

CASCA PAPER (Salisbury Address) - Redundant Workers, Disillusioned Citizens:
The Case of the Waterford Crystal Workers' Appeal for Social Justice

Introduction

Established in 1947, Waterford Crystal is as an “iconic Irish brand,” world-renowned as a handcrafted product made on an industrial scale. The company’s success shaped the development of the southeast of Ireland. Its organized workforce secured good wages, good benefits, a high standard of living, and the opportunity to stay in Ireland at a time when unemployment and emigration were endemic. In 2008, the company was hit hard by the global financial crisis. The following year the company went into receivership. On January 30th, 2009, Waterford Crystal workers were locked out, despite assurances from the receiver that no such measures would be taken without consulting the union and the workforce. That morning hundreds of workers gathered outside the plant, at which point they took over and occupied the factory’s Showroom and Visitor’s Centre. Their demands were simple: to recall the workforce and resume production.

Initially, the occupation got enthusiastic support, both locally and nationally. However, as workers’ bills began to mount and the possibility of a suitable resolution receded, support for the occupation began to wane. As an incentive to end the occupation, the workers were offered €10 million as an *ex gratia* payment by the receiver. Although this payment amounted to very little per worker, many felt that it was better to walk away with something than nothing. Subsequently, the Waterford Crystal brand and intellectual property rights were sold to a group of U.S. venture capitalists, which outsourced all production to Central and Eastern Europe except for a small tourist facility that remains in Waterford. Meanwhile, the workers, who gave twenty to forty years of their lives in service to the company, are out of work with no redundancy pay and a pension fund that is nearly insolvent.

This presentation is divided into three sections. The first examines the legal action taken

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by the workers against the Irish state in the European Court of Justice and the workers' use of European citizenship to fight for their pension entitlements. The second focuses on the plight of the workers under Ireland's austerity programmes, which are being implemented at the behest of the EU and IMF. These two sections juxtapose each other in order to illustrate the ways in which the former glass workers' citizenship rights are simultaneously being claimed and undermined across the state and the supra-state level. The final section suggests that understanding disjunctions in democratic citizenship must begin with an analysis of the capitalist state.

The Pensions Case

“...as I was telling you, I lost a friend there last week. Three weeks ago, it's strange...myself and —, we said we'd go out for a few beers...and met this guy, who worked with — and with me. And, all he says...talk is the usual, 'What's happening with the pension —?' You know, they see — as kind of a figure...— will know. 'What's happening with the pensions? What's happening with this few bob? Are we getting a few bob back disability money? When will we have that?' All of his interest is in getting a few quid and that, you know.”

“Next thing I go out Saturday morning and this fella says to me, 'Did you hear? He's dead.'”

“‘Fuck,’ I said. All this bother. Then it had me thinking, like...And, I'm saying, 'Fuck, what about the people, like him?' Who got bare pittance...well, not pittance, but the bare amount that they could get out of it. No pension. No nothing. Nothing to go back to his family, absolutely nil. The place just went and that's that.”

- Male, 44, General Section, 25 Years Service

In April 2010, ten former workers, funded by their union, took legal action against the Irish government for failing to protect their pensions, a failure which they claim is a direct violation of Article 8 of the European Insolvency Directive. The European Insolvency Directive was introduced in 1980 in order to protect employees' and former employees' pension entitlements in

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cases where companies went insolvent. Even though this law has been in effect for over thirty years, it has continually been resisted by the Irish government. In 1984, the Irish government established the Protection of Employees (Employers' Insolvency) Act, "which limits the payments to be made by the State to an insolvent employer's pension scheme to the 12-month period prior to insolvency."¹ The 1990 Pensions Act avoided the issue all together and did not include any stipulations about a minimum guarantee for pension funds affected by a company's insolvency.² The purpose of both acts was to circumvent the European Insolvency Directive.

In 2007, the case of *Robins and Others* (a group of former steel workers in the UK) vs. British Secretary of State for Work and Pensions set a legal precedent in the European Court of Justice concerning the loss of pension entitlements in cases of insolvency. *Robins and Others* were only expecting to receive between 20-49% of what they were owed after the company they worked for went insolvent. Upon hearing their case, the European Court of Justice ruled that benefits limited to 20-49% "was not adequate protection within the meaning of the Directive."³ However, they did not determine a "minimum level of benefits which had to be guaranteed in order to ensure compliance with Article 8."⁴ Following the ECJ's ruling, the UK government established the Pension Protection Fund to protect workers' pension entitlements. As a result, *Robins and Others* received upwards of 90% of what they were owed. It is worth noting that the Irish government supported the UK's position to not protect insolvent pension funds during the *Robins and Others* case. Plus, after the ruling, every EU member state was contacted and informed of their obligations under the European Insolvency Directive.

The former glass workers are only expecting to receive between 18-33% of their pension entitlements. In an effort to mitigate the Irish government's responsibility for pension protection

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and to address the increasing number of private sector pensions that are in trouble following the 2008 financial crisis, the Pension Insolvency Payment Scheme (PIPS) was established by the Irish government in February 2010. In the case of the former Waterford Crystal workers, PIPS improved their pension entitlements only marginally and not beyond the benchmark of 49% established by the European Court.

On April 25th, 2013, the ECJ ruled that Ireland was in “serious breach” of its obligation under the European Insolvency Directive. It also ruled that the economic situation in Ireland “does not constitute an exceptional situation capable of justifying a lower level of protection for employees.”⁵ Upon hearing the ruling, Jimmy Kelly, regional secretary for the union and a former glass worker, said: “It is regrettable that the state chose to contest what should have been an open and shut case, causing distress and uncertainty for the workers involved and forcing the taxpayer to pick up a substantial legal bill...It is a crucial decision for Unite [the union representing the workers], Waterford Crystal and the union movement as a whole as it affects any worker in an occupational pension scheme.”⁶ The case has now been sent back to the Irish High Court to determine the amount the workers should receive, which could range from 50-100% of their pension entitlements. While the economic situation in Ireland may not justify a lower level in protection, there is no way the economic situation in Ireland will not affect or be affected by this ruling. The Irish government is operating under a very restrictive austerity budget overseen by the EU and IMF, which may justify a ruling in the Irish High Court that awards the workers only half of their pension entitlements. This ruling will also have wider repercussions because freeing up money to invest in insolvent pension funds, will require cuts elsewhere in the national budget. Let us now look at Ireland's austerity economy.

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Austerity Ireland

“I saw a thing...the slaves in Haiti were the first people to battle back against slavery and they ended up having to do a deal with France because France sought reparations from them...that was in the 1700s. But, it ended up that it was 1946 before Haiti finally paid off the reparations to France. And, it would be the equivalent in today's money of twenty-three or twenty-four billion euros. Now, look at what that money would do today for Haiti. And, if you look at a satellite picture of Haiti, it's absolutely bare and people think it is because it is rocky because you look over at the Dominican Republic and it is green. The reason is because the people took the timber to do cooking and used it for firewood and all that because they had nothing else...they were left that way by France.”

“Now, are