally focused on self-interest) and foundational Community ideals of solidarity, cooperation, and mutual concern.\(^{32}\) To borrow a term from popular psychology, the EU has been Ireland's "enabler" in political and economic self-delusion.\(^{33}\)

The question to be asked at present is what political and economic persona is available to Ireland at the important crossroads of 2010/2011? Having overstated its own economic and social performance within the EU, having flirted with Euroskepticism in 2008 until scared out of it by a major economic meltdown, and having used up the most advantageous economic "schemes" modern global capitalism has to offer, Ireland is apparently adrift and uncertain.\(^{34}\) Ireland, for all the reasons of

\(^{31}\) Id. at 31.

\(^{32}\) See id. at 31-55.

\(^{33}\) See Blue, supra note 7, at 458, 461 (noting that the Commission granted an exception to Ireland as an "underdeveloped" area, which allowed the government to extend its 10% to the SCAZ and the IFSC, despite provisions of the EC Treaty and the EC's official sanctioning of Ireland's 1999 Finance Act, which allows Ireland to set its corporate tax rate at 12.5%). See also Arthur Beesley, Reforms a Threat to Investment in Ireland, IRISH TIMES, May 6, 2009 (discussing Ireland IDA's chief executive, Barry O'Leary, as having adopted a relaxed stance in response to Obama's tax reform proposals) Despite the "relaxed stance," O'Leary has sent top officials to the U.S. "to deal with the issue." Id.

\(^{34}\) Ireland’s current crisis may be linked to the idea that Ireland remained poor after attaining independence in the 1920s because of cultural and economic "protectionism" and became wildly successful after "liberating" itself through foreign investment and belief in global trade. This crude template purported to account for all issues of wealth and poverty—in the material and spiritual sense—of modern times. For one analysis of this collective viewpoint, see Tom Garvin, Preventing the Future: Why Was Ireland Poor for So Long? (2004). Writ large, the late 1990s elite viewpoint within Ireland was that a stagnant, repressive, heavily religious nation had been traded in at last for a dynamic "advanced democracy." Id. at 231-32. That the "Celtic Tiger" model was a generally positive one has been taken for granted by the vast majority of these and
developmental dissonance mentioned above, has found itself in a situation where what comes next depends on two main factors: whether the EU will act rigorously on the issue of EU-wide corporate tax harmonization, and whether the United States will act on the issue of U.S. corporate tax avoidance. 35 There appears to be no evidence that Ireland has developed an economic roadmap that involves greater reliance on domestic innovation; in that sense, no profound lessons have been learned from over-dependence on the low taxation device. 36

It is clear that the supranational European entity to which Ireland hitched its destiny in 1973 requires a far greater degree of political allegiance than Ireland has so far shown. 37 It is equally clear that extreme reliance on multinational investment to provide the appearance of real prosperity required a far greater degree of honesty about the risks of that strategy. 38 Ireland is now in the unenviable position of having to reinvent itself once more, with its own global role as a tax avoidance vehicle under fire both from the Obama administration and the EU itself, on grounds of fairness and equity against which the Irish will find it difficult to mount

35 See, e.g., Alex Ritson, European ‘Tax Havens’ Face Obama Action, BBC NEWS (May 6, 2009), http://news.bbc.co.uk/2/hi/business/8036914.stm (specifically saying that “Ireland and the Netherlands are two countries which could fall foul of President Obama’s plan to crack down on tax havens”).

36 See generally, LAFFAN, supra note 30 (assessing the extent of Ireland’s integration into the EU and whether more integration should take place); Ruddick, supra note 15 (noting that in 2008, U.S. corporations invested almost $150 billion in Ireland, which was more than Brazil, Russia, India, and China combined).

37 Of Ireland’s decision in 1972 to enter the EEC, Jacobsen writes that “few Irish believed that their island could thrive outside the Treaty of Rome. An official mission to Brussels became the economic equivalent of a pilgrimage to Lourdes. Thereafter an infirm economy should revive, shriveled regions flourish, and benign investors spread capital abundantly in the fair hills of Eire.” JACOBSEN, supra note 2, at 96.

38 See Killian, supra note 3 (arguing that the enticement of foreign corporations through low tax rates has had negative consequences on Irish life). As an example, Killian points to Intel, the second largest information and communications technology exporter in Ireland, which employs about 4,700 people in its plant in Leixlip, a small town near Dublin. Id. at 1077. She notes that while job creation has been unprecedented, Irish host communities are “dependent upon the . . . presence of multinationals, which support employment, infrastructure, community projects, schools and other needs . . .” Id. at 1078.
any compelling rebuttal.\textsuperscript{39} Despite the fierce defense offered by Ireland’s political establishment of its mono-focus on tax policy to lure multinationals, saving American corporate giants’ money clashes with Ireland’s traditionally redistributive historical agenda.\textsuperscript{40} At present, the best the Irish governing classes can hope for is that none of the impending challenges to its tax-reliant policy bring about major change.\textsuperscript{41} The fact is that without multinational investment in Ireland, there would scarcely be any modern economy whatsoever.\textsuperscript{42}

Ireland is a small but unusually complex state precariously positioned in the cross currents of EU exigencies and global economics. The premise of this article is that, having come into


\textsuperscript{40} Ireland’s role in helping major U.S. corporations to lower their international tax bills has been enormous. See Killian, \textit{supra} note 3, at 1079-80 (describing how high-tech U.S. firms route profits through Ireland for this purpose). While the tax rates are extremely low in Ireland, the influx of such taxes provide huge amounts of money for Ireland relative to its comparatively small size. See Simpson, \textit{supra} note 27. See also \textit{European Commission Requests Ireland to End Discriminatory Rules on Tax Treatment of Patent Royalties, FINFACTS IRELAND} (Mar. 23, 2007), http://www.finfacts.ie/irishfinancenews/article_10009534.shtml (explaining that the Commission formally announced that Ireland’s royalty exemption is “incompatible with the freedom of establishment and the free movement of services”).

\textsuperscript{41} See AMERICAN CHAMBER OF COMMERCE IRELAND, \textit{Response to President Obama Proposals on Tax Changes} (May 5, 2009), http://www.amcham.ie/article.aspx?id=630 (quoting Pat Wall, chair of the American Chamber of Commerce in Ireland’s Taxation Group, as stating that “the proposed changes to deferral of tax on foreign profits is not as severe as had been anticipated . . . ”).

\textsuperscript{42} See Killian, \textit{supra} note 3, at 1074 (noting the “Celtic Tiger” years were primarily “due to Ireland’s success in attracting foreign direct investments”). See also Niamh Lyons, \textit{We Face Job Losses as EU Plots End of Low Corporation Tax}, THE DAILY MAIL, January 4, 2010, available at http://www.thefreelibrary.com (enter in search title: We Face Job Losses as EU Plots End of Low Corporation Tax).
being in the 1920s as a pale imitation of the British state,\(^{43}\) and without sufficient thought to cultural preservation or genuine economic development, Ireland has in recent decades shown itself, after a long period of stagnation, eager to grasp onto a wide variety of opportunities presented by contemporary international economic trends, also known as globalization.\(^{44}\) Ireland has presented a series of faces to the world, most deriving from a predisposition to reactive and insecure short-termism, a result of centuries of survival as a close-to-home source of land and treasure for Britain.\(^{45}\) The scope and scale of the opportunities presented by the European market and American investment from the late 1980s and early 1990s onward proved irresistible.\(^{46}\) The Irish attempt to game the European market system worked as well as the Irish could have hoped.\(^{47}\) It was to be expected that the EU

\(^{43}\) See JACOBSEN, supra note 2, at 50-51 (describing the newly independent Irish state of the 1920s as a "pale replica"). In Chapter 3, Jacobsen writes that:

[T]he new state was a recreation of British institutions and economic ideology. The civil service was 'Whitehall, writ small.' The legal system became more British than the system the British themselves retained, and the tax system was adopted with only minor modifications. Dail Eireann was a hibernicized House of Commons; Seanad Eireann a feeble counterpart to the House of Lords. The flags were Irish, but the flagpoles probably were manufactured in Britain. Id. at 50-51.

\(^{44}\) See Michael Busby, Luck of the Irish: Ireland Has Become the Technological Wonderland of the European Union, 11 INT'L TRADE L.J. 55, 55 (2002) (prophesying that because "the Irish economy is highly dependent on foreign direct investment, Ireland would be greatly affected if there were a downturn in the global economy" and "therefore needed to be actively involved in the European Union"). Id. at 64 n.1.

\(^{45}\) O’TOOLE, supra note 20, at 97-101 (describing how the Irish property boom of the late 1990s and early 2000s was fueled by resentment against years of enforced underdevelopment and British oppression).

\(^{46}\) See Killian, supra note 3, at 1074.

\(^{47}\) See, e.g., Tom McEnaney, Tax Harmonisation 'by Back Door' Threatens our Economic Survival, IRISH INDEP. (Apr. 21, 2008), http://www.independent.ie/business/irish/tax-harmonisation-by-back-door-threatens-our-economic-survival-1353847.html. McEnaney writes that "[i]t was one of the shrewdest moves Ireland has ever made" when Ireland went to the EU authorities in 1995 to ask if it could adopt an across the board 12.5% corporate tax rate, as opposed to the special 10% rate for multinationals that it had obtained before that time, and which was contrary to EU non-discrimination rules. Id. He continues: "I hope there is a plaque somewhere to the civil servants who persuaded the EU that there was no threat to our introducing a common low rate of corporation tax." Id. McEnaney is refreshingly candid about the motives of U.S. corporations who have invested in Ireland, stating that "...much is
would have intervened at an earlier stage to discourage the Irish economic model, but instead, the EU acted with uncertainty and hesitancy when it came to the issue of unfair tax competition.  

Even an outline version of modern Irish history provides crucial context for this analysis: the rise of nationalism and the transition to a modern state; the infamous economic doldrums of the 1950s; Ireland’s role as champion of the developing world during the 1960s and 1970s; its enthusiastic, if often feigned, embrace of the EEC from 1973 through the present, which Ireland milked for structural funds and market access; and Ireland’s ingenious though fatally flawed decision to rely on low corporate tax rates sometimes made of our ability to speak English or our highly educated workforce; but the principal reason foreign companies, and in particular American foreign companies, have flocked to Ireland is low taxes.” *Id.* “The luck of the Irish,” though a clichéd phrase, ultimately points to the Irish tendency to find a means of survival in adversity. *See Laffan & O’Mahony, supra* note 30, at 31; Ruddick, *supra* note 15. Recent Irish economic “success” also played perfectly into the revisionist narrative of Ireland as a modernizing, secularizing society, making rational market choices. *See generally, R.F. Foster, Luck and the Irish: A Brief History of Change from 1970 (2008)* (referring to Irish “luck” advisedly and with a strong sense of irony).


[the fine line between national sovereignty and European Community law was drawn by placing strict limitations on the authority of the Community to implement legislation related to taxation and reserving the power to levy direct taxes for the Member States. Despite this cautious approach to relinquishing national sovereignty in the realm of direct taxation, Member States were still bound to the goal of developing a single common market by the Treaty Establishing the European Community].

49 *European Structural and Cohesion Funds are designed to help new entrants to the EU catch up economically. They are aimed at infrastructural and other foundational improvements, to assist new EU Member States in taking advantage of the market advantages of membership. See David Bailey & Lisa De Propris, The 1988 Reform of the European Structural Funds: Entitlement or Empowerment?, 9 J. Eur. Pol’y 408 (2002). Ireland received huge amounts of structural funding at a crucial time. See After 30 years, Our EU Structural Funds are Leaving Us, IRISH INDEP. (Oct. 12, 2006), http://www.independent.ie/business/irish/after-30-years-our-eu-structural-funds-are-leaving-us-72891.html (noting Ireland’s total was approximately €20 billion in today’s money, most of which was paid out by German taxpayers, and amounted to 3% of GNP in the early years, and 2% of GNP annually between 1993-1999). The article closes with a telling quote from former Prime Minister Albert Reynolds, that even though Ireland is far from where it was in those early days, “of course, you would always take more money if you could get it.” *Id.*
tax rates aimed at U.S. multinationals as a primary means of economic growth.\footnote{50} As described above, through several relatively simple legal stratagems, Ireland became the recipient of a huge amount of foreign investment, mainly from the United States.\footnote{51} Given its small size, this rapid infusion of capital all but guaranteed that Ireland would be drastically altered in every sense.\footnote{52} In light of the insecure cultural basis on which the Irish state was constructed, it is hardly surprising that what remained of the Irish language, culture, and physical landscape would be quickly threatened by this process.\footnote{53} It is ironic that EU environmental rules came to be invoked by some non-governmental organizations (NGOs) as a means of attempting to preserve what the Irish government and much of the Irish public were content to destroy in the name of progress.\footnote{54}

\footnote{50} See Bai, supra note 23 (providing an introduction to Ireland’s low corporate tax policy).

\footnote{51} See Killian, supra note 3, at 1074; Ruddick, supra note 15 (citing that in 2008 alone U.S. companies invested almost $150 billion into Ireland, more than into Brazil, Russia, India, and China combined).

\footnote{52} U.S. academic writing on Ireland's tax policy and economic success in the 1990s has often portrayed EU attempts to eliminate unfair tax competition in Europe as detrimental to Ireland, ignoring the context in which Irish tax policy has played out. Blue characterizes Ireland as a misunderstood hero. See Blue, supra note 7, at 443 (portraying Ireland’s recent economic choices as part of its “independent identity”).

\footnote{53} See Killian, supra note 3, at 1078-80 (discussing Ireland’s high level of economic inequality, health industry crisis, persistent poverty and homelessness, and lower employment rates among Ireland’s minority groups); see also Coleman, supra note 2, at 865-70 (analyzing Ireland’s cultural disintegration and labor problems); see generally MCDONALD & Nix, supra note 25 (discussing Ireland’s developer-led growth and landscape destruction).

\footnote{54} There are many examples of environmentalists enduring heavy criticism in Ireland, where good planning is feared as a block to progress. Jacobsen traces this to the early days of Irish reliance on multinational investment, writing:

The foreign industrial presence aggravates this tendency. Any ‘interference’ with development draws heavy official fire. In 1978, a multinational chemicals firm took its business elsewhere when planning permission was delayed because residents sought pollution control assurances . . . . Dismissing the barbaric local dissenters as ‘unrepresentative,’ the IDA anyway threatened to drop the [County] Clare district as an industrial zone.

JACOBSEN, supra note 2, at 142.

For a sense of the degree to which Ireland’s economic boom clashed with EU environmental requirements, see Niamh Connolly, Ireland High Among EU Environmental Offenders, SUNDAY BUS. POST ONLINE (Jan. 31, 2010),
Ireland has conducted a difficult balancing act on the issue of corporate tax policy, i.e., convincing the EU that its tax regime was not anti-EU in nature and hoping that the U.S. corporations on which Ireland relied would be allowed to continue to avoid taxes that might have otherwise been usefully spent within the United States. As the EU moved forward with enlargement into Eastern Europe in 2004, fulfilling a long held ambition to project a more unified image on the world stage via the Lisbon (“Reform”) Treaty amendments, the Irish, who had never really identified themselves as members of a mutually supportive grouping of states, balked. The Irish vote in June 2008 against the Lisbon Treaty represented a predictably negative reaction by a country facing an end to its opportunistic use of the EU, as opposed to the more genuine participation in a “project” that characterized Continental understandings of the EU. The advent of the controversial

http://archives.tcm.ie/businesspost/2010/01/31/story47083.asp (noting that “Ireland is among the worst offenders when it comes to infringing EU environmental laws, according to new figures.” Ireland’s violations run the gamut from water quality and waste disposal through to archaeological protection). The environmental network, Friends of the Irish Environment (FIE) keeps a tally of enforcement actions being pursued against Ireland. See EU Environmental Infringement Cases Against Ireland, FRIENDS OF THE IRISH ENVIRONMENT (Sept. 2010), available at http://www.friendsoftheirishenvironment.net/cmsfiles/files/library/eu_infringments_2005_2009.pdf (setting out a table of these actions against Ireland); see also Anita Guidera, Ireland Last to Put EU Environmental Treaty into Law, IRISH INDEP. (Mar. 24, 2008), http://www.independent.ie/national-news/ireland-last-to-put-eu-environment--treaty-into-law-1325941.html (noting that “Ireland has been dragging its heels when it comes to enacting EU legislation which gives the public greater involvement on environmental issues”).

55 See Killian, supra note 3, at 1075-76 (describing Ireland’s 12.5% tax scheme as a “difficult dance” because, while it is critical for Ireland to keep its rates low, the country is increasingly being labeled as a tax haven and an international pariah). With respect to the United States, Ireland’s tax strategy has ensured that corporate profits can be repatriated to the United States with minimal adverse tax consequences. Id. at 1076. U.S. companies are apparently sensitive to criticism over their use of Irish tax avoidance opportunities. See Microsoft to Hide Irish Tax Haven Data of Subsidiaries that have Saved it Billions of Dollars in US Taxes, FINFACTS (Mar. 9, 2006), http://www.fmfacts.ie/irelandbusinessnews/publish/article_10005150.shtml. Apparently in reaction to publicity engendered by a Wall Street Journal exposé, Microsoft took steps in 2006 to “shield from the public the value of Tax Haven transactions of two Irish-registered subsidiaries that have enabled it to save billions in U.S. taxes,” namely Round Island One and Flat Island Company. The two companies are reported to be operated out of the Dublin offices of corporate lawyers Matheson Ormsby Prentice. Id.

56 See generally Matt Qvortrup, Rebels Without A Cause? The Irish Referendum on
political group "Libertas," led by the mysterious Irish-British figure Declan Ganley, had the potential to remake Ireland into the epicenter of a new, more fundamentalist and neo-liberal Euroskepticism than any that had been seen before in pan-European politics.\(^{57}\)

The economic meltdown experienced by Ireland in the months that followed the Lisbon rejection reflected the country’s heavy dependence on American investment and the grossly inflated property values across the country.\(^{58}\) The cheers that greeted rejection of the Lisbon Treaty quickly died away, with voters appearing to accept the inevitability of seeking protection and support from Europe in the face of accelerating economic collapse.\(^{59}\) As the Celtic Tiger began to lose steam in 2009, the daring experiment in repudiation of the EU was also faltering. The move by the Irish public towards acceptance of the Lisbon Treaty, 80 POL. Q. 1 (2009); John O’Brennan, *Ireland Says No (Again): The 12 June 2008 Referendum on the Lisbon Treaty*, 62 PARL. AFF. 258 (2009); Anatole Abaquesne de Parfou, *‘See No Evil, Hear No Evil, Speak No Evil’: The Irish Referendum and Ratification of the Lisbon Treaty*, 15 MAASTRICHT J. 493 (2008). Some have seen the Irish “no” vote as a perfectly normal response on the electorate’s part due to their confusion over Lisbon’s implications, and therefore no cause for alarm. See, e.g., Maria Cahill, *Ireland’s Constitutional Amendability and Europe’s Constitutional Ambition: The Lisbon Referendum in Context*, 9 GERMAN L. J. 1191 (2008) (encouraging readers to consider the Irish rejection of Lisbon in light of Irish constitutional requirements, and, in particular, the Irish approach to constitutional referenda as a means of changing the Irish Constitution, including on those occasions when the change is brought about by EU legal developments).

\(^{57}\) The Libertas website was scathing in its description of the EU’s methods and intentions. Although the website disappeared after the party’s failure to gain more than a few seats in the European Parliamentary elections of June 2009, its earlier descriptions gave no ground at all to the political and social benefits brought about by the EU.

\(^{58}\) Stewart et al., *supra* note 16 (explaining Ireland’s current financial “meltdown”). The article notes:

More than a year into a devastating housing crash, and with its export-dependent growth suffering badly, Ireland is mired in a deep financial and economic crisis . . . Not only is the property crisis devastating Ireland’s consumers, but many of the jobs created in the boom are now disappearing. Last month computer manufacturer Dell announced that it was shedding 1,900 workers at its Limerick plant, moving some to Poland and contracting out others.

*Id.*

\(^{59}\) See Ruddick, *supra* note 15 (arguing that proponents of the Lisbon Treaty view it as vital to helping Ireland’s beleaguered economy).
Treaty in the fall 2009 referendum re-run indicated that the EU offered at least safety and continuity, if not the easy ride to prosperity of earlier times. Tellingly, the supposedly Europe-wide Libertas movement posted a dramatic inability to connect with European voters in the June 2009 European Parliamentary elections, when even founder Declan Ganley failed to gain a seat for the new party.

Ireland’s false position vis a vis the EU on the one hand, and its own history on the other, had never been more troubling than at the end of the long and rapacious economic boom, extending roughly from 1995 through 2008. As the events described above came together into a perfect storm of political confusion, a report on the widespread and systematic abuse of children in religious-run institutions in Ireland over the course of decades was a further blow to modern Irish self-confidence. Ireland’s tendency to see itself as exceptionally marvelous or exceptionally terrible played out in these events, leaving its future relations with Europe in a state of great uncertainty.
Three essential propositions ensue from this analysis. The first is that modern Ireland should have pursued a more varied, sustainable, and internationally viable strategy than simple reliance on U.S. multinational investment based on tax inducements. Second, the EU should have been more forthright with Ireland about the uncooperative and anti-EU nature of the Irish tax policy and should have taken creative steps to deal with the matter of fair and sustainable Irish economic development. Third, if Ireland has come to the end of this economic and political phase, it will be forced to find a means of economic survival that is not based purely on tax. Domestically, regionally, and internationally, Irish political culture has been based almost entirely on the power of tax avoidance schemes. On the other hand, it is plain that many Irish policy makers continue to hope that this tax-based methodology will miraculously survive; most also display continued indifference to the cultural and environmental implications of Ireland’s “investment boom” approach.

III. The EU, Member State Histories, and Technocratic Reformulations

A. Ireland as a “Part” of the EU?

The history of each EU Member State drags invisibly behind as that history comes into contact, day by day, with the intensely local nineteenth century psychodrama.” Id. at 101.

65 Some writers have questioned the “sustainability” of Irish prosperity in terms of its continued success. See, e.g., Coleman, supra note 2. In the present article, I am using the term to refer instead to intellectual, historical, and “Europeanist” viability.

66 It is noteworthy that Irish intellectuals have begun to reflect the sense that Ireland is adrift in the post-Celtic tiger years. See Declan Kiberd, Returning to the Spirit of Tiger Ireland is Pointless. Only a Completely New Political Movement Can Tackle the Challenges, IRISH TIMES (Mar. 13, 2010), http://www.irishtimes.com/newspaper/weekend/2010/0313/1224266184020.html (stating that during the boom years,

[a] vulgar, heedless populism led to an assertion that unrestrained market forces were somehow compatible with excellence and ethics, and to a widespread destruction of those with real professional expertise. As gesture took the place of structure, the very people who now call for regulation were just a few years ago the ones baying loudest for deregulation of everything from transport to heath services).
rationalized legal system known as the European Union. This contact provides an alternative way of “knowing” for each of the Member States—knowing themselves and their fellow EU Member States.\(^6^7\) The endurance of the EU is attributable to its legally binding quality; as a law-based transformer of historical relations, it thus does a far better job than any possible inter-governmental organization. While the populations of the respective European Member States certainly find themselves wearied or inspired, in turn, by the EU as a construct, the EU has at least been consistently accepted by an EU public that acknowledges its permanency and overall success.\(^6^8\)

For mortal Continental rivals France and Germany, the fact that the EU exists as a guarantor of permanent cooperation is undeniable.\(^6^9\) For the southern European states, entry into the EU created therapeutic contact with a soothing, Continental technocracy.\(^7^0\) Religious passion, military dictatorship, and other

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\(^6^7\) This relationship between national and supranational political cultures is explored in a fascinating collection of essays. In particular, see James Henry Bergeron’s *An Ever Whiter Myth: The Colonization of Modernity in European Community Law, in Europe’s Other: European Law Between Modernity and Postmodernity*, 3-26 (Peter Fitzpatrick & James Henry Bergeron, eds., 1998).

At the heart of the discourse of EC law is myth. Not myth as a child’s fable, but as a transforming signifier capable of re-ordering the ‘radical imaginary’ of the European polity. The successful ‘constitutionalization’ of the EC Treaties, and the consequential relative autonomy of the Community, owes much to the incorporation into European Community law of the mythical structures of modernity which imbue national political culture and, increasingly, the political culture of a globalised West. *Id.* at 4.

\(^6^8\) A survey by the European Commission done in the United Kingdom, historically one of the least enthusiastic EU Member States, reported that citizens in the UK believe that the EU has a role to play in the serious issues facing the EU, UK, and the world generally (such as terrorism, climate change, global poverty etc.). It appears that even the resistant British public believes the EU is a permanent feature on the political stage. *See Flash Eurobarometer, The Gallup Organization, Attitudes Towards the EU in the United Kingdom* 203 (May 2007) [hereinafter Attitudes], available at http://ec.europa.eu/public_opinion/flash/fl203_en.pdf.

\(^6^9\) *See* Joschka Fischer, Address at Humboldt University in Berlin: From Confederacy to Federation (May 12, 2000) (transcript available at http://www.dwfed.org/pp_confed_to_fed.html).

“pre-modern” attributes were cast off with the embrace of blander notions of equality, technocratic competence, and transparency. And so it went, with each state, set of states, or region finding itself liberated from the genuine complexities of the past in the apparent, or rarified, complexities of the EU’s *acquis communautaire*. While the EU normally has the effect of internally and externally “translating” national history, and thus restraining disharmonious elements, it is doubtful whether EU membership has had any such effect with regard to Ireland.

Although the EU rises and falls in popularity, based on evolving perceptions of its role in bringing about positive or negative outcomes, different forms of political cost have been extracted from participating nations. The Member States have understandably been asked to invest various forms of capital in the ongoing creation of the EU. There is a basic straightforwardness inherent in the European project, a mandatory allegiance to core ideas that eschews real cynicism. Amorphous though it may sound, there is a treaty-based requirement that Member States not take any actions that would jeopardize the overall goals of the EU. Despite the recent failure to fully “constitutionalize” the EU, members are not meant to make light of core EU objectives.

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74 See Baily & De Proprius, *supra* note 49 (discussing structural and cohesion funds).

75 See Daniel Halberstam, *Of Power and Responsibility: The Political Morality of Federal Systems,* 90 VA. L. REV. 731, 763-64 (2004) (noting that Article 3, now Article 10 of the EC Treaty, requires that members “take all appropriate measures” to ensure, and “abstain from any measure” that could compromise, the success of the treaty”).

76 For a brief but revealing description of the rise of the idea of a European
This is in large measure due to the systemic characteristics mentioned above; that the EU is meant to meet, greet, and tame history, purging "the idea of Europe" of the frightening and the grotesque. This accounts for the central role reserved for law in the development of the EU. Whereas Americans often appear baffled at the willingness of Europeans to submit to the EU’s bureaucratic yoke, it is because Americans cannot successfully identify with the longing to be set free from a messy and bloody history. This is not to say that the reaction of each EU Member State to the EU is identical or even broadly similar; on the other hand, a main contention of this article is that the Irish reaction to EU membership was outside the knowledge and experience of Continental Europe.

There is reason to believe that Ireland did not especially wish to be "known" through this Europeanizing process; rather, Ireland needed to be misperceived by Continental Europe. Ireland was naturally pleased to jettison its own deep and messy historical preoccupation with the British, not to mention its consistent failure to invigorate the economy of a state that had enjoyed

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The Union, endowed with most basic organizational and material elements founding an autonomous polity, including the right to mint money and a nucleus of defense capabilities, differentiates essentially from a state-like structure because of its coexistence with other sovereign entities. This difference lies at the heart of European integration, which far from negating Members States' identities and specificities, organizes their coexistence—united in diversity [the Union's motto]—through the pooling together of their resources to pursue goals of common interest.

*Id.* at 479. The Constitutional Treaty, as it was called, was rejected by Dutch and French voters in 2005. Many of its provisions were repackaged into the Lisbon Treaty amendments.


78 LAFFAN & O’MAHONY, supra note 30, at 31.

79 O’TOOLE, supra note 20, at 170-71

([T]he Irish sense of belonging in Europe turned out to be much weaker than it had seemed. . . . It was not surprising that enthusiasm for the European project was particularly high in Ireland. Yet, as it turned out, it was also particularly shallow. . . . The Celtic Tiger’s tendency to snap at the European hand that had fed it in its infancy was encouraged by the same politicians who, when it suited them, insisted that the Irish should be good Europeans).
independence since the 1920s. The Europeans, with their partial and unsatisfactory history with Britain, were equally happy to assist in the supposed decoupling of Ireland and Britain. Ireland was eager to be airlifted out of the British sphere of influence, and this fed into the EU script of lifting up new Member States one by one. For Ireland, success within the EU was proof that it did not need Britain, but had been, as it were, inescapably attached to Britain due to physical proximity. For the EU’s major players, Ireland’s success was proof that the EU regimen could transform even the most under-performing European economy; also and not insignificantly, Irish success meant that the Continentals could effect this change in a way the British could not. A wealthy Ireland, historically counter-intuitive, proved that the European prescription really worked, even in the most difficult circumstances. However, Ireland did not become genuinely wealthy, unless national wealth is counted in GDP alone; it merely pulled in U.S. investment through a crude and quite obvious

80 While all the EU Member States have used the EU as a new way of perceiving their own political identities, in Ireland’s case the unity and solidarity dimension seems to have been lacking. As Ireland was mainly seeking release from its own historical inferiority complex vis a vis Britain, it sought a shortcut to confidence that did not include any sacrifice on behalf of the EU.

81 Ireland basks in role as the EU success story, EU BUSINESS (Mar. 21, 2007), http://www.eubusiness.com/topics/employment/ireland.18/ (discusses Ireland’s success in EU).

82 The long-running sense of national failure can hardly be overstated. Despite having achieved independent nationhood for most of its island country, the Irish did not manage to establish any credible industrial base with which to sustain its population. The 1950s were particularly difficult. See John Bradley, Changing the Rules: Why the Failures of the 1950s Forced a Transition in Economic Policy-Making, in LOST DECADE: IRELAND IN THE 1950’s 105 (Dermot Keogh, Finbarr O’Shea & Carmel Quinn, eds., 2004) (“The rapid recovery and growth of the main economies of Western Europe—after an initial period of post-war reconstruction—crucially exposed the poor performance of the Irish economy”). The essay ultimately points to the post-1950s emphasis on foreign investment as the key to Irish economic independence from Britain and to greater prosperity. Bradley is a proponent of the common Irish view that the “protectionism” of the 1930s through 1950s was a failure, and that the turn towards American investment was the appropriate alternative. Bradley, like other writers in this genre, does not entertain the idea that Ireland simply traded one form of dependence for another. Id. See also Enda Delaney, The Vanishing Irish? The Exodus from Ireland in the 1950s, in THE LOST DECADE: IRELAND IN THE 1950’s 80-86 (Dermot Keogh, Finbarr O’Shea & Carmel Quinn, eds., 2004) (exploring Irish fears of general depopulation in the 1950s, based on the strikingly high levels of emigration and sense of powerlessness to stop it).
mechanism: extremely low tax. It was the tax/European market intersection that allowed Ireland to lasso such a huge amount of investment relative to its size.

For the EU to operate successfully, while it must simplify and refashion, it should not fundamentally misrepresent or misunderstand. The EU is based on a Grand Bargain and a smaller set of bargains, a give and take in the service of an ideal. Ireland’s behavior not surprisingly mirrored its former behavior towards Britain and the Commonwealth (though a far more successful version of it), as well as the general behavior of Irish emigrants throughout the diaspora generally. The familiar Irish game plan was to figure out an available scheme, a formula for obtaining money, and ride the wave. The main Irish objective within the EU was internally focused and had little connection with any overarching European ideals. It is only logical to conclude that if all EU Member States were to approach the EU as Ireland did, there would be no EU as it is generally understood.

As explained above, the device used by Ireland to provide an appearance of grand economic transformation was a low tax regime for multinational corporations, principally from the United States, a technique that, when pushed too far, cannot be

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83 In the late 1990s, the mainstream consensus in Ireland was that important economic decisions had placed Ireland in a position of strength when compared to other economies great and small. See, e.g., Paul Sweeney, The Celtic Tiger: Ireland’s Continuing Economic Miracle (1999) (writing in the book’s preface that “the Irish economy entered a ‘virtuous circle’ from 1987, and since then, the economic management of Ireland has been excellent in most areas and the players in the complex interactions of economy and society have contributed very positively to sustaining the high level of growth”). The very first page of the main text states that “Ireland has become the ‘Celtic Tiger’ economy of Europe, and it is leading the European Union in nearly every economic sphere.” Id. at 1.

84 See Killian, supra note 3, at 1074; O’Toole, supra note 20, at 93-94 (pointing out that the vaunted Irish prosperity was very poorly distributed internally, and statistics pointing to Irish economic growth could be highly misleading).


86 The EU has so far been precluded by the Treaty’s terms in this area from setting a floor on corporate taxation rates within the EU. Even though the behavior of Ireland in this respect is arguably contrary to EU common interests, Ireland has managed to avoid real action by the EU because of the treaty requirement that changes of this type in tax policy be entered into unanimously by all Member States of the Union. For a
reconciled with EU notions of solidarity. The ultra-low tax attracted inward investment to a degree that even the Irish imagination could not have predicted. For a certain period, Ireland was pulling in approximately 40% of all high-tech U.S. investment in Europe. Positioned within the single European market, developing its rickety infrastructure with the infusion of European development capital, and enjoying participation in an EU based on the concept of its members’ “solidarity,” Ireland finessed its contradictory position with both skill and audacity. Mainstream descriptions of the Irish economic performance were at pains to avoid the impression, however justified, that Ireland was profoundly over-reliant on tax-motivated inward investment.

comprehensive discussion of the tax-related provisions of the Treaty, see Charles E. McLure, Legislative, Judicial, Soft Law, and Cooperative Approaches to Harmonizing Corporate Income Taxes in the US and the EU, 14 COLUM. J. EUR. L. 377 (2008). “Since each Member State is represented on the Council, as a practical matter the requirement for unanimous consent implies that each Member State has veto power over future EC tax legislation. This has, with only minor exceptions, prevented the use of EC legislation to achieve either prescriptive or proscriptive harmonization of direct taxes, including corporate income taxes.” Id. at 381. Had it not been for this Treaty limitation, it is all but certain the EU would have taken action to coordinate corporate tax rates long ago. Indeed, coordinating Member State approaches to corporate taxation levels has been under consideration by the European institutions since as early as the 1960s. See also Jack Mintz and Joann Weiner, Some Open Negotiation Issues Involving a Common Consolidated Corporate Tax Base in the European Union, 62 TAX L. REV. 81, 89 (Fall 2008). (“The process [of company law reform] had begun shortly after the founding of the European Community when the Neumark Committee in 1962 suggested harmonizing company tax systems in the form of an imputation system with split rates”).

87 Irish economic success has been described in extremely simplistic terms by commentators, generally to the effect that Ireland was formerly a “closed” and “protectionist” economy, but was a great success after it embraced “openness.” See Mikiciuk, supra note 18 at 90 (describing Ireland’s transformation from “Europe’s worst to Europe’s best-performing economy”). See also Busby, supra note 44, at 64 (describing how Ireland enticed foreign investors with its attractive economic policies).


89 See Colin Coulter, The end of Irish history? An introduction to the book, THE END OF IRISH HISTORY? CRITICAL REFLECTIONS ON THE CELTIC TIGER, supra note 2, at 18-20 (explaining that the prosperity and supposed transformation of the Irish Republic in the 1990s were based primarily on the desire of U.S. based multinational corporations to lower their global tax bill).

90 See, e.g., Brendan Walsh, Taxation and Foreign Direct Investment in Ireland, TAX REFORM IN CANADA: OUR PATH TO GREATER PROSPERITY, 207-28 (H.G. Grubel ed.,
The EU, based on far loftier concepts, first ignored and eventually struggled to find the right tone in dealing with Ireland’s peculiar mode of engaging with Europe. 91 On the one hand, as indicated above, having pried Ireland away from the generally distrusted British, the EU treated Ireland as a great success story. 92 The EU, so the myth went, had effectively banished the economic doldrums characteristic of prior Irish governments. 93 It would therefore be politically unseemly for the EU to publicly chide this protégé. On the other hand, with the 2004 enlargement into Eastern Europe, ensuring genuine solidarity and preventing investment poaching by the new entrants took on real urgency. 94 The Irish had every reason to dread enlargement into Eastern Europe, as the Irish Model of EU participation, if imitated, would inevitably be more rigorously parsed and more clearly discouraged with respect to the new entrant countries. 95

2005) (embedding the taxation factor in a “normalizing” narrative that looks at a number of factors relevant to Irish success).


92 See O’TOOLE, supra note 20, at 170-71.


95 For an analysis of the long-running EU efforts to deal with the problem of widely different corporate taxation rates across the Union, see Byoung-Inn Bai, supra note 23, at 115 (positing the theory that, while closely aligned corporate tax rates were desirable in light of the free movement of capital across Europe, the Member States have been able to absorb negative fallout for this disharmony). The EU has also floated the idea of a “Common Consolidated Corporate Tax Base” (CCCTB), an idea that emerged from a 2004 meeting of European finance ministers. See Colm Kelly, CCCTB May be a Mixed Blessing, supra note 91 (writing that under the CCCTB, “[t]he aggregated profits of a group of companies operating in the EU will be apportioned to each member state based on a set of rules known as formulary apportionment. . . . [T]he criteria used to determine the allocation are likely to be a combination of sales by destination, property . . . and payroll”).
Ireland, as mentioned, is ambitious in its sense of self. This may well derive from the fact that it was oppressed by one of the greatest states and largest empires of them all, Britain. Whether in alliance with the world’s downtrodden or symbol of successful modernity, Ireland has displayed a historical tendency to position itself astride the strongest global trends. In the case of the low tax-dominated period from the 1990s on, this approach led to a remarkable bounce of apparent prosperity. Unlike countries such as Norway, content to pursue their own ideal forms of farming, fishing, and smaller-scale manufacture, Ireland has historically seen itself as a nation miraculously linked to, even symbolic of, major global trends, economic or otherwise.

Ireland, passive in its economic and cultural methodology, has at the same time been extremely active in laying hold of EU and indeed global economic opportunities. It may be that, after the economic crisis in 2009, Ireland is experiencing a moment of systems failure. However, depending on European developments, it is conceivable that Ireland will reconfigure itself and find another international trend on which to base its sense of importance.

B. An Anglo-Saxon Celtic Tiger?

As described above, Irish voters went to the polls in June 2008.
and resoundingly rejected the Lisbon Reform Treaty, a set of amendments to the existing EU treaties, designed to allow for greater ease of decision making in an enlarged Europe and also to give Europe a more decisive role in world affairs. Standard explanations for this negative reaction by Irish voters include the argument that French and Dutch voters had rejected a largely similar “Constitutional Treaty” a couple of years earlier, so Ireland was in fact in the European mainstream. It was also pointed out that Ireland had first rejected, then after some tweaking accepted, an earlier set of treaty amendments called the Nice Treaty, in 2001 and 2002. While all of this is factually true, there was an air of resistance and hostility in the 2008 vote indicating that Ireland had concluded that it had taken what it could from Europe, and that the long ride on a surprisingly manipulable gravy train was coming to an end.

More than any other EU country, Ireland’s membership has been characterized by an attitude of taking what it could and using its place within the European market to service the needs of U.S. multinationals, which accepted, in predictable fashion, this offer of tax savings. In June 2008, judging by the popular mood, it appeared that Ireland had rediscovered nationalism, the foundational doctrine and touchstone of national identity, one that delivered Ireland its independence from Britain and that delivered it possession of a state.

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105 See id. at 7 (mentioning Nice Treaty).

106 Ireland’s Vote on the Lisbon Treaty: No Means No, THE TIMES (June 14, 2008), http://www.timesonline.co.uk/tol/comment/leading_article/article4133301.ece.

107 See, e.g., Ruddick, supra note 15 (describing that “in the short term, avoiding the harm of rejecting the [Lisbon] [T]reaty was more important than the merits of accepting it” and that Treaty approval will be seen as Ireland getting its “act together”). See also Coulter, supra note 89.

108 Agnes Maillot, Sinn Féin’s Approach to the EU: Still More ‘Critical’ than ‘Engaged’?, 24 IRISH POLITICAL STUDIES 4, 559-74 (December 2009) (analyzing how Sinn Fein campaigns for European Parliamentary seats, but still presents itself “as a resolutely republican and left-wing party”). Maillot also notes that for Sinn Fein to
essential ingredients to achieve a striking degree of national wealth—EU transfers, in the form of money given to assist Ireland in developing infrastructure and low taxes for U.S. multinationals—the Irish political elites, including journalists and commentators, expressed little if any awareness of the irony of Ireland’s position. This double-dipping did not bring about any deep-seated sense of gratitude or loyalty in Ireland towards the European “project,” with which Ireland simply failed to identify at any profound level.

It should be noted that Ireland, under the political leadership of Charles Haughey in the 1980s, took a step beyond providing tax avoidance benefits to U.S. manufacturing industries, such as medical device makers, pharmaceutical companies, and computer companies. In fact, Ireland positioned itself as a “processor” of money in the form of nominally Irish-based companies in its notorious International Financial Services Center (IFSC). engage in such campaigning at all is a shift in party policy.

109 See Billie Morrow, Ireland: The Roads to Success, 19 PERSP. ON BUS. & ECON. (2001), available at http://www.lehigh.edu/~incntr/publications/perspectives/v19/Morrow.PDF. For a detailed discussion of the extreme dependence of the Irish economy in the 1990s on inward investment by U.S. multinationals, see O’Hearn, supra note 88, at 34-55 (“...the single overriding factor in the ‘success’ of the Celtic Tiger was the arrival of huge clusters of foreign subsidiaries in a few sectors, and predominantly from the United States”). Id. at 37. The Celtic Tiger has been extremely dependent on foreign activities, particularly on rising exports from Ireland by U.S. computer and pharmaceutical companies.” Also, “[a]rguably, Ireland’s most important function today is as a site where U.S. companies can shift their products into Europe, while accumulating profits in order to avoid taxation.” Id. at 40. It is interesting to note that O’Hearn characterizes Ireland as a “site” with a “function,” pointing to the false and dependent, albeit superficially successful, situation the Irish state had constructed for itself at the end of the 1990s.


111 The IFSC Story: What is Ireland’s International Financial Services Centre?
Purely and entirely tax based, for twenty years the center has provided opportunities for international capital to find a low or no tax environment in a jurisdiction less obviously questionable than, for instance, the Cayman Islands.  

While the European taxpayer was providing money for Irish infrastructural development, U.S. corporations were being assisted by Irish policies, even while these corporations were competitors of European corporations. On the one hand, Ireland used its image as a downtrodden member of the European family, with a terrible past assignable to the mistrusted British, for purposes of convincing Europe to help it play historical catch-up. On the other hand, in order to lure U.S. high-tech investment, the Irish created a new identity as a country filled with “young Europeans,” educated to a high standard, English-speaking, eager, the ideal employees. Ireland insisted that a low tax regime was not the only reason, perhaps not even an important reason, in the choice U.S. corporations made to set up manufacturing and research and development bases in Ireland. Aided by the British, who had their own concerns about the survival of the City of London as a thriving financial center, the Irish managed to keep Continental attempts to create a common European approach to corporate taxation levels at bay for many years. With enlargement into

FINANCEDUBLIN.COM,

112 Compare The IFSC Story, supra note 111, with O’TOOLE, supra note 20, at 131 (providing the back story to the IFSC, noting how the Center has attracted vast swaths of international profits from all kinds of industries, funneling billions of euros of capital through the Center, while generally employing staff of only a few people).

113 See supra notes 7 and 109 and accompanying text (discussing Ireland providing low tax rates to U.S. corporations).

114 O’TOOLE, supra note 20, at 170-71.


116 Cf. BEESLEY, supra note 33 (suggesting that the Irish have long used corporate tax rates to attract foreign investment).

Eastern Europe, the idea that any one Member State could provide a completely out of sync low-tax environment was more problematic than ever before.\(^\text{118}\)

In the process of achieving superstar status as the little nation that could,\(^\text{119}\) Ireland experienced a great deal of internal destruction. Ireland has a poor record of compliance with EU environmental standards, and the European Commission has frequently brought Ireland before the European Court of Justice.\(^\text{120}\) Compared with other European countries, Ireland also has a weak record on cultural preservation.\(^\text{121}\) Having let its language languish more than a hundred years ago, Ireland was equally unperturbed by the rapid loss of landscape that occurred in the 1990s.\(^\text{122}\) Native speakers of Irish Gaelic before the boom found their linguistic habitats further threatened by the holiday home phenomenon that the Irish government encouraged with yet more tax incentives. Some small seaside towns sprouted tax incentive-generated “holiday homes.”\(^\text{123}\)

Visitors were appalled that the “green fields”

corporate tax policy across the EU).

\(^{\text{118}}\) See Byoung-Inn Bai, supra note 23 (alluding to disapproval of Eastern Europe following Irish tax policies).

\(^{\text{119}}\) See, INTERNATIONAL PERSPECTIVES ON THE IRISH ECONOMY (Alan Gray ed., 1997) (This collection of essays that appeared during the early period of the Irish boom years featured a number of analyses by prestigious international economists about Ireland’s success in the 1990s).

\(^{\text{120}}\) Ireland’s failure to comply with EU environmental laws has been notorious. Labour MEP for Dublin, Proinsias DeRossa, has been scathing in his criticism of successive Irish governments on this score. See, e.g., De Rossa Slams Government’s Environmental Record Following Announcement of Eight Separate Challenges over Breaches of EU Law, DERossa.COM (Jan. 13, 2005), http://www.derossa.com/showPage.php?ID=716 (“During the period [1997-2002], with just one percent of the EU population, Ireland was responsible for 16% of all first warnings [by the European Commission on environmental matters] while Ireland received twice as many first warnings than France, a country with over ten times our population.”) See also Frank McDonald, Ireland’s Ecological Breaches High, Says DeRossa, IRISH TIMES, June 2, 2009, at 8 (quoting DeRossa to the effect that “‘conservative political forces’ in Ireland viewed environmental protection as one of the negative ‘obligations’ of EU membership—measures that should be opposed and, when that proves futile, to be delayed for as long as possible”).

\(^{\text{121}}\) MCDONALD & NIX, supra note 25, at 33.

\(^{\text{122}}\) Having let its language languish more than a hundred years ago, Ireland also experienced a rapid loss of landscape in the 1990s. See Coleman, supra note 2, at 178.

\(^{\text{123}}\) See O’TOOLE, supra note 20, at 116.
were being used for tasteless buildings of all kinds. Such policies were pursued even while remaining pockets of cultural and linguistic viability were being undermined. Rather than follow a model of vibrant small business and niche farming, for instance, the Irish followed a “get-rich-quick” approach to development that proved unsustainable over the long term.

In April 2009, Mario Monti, formerly European Commissioner for the single market, tax policy and competition, ironically grouped Ireland together with the “Anglo-Saxon” economies of Britain and the United States, as distinct from the “social market” countries of the EU—France, Germany and other states committed to “social objectives.” Monti suggested that the global economic crisis provided the perfect opportunity to reconcile the competing visions of the Anglo-Saxons as against the Continental social marketeers, through the long overdue coordination of tax regimes. Monti suggested that this was the only way to preserve the European market economy.

It is striking that in its “boom phase,” the Irish economy was referred to as the “Celtic” tiger, attributing its economic prowess

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There were incentives for the developers of hotels and holiday camps, of private hospitals and nursing homes, of holiday cottage schemes, of third-level educational buildings and student accommodation blocks, of childcare and park-and-ride facilities, of multi-story car parks and refurbished flats. Most of this was stark stupidity: the number of hotel rooms, for example, increased by 150 percent in the Celtic Tiger years, while the number of tourists increased by 70 percent.

*Id.* at 116.

124 See *id.* at 116-20.

125 See *Id.*

126 There have, of course, been some analyses of Ireland’s peculiar position *vis a vis* the EU and the larger trends of global capitalism. Michael J. O’Sullivan has pointed out that Ireland’s embrace of globalization has placed it in the “Anglo-Saxon” camp. See Michael J. O’Sullivan, Ireland and the Global Question 7 (2006) (“... [T]here is a growing strain between Ireland’s role as a modern European nation and its increasing adoption of Anglo-Saxon political, economic and cultural norms. Globalisation, which is largely Anglo-Saxon in nature, has contributed to this.”). O’Sullivan points out that between 2002 and 2004, Ireland was internationally ranked as the “most globalised country.” *Id.* at 34.


128 See *Id.*

129 See *Id.*
to Ireland’s latent Celtic (i.e., non-Anglo-Saxon) characteristics.\(^{130}\)
Whether or not the Tiger’s proponents thought of it in this way, the use of the phrase Celtic Tiger implied (albeit tongue in cheek) a reawakening of the long-suffering Celtic beast, whose distinctiveness had, to a large extent, faded under centuries of British oppression.\(^{131}\) From a certain point of view, the Celtic Tiger was allowed to flourish by virtue of the largesse of the Continental Europeans.\(^{132}\) In Monti’s 2009 formulation, however, the Celtic Tiger had reverted to a pre-existing “Anglo-Saxon” group membership, the selfish aspects of which had eclipsed the more positive “Celtic” image.\(^{133}\)

It is unclear how Ireland might survive a return to the margins of Europe. It could be argued that the EU had a responsibility to understand the degree to which Ireland had made itself dependent on the low-tax device and, in turn, the degree to which that was incompatible with good faith EU membership. It was likely the case that, just as the EU served Ireland’s needs, portrayal of Ireland as a role model for small and underdeveloped states achieving success via EU membership also served the EU’s needs.\(^{134}\) This led to a prolonged state of mutual denial, allowing the inherent contradiction to develop unchecked.

\(^{130}\) The notion of a “Celtic tiger,” of course, grew out of a comparison between Ireland’s newly successful economy and those of certain Southeast and East Asian nations that had been dubbed the “Asian tigers.” See generally Denis O’Hearn, Comparative Tigerhood, in INSIDE THE CELTIC TIGER 1-32 (1998) (critiquing this false comparison).

\(^{131}\) The Celtic Tiger reawakened decades after Ireland broke free from British power. See supra note 96.

\(^{132}\) See infra Part V.C (discussing role of cohesion funds).

\(^{133}\) See Willis, supra note 127 (discussing 2009 formulation).

\(^{134}\) An ordinary internet search finds a wide variety of references to Ireland (at least before the 2009 economic collapse) as the role model for small states within the EU; it was praised for having used its EU membership to great, even amazing, advantage. Virtually none of these references take into account Ireland’s over-reliance on tax policy to achieve development. See, e.g., Brian O’Mahony, Take a Bow for Role Model Behaviour, IRISH EXAMINER (Sept. 24, 2005), http://archives.tcm.ie/irishexaminer/2005/09/24/story694531505.asp.
IV. Manufacturing Happiness for U.S. Multinationals

A. Irish Objectives, European Discourse

From the first, and in each successive instance of European enlargement, the EU, moving in the direction of some ultimate political union, has collided with national political themes and tendencies. The original objective of the EEC was to render war involving Germany and France obsolete as an option. The EU approach to institutional reform, while painfully slow, has had a consistent purpose when viewed over time. Continental European countries, perhaps better disposed to grasp the techniques and even virtues of empire building than the so-called peripheral countries, have undoubtedly seen their own transcendent historical goals reflected in the EU itself. The road to the “ultimate” would thus, from their perspectives, have to be more than simply the orchestration of national interests. As one moves away from Central Europe, this philosophy appears to be less operative.

In the case of Britain and Ireland, the two inextricably linked “island nations,” what they have found and how they have performed in the EU, is far more idiosyncratic and less conceptually integrated than the Continental states. In the case of Britain, a sense of European exceptionalism meant that the political focus would remain on the Commonwealth, the alliance with the United States, and on the importance of remaining separate from European threats to its (non-negotiable) identity. Ireland, always in the British shadow, contains contradictory elements of dependence upon and resistance to outside influence.

Many watching Ireland during its early years of participation

136 Fischer, supra note 69.
137 See id.
138 See id.
139 See id. It remains to be seen how the new entrants of 2004 and 2006—Poland, for instance—will fit into this conception.
140 E.g. British nonintegrated monetary system and Irish tax manipulation.
141 See generally, JACOBSEN, supra note 2, at Ch.7.
in the EEC might not have grasped the essential reality that its apparently pro-European position was a manifestation of the Irish tendency to passivity, outward imitation, and a determination to climb out of the British shadow by playing in a bigger league.\textsuperscript{142} Certainly Irish membership came with expectations of national "performance" and ultimate success.\textsuperscript{143} Vast wealth transfers between continental Europe and the Irish took place as a matter of course; the countryside was transformed by roads, and the creaky machinery of the Irish state was modernized.\textsuperscript{144} Yet, reflecting its tradition of colonized thinking and policy-making, the Irish chose the easiest route to prosperity: providing U.S. multinational corporations with tax savings and the opportunity to sell their goods in the European market.\textsuperscript{145} As explained above, the Irish achieved a parallel feat in the realm of global capital by creating a "Financial Services Centre" that provided tax evasion opportunities for thousands of (mainly paper) global companies, in addition to the U.S. companies carrying on business out of Ireland.\textsuperscript{146} Fortunately for Ireland, the Continental antipathy towards the British placed Ireland in exactly the right place to take advantage of a European psychodrama.\textsuperscript{147} Britain, with its retrograde view of Europe and prioritizing of the transatlantic alliance, was often unpopular in Brussels.\textsuperscript{148} While Tony Blair had a transformative effect on that relationship after his election in 1997, his embrace of George Bush's Iraqi ambitions beginning in 2003 returned the UK-European relationship to its prior reality: Continental frustration that Britain would probably never sign on

\begin{enumerate}
\item See O'Toole, \textit{supra} note 20, at 171-72 ("The EU had been a crucial part of Irish identity between the 1970s and 1990s when it had been the form in which Irish modernity sold itself to a rural and conservative population. It has, paradoxically, vindicated Irish nationalism by finally breaking the dependence of the Irish economy on trade with Britain").
\item See Laffan & O'Mahony, \textit{supra} note 30, at Ch.7.
\item See Morrow, \textit{supra} note 109 (discussing roadways and funding).
\item See Killian, \textit{supra} note 3.
\item See, O'Toole, \textit{supra} note 20, at 126-27, 129-30 (describing how the IFSC, brain child of Prime Minister Charles Haughey, became a center for "high-level financial juggling by American-owned transnational corporations, with their Dutch-based treasury-management subsidiaries routing capital flows through Dublin").
\item See O'Toole, \textit{supra} note 20, at 170-71.
\item See generally, Jacobsen, \textit{supra} note 2.
\end{enumerate}
to the "ultimate" vision of a politically unified EU. 149 From the 1970s onward, the EU accepted the role of liberating Ireland from its dependence on Britain. 150 Ireland was now the Good European, in contrast to British ambivalence. 151 Ireland could be competent, without British assistance. 152 Ireland had become one of a uniquely powerful grouping of nations.

Ironically, as noted above, the Irish method of achieving the appropriate level of prosperity had remained utterly dependent in methodology. 153 To a remarkable extent, the Irish economy became dependent upon the Irish being allowed to engage in unfair tax competition, using its position within the European market, and simultaneously providing extremely generous tax relief to U.S. multinational corporations. 154 This required Ireland to develop some defensive explanatory narratives, and in a great hurry. 155 It attributed its own success to "productivity," "technology," and targeted educational policies, to name a few. 156 Enjoying a political invisibility due to its small size, and coddled because of its vexed historical relationship with Britain, Ireland sat back and experienced itself being washed over with enormous

149 Id.
150 See O'TOOLE, supra note 20, at 171-72 (indicating that Ireland used the European Union to get out from under the British shadow); id. at 97-101 (describing how the Irish property boom of the late 1990s and early 2000s was fueled by resentment against years of enforced underdevelopment and British oppression).
151 See O'TOOLE, supra note 20, at 170.
152 Id. at 171-72.
153 See Somerville, supra note 4.
154 Id.
156 But see O'SULLIVAN, supra note 126, at 63.

[W]ider access to education seems to have created an illusion of deeper and better education. Though the Irish education system and the skills it has imparted to the Irish labour force are almost always invoked to explain the attractiveness of Ireland as an investment location, Irish governments over the last thirty years have spent little more per capita than the European average. . . . [T]he 2005 OECD statistical profile of Ireland showed that spending on pre-primary, primary and secondary education in Ireland was low compared to OECD and European levels.

Id. at 63.
waves of global capital.\textsuperscript{157}

Despite its apparent loyalty to the European ideal, the European ideal never actually penetrated the Irish consciousness.\textsuperscript{158} European political unity had no obvious meaning within the Irish historical memory.\textsuperscript{159} The concepts of obligation and cooperation, both explicitly and inherently present in the EU’s treaties, were psychologically cost-free for the Irish, as Ireland had a long established tradition of seeming to bow to outside authority, while hoping to make the best of a dependent situation.\textsuperscript{160} Apparent adherence to ideas of solidarity with the Third World during the 1970s gave way to mastery of the language of international “competition” and European constitutionalism.\textsuperscript{161}

In recent years, the formerly unmentionable began to be articulated. In June 2007, the German Finance Minister finally stated quite bluntly that it made no sense for Ireland to take huge amounts of money from the EU to finance infrastructural development, while at the same time inviting in U.S. industries, which are competitors of European companies, to avail themselves of Ireland’s ultra-low corporate tax rates.\textsuperscript{162} Ireland had, for many years, been helping U.S. companies to avoid paying their rightful U.S. taxes, while also expecting the Continental Europeans to subsidize Irish public service needs.\textsuperscript{163} In the process, Ireland had,

\textsuperscript{157} See Killian, supra note 3, at 1074.

\textsuperscript{158} O’Toole, supra note 20, at 41 (describing the dominant ethos in Irish political culture as one where business elites provided financial assistance to politicians because of a perceived need to remain on the “inside track”).

\textsuperscript{159} Id. at 45 (explaining that the pay-to-play perception “tilted relations between money and politics, business and the state away from the general public interest and towards a search for mutual benefits in which politicians got access to the money and business people got access to the politicians”).

\textsuperscript{160} See Laffan & O’Mahony, supra note 30, at 1074.

\textsuperscript{161} See generally Elizabeth Keane, An Irish Statesman and Revolutionary: The Nationalist and Internationalist Politics of Sean MacBride 185-86 (2006) (noting that Sean MacBride, hero of Irish nationalism and an international human rights campaigner, was the embodiment of the progressive egalitarianism of the 1960s and 1970s).


\textsuperscript{163} See Blue, supra note 7, at 465.
as previously noted, been the recipient of a very high proportion of total U.S. direct investment in Europe.\textsuperscript{164} Ireland and the international economic think tanks billed Ireland as the most “efficient,” well organized, business friendly environment, having turned itself around from the economic backwater that it traditionally was.\textsuperscript{165} Ireland was even dubbed the most “globalized” economy in the world.\textsuperscript{166}

Yet there was no mystery about what the Irish did. They read the rather transparent wishes of multinational corporations, which have two main operational goals: savings on tax and labor costs. It is true that there is a certain set of preconditions to inward investment: reasonable levels of infrastructure, a reasonably well-educated population, and a reasonable level of public services.\textsuperscript{167} But Ireland performed only one key service: it assured multinational companies that it would help them save on their tax bill.\textsuperscript{168} It accomplished this with an impressive tenacity. Ireland showed little concern about the implications for its role as a cooperative member of the European Union and offered no apologies for how this tax avoidance role squared with traditional Irish “solidarity” with the international working class.\textsuperscript{169} Given its small size, Ireland’s economic, cultural, and physical landscapes were rapidly altered.\textsuperscript{170}

Belatedly, the European Union began to consider concrete steps towards creating uniform standards for calculating corporate taxes throughout the EU.\textsuperscript{171} As tax has been Ireland’s sole economic strategy for more than fifteen years, Ireland has understandably continued to fight European tax coordination with

\begin{footnotes}
\item[164] See Killian, supra note 3, at 1074.
\item[165] See O’Sullivans, supra note 126.
\item[166] Id.
\item[168] See supra note 40 and accompanying text (discussing the manner in which Ireland has provided low taxes to U.S. corporations).
\item[169] See Collins, supra note 93.
\item[170] See Coulter, supra note 2, at 16.
\item[171] See Lambert, supra note 117.
\end{footnotes}
In June 2007, the EU's tax commissioner, Laszlo Kovacs of Hungary, finally stated the obvious when he accused the internal market commissioner, Charlie McCreevy, of pursuing the Irish national interest rather than the EU's interest. Commissioner Kovacs' statement was perfectly true, and McCreevy's approach was completely predictable. In many non-tax related areas of concern, Ireland seemed to display supranational competence and was able to present itself as a "good European." In part because of the Continental distrust of the Britain, Ireland was seen as a team player in Europe, one that deserved to be rewarded in light of its difficult history. But on the tax issue, Ireland had always been out for itself, and it showed little concern for American development objectives that might not be funded because of tax avoidance by Microsoft and Google. Ironically, outgoing Commissioner McCreevy exacted some revenge in a public statement in which he denounced the supposedly partisan, nationalistic approach taken by the French towards the French representative on the European Commission.
On the occasion mentioned above, Commissioner Kovacs stated that “when I’m speaking for the harmonisation of the tax base I’m not representing Hungarian interest but the Community interest. Mr. McCreevy is representing the national interest of Ireland.” Mr. Kovacs pointedly implied that the Commission had finally caught on to the motives of Ireland: “[I]t is the Council [the body representative of Member State interests within the EU structure] where national interest is to be represented by the ministry of finance. Mr. McCreevy is no longer the minister of finance of Ireland. He used to be but now he is [a] member of [the] European Commission who should represent the community interests.” But McCreevy, typical of mainstream Irish politicians, likely never had any intention of working for the Community interest. The fact that German taxpayers had subsidized poorer regions for years in the name of a higher European ideal was not an issue that Irish politicians had acknowledged. The degree to which Ireland was not thinking according to any EU level ideal must have come as something of a surprise to those who had not realized this before.

Ireland likewise expressed no concern for European businesses that might be harmed by Ireland’s pandering to U.S. companies. Ireland has provided a strident defense of the view that Ireland

178 Kubosova, supra note 173.

179 Id.

180 See O’TOOLE, supra note 20, at 23 (describing the political career of Charlie McCreevy and his efforts to “preserve the deep inequalities in Irish society” by redistributing income upwards and providing tax cuts that most benefited individuals with higher incomes). See also LAFFAN & O’MAHONY, supra note 30, at 32 (“Irish policy was dominated by the desire to maximize receipts from [European Community] funds, while minimizing the amount of interference in domestic policy and seeking derogations on difficult parts.”). See generally Jason Gorrige, Ireland Prepares Defenses Against European Tax Harmonization, TAX-NEWS.COM (April 26, 2007), http://www.tax-news.com/news/Ireland_Prepares_Defences_Against_European_Tax_Harmonisation__27087.html (noting opposition from Irish politicians and business leaders to efforts to harmonize and bring transparency to corporate tax rates across the EU).

181 See Spinning the German Contribution, PRESSEUROP.EU (Oct. 12, 2009), http://www.presseurop.eu/en/content/news-brief-cover/114321-spinning-german-contribution (noting that Germany’s net contribution is 8.8 billion euros, and that its financial contribution continues to increase while other countries’ burdens decrease).

182 See Collins, supra note 93.
was an "attractive location" for U.S. business on many fronts, with a well-educated, English-speaking workforce, bountiful water, and temperate climate. But the ultimate necessary precondition for the U.S. investment was the tax regime. Had the tax rate increased to any significant degree, the U.S. companies would not have remained. Irish politicians themselves knew this, as their country went from one of the poorest in Europe to one of the richest in the world, its countryside altered beyond recognition, and its traditional culture greatly weakened.

V. Historical Baggage

A. The Irish State as a General Disappointment

Ireland's national identity has been formed around the twin notions of victimization and dispossession. Faced with the superior technical and political organization of the English, the ancient Celtic culture of Ireland began to slip away as early as the 14th century. Over time, the British carved up Irish territory into estates, leading directly to the creation of the culturally familiar Irish peasant of the 19th century, living in his stone cottage by his few pigs and cattle, living off the nutrients found in potatoes, and endlessly plotting revenge against the British master.

The Great Famine of the 1840s cut the 19th century in half, and is responsible for the general loss of language and cultural cohesion that had managed to survive British domination. Irish as a living language of everyday commerce retreated from most parts of the country. With the combined effects of death by starvation, disease, and mass emigration, the Irish population was

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183 The sole purpose of the Industrial Development Agency is to promote foreign business investment in Ireland. See Foreign Investment, supra note 115.
184 See Killian, supra note 3, at 1074.
185 See Hanafin Rules Out Increase in State's Corporation Tax Rate, supra note 167.
186 See O'TOOLE, supra note 20, at 26-45.
188 See, JACKSON, supra note 28, at Ch.3.
189 See id. at 84.
190 Id.
This tragic event, which continues to be a point of interest today, was a cultural trauma of the highest order. This sense of loss and failure was carried out across a massive Irish diaspora, to be recounted and dwelt upon across generations. Within Ireland, agitation for land reform continued, and, while many might have been content with some form of home rule, Ireland eventually gained independence for twenty-six of its thirty-two counties. 

Ireland has been a thorn in the side of Britain’s own heroic narrative. The murderous Black and Tan special forces, active during the war of Irish independence in the 1920s, used the most repressive tactics in an attempt to root out Irish nationalists. Even in recent times, Britain has been forced to mediate in a conflict of its own historical making in Northern Ireland. For decades, at least until the Catholic-Protestant peace agreements of the 1990s, Britain had to deal with a long-running cultural and religious battle on its doorstep. Irish people around the world have created one of the most broadly dispersed diasporas of any nation. Throughout the long period of direct British influence in Ireland, economic dependency was not surprisingly the dominant mode of thinking among the general population. Livelihood was often connected to public works “schemes,” such as wall building.

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191 See generally David Fitzpatrick, Flight from Famine, in THE GREAT IRISH FAMINE 174-84 (Cathal Póirtéir ed., 1995) (noting the effects the famine in Ireland had on emigration from the country and the resulting population loss following that time); Keven Whelan, Pre and Post-Famine Landscape Change, in THE GREAT IRISH FAMINE, 19-33 (discussing the history of the potato in Ireland).

192 See id.

193 See id. at Ch.3. (Land Question).

194 See JACKSON, supra note 28, at 212.


196 Ireland Timeline, BBC NEWS, http://news.bbc.co.uk/2/hi/europe/1038669.stm (last updated Oct. 9, 2010) (briefly addressing the agreements and negotiations between Ireland and Britain over the past hundred years).

197 See id.


199 See Telzer, supra note 8.

200 See JACKSON, supra note 28, at 74.
After independence was attained, the new Irish state was hardly the "nation" imagined by those who had fought for independence from the nineteenth century onwards. In stark contrast to the vision of thinkers like Padraig Pearse and Michael Collins, Ireland did little to maintain and revive the national language, despite its featured role in the Irish Constitution. The principal means of giving honor to the slowly dying language was to link it to obtaining secondary school diplomas and to finding employment in the public sector. Compared to other parts of Europe where speakers of minority languages did not even enjoy the advantage of having a state of their own—the Catalans, Basques, and Welsh, to name only a few examples—the Irish failed in an obvious way to bring the Irish language into the mainstream of national life.

Although the Irish political party system was based on alliances in the Irish Civil War of the 1920s, in fact the administrative imagination of the new Irish state was, as described

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201 Michael Collins and other nationalists and revolutionaries consistently made the point that loss of the national language had caused degradation in public life in Ireland and that part of the restoration of the country must include restoration of the language to a central place in everyday communication. See Michael Collins, *Distinctive Culture; Ancient Irish Civilisation, in The Path to Freedom* 95-105 (2006) (glorifying the "Gaelic past" and imagining a non-commercial, highly spiritual Ireland that could be reconstructed through the promotion of the Irish language, among other efforts). Collins wrote that "English civilization, while it may suit the English people, could only be alien to us... For us, it is a misfit. It is a garment, not something within us. We are mean, clumsy, and ungraceful, wearing it. It exposes all our defects while giving us no scope to display our good qualities." *Id.* at 98. Collins urged that "The biggest task will be the restoration of the language. How can we express our most subtle thoughts and finest feelings in a foreign tongue? Irish will scarcely be our language in this generation, not even perhaps in the next. But until we have it again on our tongues and in our minds we are not free, and we will produce no immortal literature." *Id.* at 102.

202 See *id.*

above, simply a pale reflection of the British version.\textsuperscript{204} Of course, the Catholic Church and Catholic dogma generally enjoyed a high level of power and authority, but with respect to overall governmental organization and design, the British model was unmistakably dominant.\textsuperscript{205} The delegation of many important governmental tasks to local authorities, for instance, was based on the British administrative model.\textsuperscript{206}

Having an independent state of its own did little to stop the tide of Irish emigration from the 1920s onward.\textsuperscript{207} The 1950s were economically stagnant.\textsuperscript{208} Throughout the heady 1960s and 1970s, during which the great colonial powers let go of their possessions in the developing world, Ireland took on the role of champion for the poor and oppressed, presenting itself as a bridge between the developed and developing world.\textsuperscript{209} The great political figure Sean MacBride stands for this image of Ireland as victim and moralizer, set apart from the European mainstream, proud of its heritage as the home of a colonized people on the edge of Europe.\textsuperscript{210} Having been a nationalist fighter, a member of

\begin{itemize}
\item \textsuperscript{204} \textit{See} JACKSON, \textit{supra} note 28, at 275. Ireland set itself up with the same Parliamentary structure as Britain after the War of Independence. \textit{Id.}
\item \textsuperscript{205} \textit{See} id. at 310.
\item \textsuperscript{206} \textit{See} id.
\item \textsuperscript{207} Joellen Perry, \textit{Economic Crisis Strikes at Irish Heartland}, \textit{WALL ST. J.}, Aug. 27, 2009, at A11 (“Emigration continued after Ireland won independence from Britain in 1921; more people left the country than came to it every decade until a 1970s economic revival stemmed the tide. But double-digit unemployment pushed people abroad again in the 1980s.”). The article also notes that people are now leaving Ireland in search of better work environments. \textit{Id.}
\item \textsuperscript{208} \textit{See} J.J. Sexton, \textit{Employment, Unemployment and Emigration, in IRELAND IN TRANSITION} 31 (Kieran A. Kennedy ed., 1986) (describing the 1950s as “one of the lowest points in the recent fortunes” of Ireland with “a net population loss of some 400,000—almost one person in eight”).
\item \textsuperscript{209} In a 2006 press release, Irish politician Dermot Ahern said this “marks a radical new vision of Ireland as bridge between the developed and developing world.” Dermot Ahern, Speech: Launch of White Paper (Sept. 18, 2006), transcript available at http://www.irishaid.gov.ie/whitepaper/assets/Minister%20for%20Foreign%20Affairs%20speech%20White%20Paper%20launch.doc.
\item \textsuperscript{210} \textit{See} WILLIAM G. HARLEY, \textit{CREATIVE COMPROMISE: THE MACBRIDE COMMISSION} 33 (1993) (describing Sean MacBride as coming “literally from fighting Irish stock”). Not only had MacBride been imprisoned in the name of Irish freedom, but went on to champion international human rights at the highest levels. \textit{Id.} at 33-34.
\end{itemize}
government, and an international statesman, MacBride symbolized an Irish political identity that was empathetic and egalitarian, in part because of its perceived resistance to the interests of the British Empire.  

At the time, few would have considered the Irish international political stance to be essentially superficial, and merely reflective of the fact that Ireland had not been able to succeed at providing material prosperity for its citizens. A continued focus on historical victimization was more comfortable than a rigorous examination of the fact that, despite advantages of location and climate, Ireland had not managed to produce anything of substantial interest to a regional, let alone international, market. Prior to entry into the EEC, and indeed long after as well, Ireland traded off its image as a charming and sincere nation of people with a lively culture intact in its cities and rural locations. To that extent, tourism became a principal industry, aided by the nearly endless supply of interested and well disposed visitors from the four corners of the Irish diaspora.

B. EEC Membership: The Greatest Scheme of All

As explained above, the roots of the EEC were, despite the technocratic packaging, intensely political and idealistic. In their own way, the founders of the EEC were as quietly passionate about their cause as any revolutionary acting in the service of a political concept, despite the self-imposed limitations of a gradualist and technocratic approach to the "project." It is well

\[\text{\textsuperscript{211} See id.}\]
\[\text{\textsuperscript{212} See id.}\]
\[\text{\textsuperscript{213} See id.}\]
\[\text{\textsuperscript{214} See Laffan & O’Mahony, supra note 30, at 31-55.}\]
\[\text{\textsuperscript{215} Discover Ireland, a government website promoting tourism has a decidedly market oriented approach to the country providing “strategic and practical support to develop and sustain Ireland as a high-quality and competitive tourist destination.” Developing Ireland as a tourist destination is an important business enterprise. Official Irish Tourism Website, http://www.discoverireland.ie/Home.aspx (last visited Oct. 27, 2010).}\]
\[\text{\textsuperscript{216} Id.}\]
\[\text{\textsuperscript{217} Fischer, supra note 69.}\]
\[\text{\textsuperscript{218} In his famous Declaration of May 9, 1950, the French Foreign Minister, declaring what would become the dominant and consistent methodology of the EU, wrote the following: “Europe will not be made all at once, or according to a single plan.}\]
established that the goal of the founders was to bring about a political union that would make war unthinkable and restrain excessive nationalism, over time and through a process of legal and technical accretion.\footnote{Fischer, supra note 69.} For the Irish Republic, having essentially sat out of World War II, this goal can hardly be expected to have had a galvanizing political or psychological effect. The rationale put forward by the Irish elites for entering the EEC was predictable: the British were going to join up, and Irish farmers could become wealthy through the Common Agricultural Policy.\footnote{The EU in Ireland, EUROPEAN COMMISSION, http://ec.europa.eu/ireland/ireland_in-the-eu/index1_en.htm (last visited Oct. 27, 2010).} There is little evidence of the Irish taking on a sense of European mission upon entry.\footnote{See Killian, supra note 3, at 1075.} Even compared to the recent entrants from Eastern Europe, who have been motivated by a wish to flee a history of Soviet domination, the Irish approach was strikingly practical and separated from the true source of Irish political passion, which remained nationalistic, or more accurately, inwardly-focused.\footnote{See Walsh, supra note 90, at 207-28.} Indeed, the resistance to participation, both then and now, is largely from nationalists, who reject the imposition of a false set of motivations onto the Irish state apparatus.\footnote{One of the most prominent Irish euroskeptic groups is the National Platform, headed by the ubiquitous Anthony Coughlan. See generally THE NATIONAL PLATFORM EU RESEARCH AND INFORMATION CENTRE, http://www.nationalplatform.org/ (last visited Oct. 27, 2010). The group mantra (“For a Europe of Independent Democratic Co-Operating Nation States”) is unremittingly hostile to the EU on the grounds of its supposed lack of democracy. Id. The group’s underlying philosophy is a revealing combination of old-time nationalism, cultural particularism and, ironically, strident support for Ireland’s policy of reliance on U.S. multinational investment. Id. An example of this is seen in the group’s analysis of the potential dangers of the Lisbon treaty. The Lisbon Treaty Amendment on EU Harmonized Taxes, WISE UP JOURNAL (Apr. 18, 2004), http://www.wiseupjournal.com/?p=270. The analysis notes that Article 279 of the Lisbon Treaty amendments, inserting the phrase “and to avoid distortion of competition”}
leftist ones, see no contradiction in Irish reliance on U.S. multinational investment. In fact, many now see their opposition to the EU in terms of the need to protect and preserve Irish tax autonomy, which is code for continuing U.S. multinational investment.

Membership in the EEC did allow the Irish to explore a long overdue independence from British economic domination. For the first time in hundreds of years, economic survival did not depend on the British, and indeed a surer road to prosperity lay in acting the part of the Euro-enthusiast to contrast with British antipathy towards European political union. The British understood and rejected European political (as opposed to a more limited economic) union. The Irish assumed European political union would not bother them one way or the other, and simply tuned out that political philosophy as if background music in a language they did not speak.

It may be surmised that the Continentals believed that Ireland was more profoundly touched and inspired by the European project than was the case. It is certain that Irish elites, and even ordinary people, quickly saw the potential for profiting from EEC membership. Although it took a certain amount of time, it is possible to interpret Irish strategic behavior from the 1970s on as the grasping of a unique historical opportunity to achieve what had eluded the Irish for so long: material success. It is not surprising, then, that the MacBridean theory of Ireland as a friend and fellow traveler of the downtrodden, while still part of the

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References:

224 See id.

225 Norton, supra note 2, at 206.

226 Norton, supra note 2, at 213-16.

227 See Lenaerts, supra note 76, at 479; Attitudes, supra note 68. Together these sources show that the UK is understood to be set apart from the rest of the EU.

228 See Norton, supra note 2, at 213-16.

229 See McLean, supra note 70.

230 Norton, supra note 2, at 206-16.

231 See HARLEY, supra note 210, at 33-34. See generally KEANE, supra note 161, at 185-86 (exploring the politics and policies of Sean MacBride with a focus on his impact on Irish foreign policy).
political and psychological makeup of the country, was soft pedaled on the world and European stage.

Ireland, constantly emptied out of its population through emigration, was at the time of EEC entry a far less populous country than it would have been under more ordinary developmental circumstances. The economic effect of EEC membership on the country as a whole was electric. The number of farmers decreased at an alarming rate, but those who survived were greatly enriched by participation in the Common Agricultural Policy. Not surprisingly, Irish-owned businesses disappeared as competition with superior European goods was overwhelming. Despite some anemic attempts to support a "Buy Irish" campaign, no Irish government and no mainstream political party made a serious argument to the effect that Ireland could attain prosperity by a go-it-alone policy.

Ireland soon became the spoiled child of Europe. Easy to love, small and remote, and long oppressed by the British, the EEC essentially allowed Ireland to game the system. A similar fondness and lack of understanding from the American side allowed Ireland to serve as a tax avoidance vehicle for American companies, beginning in earnest in the 1990s. It has been suggested above that the great seriousness of purpose of the EU as

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232 Brendan Walsh, Economic Growth and Development, 1945-70, in IRELAND 1945-1970, 27, 28-29 (Joe Lee ed., 1979) (Ireland had a population of 2.8 million when it entered the EEC in 1961, which is five percent less than when Ireland gained independence in 1921).


234 See JACOBSEN, supra note 2, at 112 ("Over 1971-74, 58,500 jobs were created in IDA sponsored [that is, multinational-derived] industries, but 53,000 jobs were lost in the old manufacturing sector - a quarter of all manufacturing jobs."); see also id. at 151 ("[F]ew [Irish] firms had adjusted to competitive conditions [within the EEC].").

235 Blue, supra note 7, at 459-63.

236 Norton, supra note 2, at 200-06.
a "project" was never internalized by the Irish,\textsuperscript{237} perhaps for the simple and obvious reason that history did not appear to the Irish imagination in a genuinely European way. The British had long been considered "suspect" from a Continental perspective, and the British lack of adherence to the European project was a cause of consternation.\textsuperscript{238} Ireland, though, was small enough and previously unsuccessful enough that this lack of political connectedness was easy to overlook.\textsuperscript{239}

\textbf{C. Structural Funds and Headage Payments}

In many ways, the worst thing that could have happened to Ireland was the easy money that flowed into it to allow Ireland to "catch up" with Europe in development terms.\textsuperscript{240} The advent of structural and cohesion funds in Ireland confirmed the country's sense of entitlement and victimization and further encouraged a national tendency to seek historical justifications for Ireland's economic passivity and dependency—heretofore on Britain, but increasingly a new dependency on the German taxpayer.\textsuperscript{241} There was little discussion about what was expected of Ireland, by way of a new political consciousness, in return for these Continental

\textsuperscript{237} O'TOOLE, \textit{supra} note 20, at 26-45.

\textsuperscript{238} Former French President Charles DeGaulle opposed British entry into the EEC on the ground that the British were focused on their own interests and would never be good Europeans. \textit{BBC On This Day, 1967: De Gaulle Says 'Non' to Britain – Again}, BBC NEWS, http://news.bbc.co.uk/onthisday/hi/dates/stories/november/27/newsid_4187000/4187714.stm (last visited Oct. 27, 2010).

\textsuperscript{239} O'SULLIVAN, \textit{supra} note 126, at 80-82.

\textsuperscript{240} \textit{See} Bailey \& De Propris, \textit{supra} note 49.

\textsuperscript{241} In a famous book written just before the "Celtic Tiger" years, author Cathal Guiomard described what he calls an Irish disease that has prevented Ireland from embracing economic and social dynamism. CATHAL GUIOMARD, \textit{THE IRISH DISEASE AND HOW TO CURE IT: COMMON-SENSE ECONOMICS FOR A COMPETITIVE WORLD} (1995). While his calls for productivity and competition appear particularly ironic from the vantage point of 2009, Guiomard's description of the overriding problem in Irish thinking is still of significance. \textit{Id.} He writes that the obstacles to Irish success "go far beyond questions of economic policy and right to the heart of [Irish] culture; they include some of [Ireland's] old and cherished ways. To achieve economic and social modernization, [Ireland] must, for instance, throw off [its] ruinous defeatism and negativity, [its] anti-intellectualism, [its] tolerance of mediocrity, [its] inclination towards dependency, and [its] never-ending demand for subsidies (from London, from Dublin, from Brussels, from anywhere!)." \textit{Id.} at 2.
Ireland was now being offered an unprecedented opportunity to develop and prosper. The problem was that Ireland had no tradition of indigenous economic dynamism, and no expertise in reading genuine market trends. There was, however, a long standing tradition of figuring out how to survive without reading market trends, and the Irish state took this on with an unparalleled determination. Without the EU funding that created a great infrastructural boom, Ireland would not have been in a position to invite in American industry. But with the help of EU membership, Ireland soon set itself up as a tax avoidance jurisdiction for American firms. In the economic sense, Ireland became more thoroughly American than it had been before, even at the height of emigration to America. At the level of political discourse, Ireland was an enthusiastic proponent of the European project (in which, as has been argued in this article, it had little genuine interest). At the level of historical irony, Ireland became the site of massive tax-based gifts to American firms selling their wares into the European market in direct competition with Continental firms. Media and intellectual elites in Ireland scarcely seemed to notice this contradictory state of affairs: it was rarely, if ever, broached that there could be real damage to U.S. society due to revenue foregone, or to the EU, as Ireland failed to pull its own weight economically.

When criticism did arise from various quarters, there were

\[242\] See Bailey & De Propris, supra note 49.

\[243\] See O'Sullivan, supra note 126, at 75 (noting "Ireland has become a production centre for foreign companies").

\[244\] See id. at 82-83; see also id. at 75 ("[T]he weakness of the Irish 'miracle' . . . [is] that somebody else (i.e., foreign multinationals and the European Central Bank) either owns or controls the levers of the Irish economy, which is not really a desirable outcome for a country that cherishes its independence").

\[245\] See Blue, supra note 7, at 444-45, 454.


\[247\] O'Toole, supra note 20, at 190 (During the Celtic Tiger years, Ireland “[was] not Ireland any more but someplace else. [Irish culture] came up with a name for that place: America").

\[248\] See Moore, supra note 24, at 368-70.

\[249\] See McLure, supra note 86.
stock responses by Irish government representatives: first, American high-tech companies were not, they said, in Ireland solely or even primarily because of the tax situation. Irish government representatives claimed that Ireland had good, young workers, was English-speaking, and politically stable. These were the elements of the official story. As to the fact that the vast majority of Irish exports were the products of multinational companies, that was said to be insignificant, as the world had entered a globalizing phase, and the term "national economy" no longer had any meaning. Most bizarre of all was the Irish insistence that tax competition within Europe was "a good thing." Indeed, argued the Irish government at the height of the tax-driven success, Continental Europe would be well advised to imitate the Irish and lower their own punishingly high rates of corporate taxation. Those who espoused this view appeared not to acknowledge that it was tax revenue, generated within the larger EU Member States, that produced the funds that allowed Europe to afford such programs as the Common Agricultural Policy and structural and cohesion funding.

250 See Coulter, supra note 89, at 19.

The motives that informed these decisions [by US multinationals] to establish branch plants in the twenty-six counties bore little resemblance to the formal explanations offered at press conferences to mark their announcement. The routine assurances of senior executives that their corporations were attracted to the Irish Republic principally by the prospect of dealing with a highly educated workforce have rarely managed to convince. The education system in the twenty-six counties remains, after all, hugely under-funded and emerges poorly out of international comparisons.

Id. at 19.


252 Id.

253 See LAFFAN & O'MAHONY, supra note 30, at Ch.7.

254 Irish politicians have consistently made the argument for the supposed "benefits" of tax competition. Gorringe, supra note 180. Irish political insider, former Senator, and then MEP, Eoin Ryan, argued in the European Parliament against moves to coordinate tax rates in Europe. Id. Ryan stated that "[t]ax competition is healthy for the economic development of the European Union. It provides a clear incentive to European Governments to manage their public finances carefully and to build a corporate tax regime that encourages enterprise." Id.

255 See SWEENEY, supra note 83.
D. Effects on the Holy Ground: Cultural and Environmental Pathologies of a Tax-Based Boom

Land in Ireland has a particular significance; for the pre-British Celts, the land was not privately owned, and social organization was semi-nomadic.\textsuperscript{256} The Irish Celts had still not engaged in much permanent town building when the British, far better organized, entered on the scene and ultimately imposed centuries of dispossession and subdivision on the Irish.\textsuperscript{257} The Irish were forced to participate as laborers on the land that had been taken from them and reworked into a British system of aristocratic holdings.\textsuperscript{258} With late nineteenth century land reform, individual small holdings took on heightened importance, and the desire for more land led to infamous feuds and rivalries.\textsuperscript{259} For cultural nationalists, the landscape was the repository of historical memory. For many years, houses abandoned during the Famine were left standing, as it was believed to be a wrongful act to knock them down.\textsuperscript{260} As late as the 1970s, one could journey around Ireland and see the walls of many abandoned nineteenth century houses that were left standing.\textsuperscript{261}

In modern times, beginning with the cities, and slowly spreading into the countryside, Ireland embarked on a policy of general destruction of older buildings.\textsuperscript{262} From the mid-1990s, new houses were being built at an astonishing rate, and of a garish, ostentatious quality.\textsuperscript{263} Some areas of the country were designated

\textsuperscript{256} See JACKSON, supra note 28, at 2, 8-9.
\textsuperscript{257} Id.
\textsuperscript{258} Id.
\textsuperscript{259} See JACKSON, supra note 28, at 69-141; see also O'TOOLE, supra note 20, at 163 ("The other nineteenth-century impulse was land. What do you do with your money? You put it in property").
\textsuperscript{260} See JACKSON, supra note 28.
\textsuperscript{261} Id.
\textsuperscript{262} See FRANK MCDONALD, THE DESTRUCTION OF DUBLIN 4-5 (1985); see also MCDONALD & NIX, supra note 25, at 17 (warning that "a countryside already blighted by haphazard housing will be annihilated if the proportion of one-offs continues to increase").
as tax incentive areas, leading to speculative developments of all
kinds.\textsuperscript{264} So-called ribbon development, that is, houses that lined
Irish roads, rather than being concentrated in streets or other
planned settlements, eroded the sense of a coherent countryside
and had the effect of suburbanizing wide swaths of Ireland.\textsuperscript{265}
Long-running and costly planning tribunals, designed to uncover
corrupt relationships between politicians and the building industry,
revealed a political class dependent on builders and beholden to
them.\textsuperscript{266} The lack of effective planning policy, despite the
existence of elaborate planning procedures, reflected the cozy
relationship between Irish elected officials and those who profited
from lack of restraint on building.

The EU, dominated by "high regulating" states, both on the
Continent and more recently in northern Europe, took on
environmental issues from an early stage. The EU is unique
among regional trade systems in having a rigorous corresponding
system of consumer, labor, and environmental protections.\textsuperscript{267}
The level of commitment to these features of EU law rises and falls
over time, but the core set of laws are well established and widely
taken for granted.\textsuperscript{268} As an EU member, Ireland had no choice but
to confront such EU environmental laws as the Environmental
Impact Assessment (EIA) Directive and the Habitats Directive,
instruments that had the potential to at least slow down the
building boom.\textsuperscript{269} Again, with an irony that seemed lost on the
political elites and the general public, those most interested in
preserving Ireland's unique aesthetic and history resorted to using

\footnotesize{\textsuperscript{264} See Eileen Battersby, At War with the Blots on Our Landscape, IRISH TIMES,
(May 22, 2010),
http://www.irishtimes.com/newspaper/weekend/2010/0522/1224270863018.html.}
\footnotesize{\textsuperscript{265} See Guidelines, supra note 263.}
\footnotesize{\textsuperscript{266} See generally O'TOOLE, supra note 20 (describing the many investigative
tribunals that operated in Ireland over the past fifteen years and resulted in few
prosecutions relative to the many revelations of corruption).}
\footnotesize{\textsuperscript{267} See generally MARTIN HEDERMANN-ROBINSON, ENFORCEMENT OF EUROPEAN
UNION ENVIRONMENTAL LAW: LEGAL ISSUES AND CHALLENGES (2006) (providing an
overview of the current legal principles of European Union environmental law
enforcement).}
\footnotesize{\textsuperscript{268} See Sara Dillon, The Mirage of EC Environmental Federalism in a Reluctant
\textsuperscript{269} Id.}
EU environmental law against Ireland.\textsuperscript{270} Those who claimed to be representatives of the people continued to insist on the right of land owners to build whatever they liked, wherever they liked. Irish nationalists have shown little interest in using law to preserve the environment.\textsuperscript{271} Instead, these forces have shown a tendency to see European law as detrimental to Irish national interests whenever any development is delayed because of EU law.\textsuperscript{272}

Ireland has proven itself to be one of the foremost offenders against European environmental laws, and has gained a reputation for special recalcitrance in this area.\textsuperscript{273} In this respect as well, Ireland’s position has been to take as much as possible on the economic development side, while arguing that its former underdevelopment should exempt it from taking environmental considerations as seriously as the other European states.\textsuperscript{274}

\textsuperscript{270} See EU Law, FRIENDS OF THE IRISH ENVIRONMENT, http://www.friendsoftheirishenvironment.net/eu/ (last visited Oct. 27, 2010) (elaborating on the work of the environmental group Friends of the Irish Environment in compiling a list of the environmental law cases taken by the European Commission against Ireland).

\textsuperscript{271} See McDONALD & NIX, supra note 25, at 17.

\textsuperscript{272} See Dillon, supra note 268, at 30.

\textsuperscript{273} See McDonald, supra note 120.

\textsuperscript{274} Other EU Member States with histories of underdevelopment, such as Greece, Spain and Portugal, have had problems with environmental compliance as well. Dillon, supra note 268, at 2.
VI. Conclusion: Ireland, the “PIIGS,” and a New Post-Lisbon Reality

The enlargement of the EU to include many of the countries of Eastern Europe represented the end of one phase of the Irish relationship with the EU, and with the rest of the world. Ireland’s ability to take resources from the EU, even as it was ignoring underlying concepts of cooperation and solidarity, could only work as long as this behavior was confined to Ireland. Ireland, being small and historically disadvantaged, was allowed by the European Commission, and by the founding states of the EU, to proceed with its economic machinations. The Commission seemed increasingly annoyed with Ireland over time, but also willing to let the situation remain as it had been. Prior to 2004, it was an open question as to how the EU institutions would react if the new entrants from Eastern Europe, Poland for instance, began to imitate Irish tax competition-based behavior. Clearly, this would be a more serious matter, one that could threaten the entire EU project.

Indeed, the unprecedented scale of the 2004 enlargement brought forth a great deal of anti-EU sentiment across Europe, not just in an Ireland afraid that its special benefits within Europe would come to an end. The so-called “Constitutional Treaty” overseen by Valery Giscard D’Estaing was rejected via referendum in both France and the Netherlands, in part because of participation in the euro, these countries can no longer take such steps as devaluation of the currency. Some believe this crisis could lead to a breakup of the euro zone. See Alistair Barr, Managers See Contagion from Greek Crisis, Survey Finds, THE WALL STREET JOURNAL MARKETWATCH (Mar. 9, 2010), http://www.marketwatch.com/story/managers-see-contagion-from-greek-crisis-survey-2010-03-09 (quoting one analyst as stating that, “[i]f Greece fails by itself or contagion takes down the PIIGS, the euro zone may splinter.”).

275 Ireland is hardly the only country in the eurozone to be experiencing a dramatic downturn; along with Greece, Portugal, Italy and Spain, Ireland is part of group of countries unflatteringly designated the “PIIGS”. See Andrew Bell, Euro View: Weatherting the Market Storm, FT ADVISER (March 15, 2010), http://www.ftadviser.com/InvestmentAdviser/Investments/Region/EuropeExcludingUK/Comment/article/20100315/22b5c2fa-2b54-11df-baff-00144f2af8e8/Euro-view-Weathering-the-market-storm.jsp (“Soaring budget deficits and weak trade competitiveness have undermined confidence in the Piigs ... economies’ ability to service their debt.”). The EU is currently finalizing plans to bail out Greece, among the hardest hit of the PIIGS group of eurozone countries. See id. Because of participation in the euro, these countries can no longer take such steps as devaluation of the currency. See id. In order to preserve the value of the euro, these countries are required to slash public spending, a fate now being endured by Ireland as well. See id. Some believe this crisis could lead to a breakup of the euro zone. See Alistair Barr, Managers See Contagion from Greek Crisis, Survey Finds, THE WALL STREET JOURNAL MARKETWATCH (Mar. 9, 2010), http://www.marketwatch.com/story/managers-see-contagion-from-greek-crisis-survey-2010-03-09 (quoting one analyst as stating that, “[i]f Greece fails by itself or contagion takes down the PIIGS, the euro zone may splinter.”).
the citizens of these countries were feeling a generalized frustration with the EU.276 The EU Constitution, meant to be the end game of political union, was repackaged as the Lisbon Treaty, a set of treaty amendments designed mainly to improve the EU’s profile on the world stage.277 Only Ireland required that these amendments be put to the vote of the people in the form of a referendum.278 As described above, in June of 2008 the Irish people, to wild rejoicing, rejected the Lisbon treaty changes.279 In October of 2009, in a complete reversal, they gave overwhelming support to the same treaty. It is unlikely that Irish voters changed their view of the content of the Lisbon Treaty amendments. Rather, it became apparent that the only way out of the economic crisis then brewing was to rely on the EU.280

At some point in the near future, the EU should energetically and enthusiastically revive the idea that European solidarity requires coordination of corporate taxation rates across the EU and a crackdown on tax avoidance schemes.281 Achievement of the European social market ideal requires significant investment in the


277 See Andreas Ziegler, The Lisbon Treaty, JURIST LEGAL NEWS AND RESEARCH (Jan. 25, 2010), http://jurist.law.pitt.edu/annotationsy/2010/01/lisbon-treaty.php (describing the principal features of the Lisbon Reform Treaty, including the new, high-profile positions created to allow both an EU President and an EU High Representative for Foreign Affairs to represent the EU on the world stage).


279 See THE BROOKINGS INST., supra note 11.

280 See supra note 15 and accompanying text.

281 This has occurred, as the idea of a Common Consolidated Corporate Tax Base is again being considered in a European Parliament commission. See Pat Leahy, Common European Tax Base ‘As Soon As Possible’, THE SUNDAY BUSINESS POST ONLINE (January 17, 2010), http://archives.tcm.ie/businesspost/2010/01/17/story46811.asp.
public good. This “social market” orientation is inconsistent with the position that the EU Member States should be competing for investment through inducements like strikingly low rates of taxation on profits.

The supranational European project, while variable through time and space, is a law-based, forward-moving construct, designed to transform the raw material of nationalism and create structures aimed at the establishment of peace and prosperity. Whatever internal transformation ought to occur with EU membership simply did not occur within Ireland. This hypothesis should be tested in light of the extraordinary nature of Irish political corruption and the reliance on tax avoidance schemes established and/or tolerated by successive Irish governments for the benefit of both Irish indigenous elites and international investors. The EU itself, particularly the European Commission, ought to have taken note of Ireland’s contradictory position some years ago. The tragedy for Ireland itself is multi-faceted. Not only did Ireland fail to enter into the “transformative” aspect of EU membership, it also took advantage of EU membership in order to indulge some of its own worst political tendencies: short term gain and dependency. This problematic stance is symbolized in Ireland’s single-minded reliance on ultra-low tax rates and tax avoidance schemes as the engine of economic growth. This approach has been internally and externally damaging, and Ireland is now at a crossroads in its modern history. With the Irish example as a cautionary tale, the EU should now move to articulate a set of fiscal imperatives reflective of its larger foundational ideals.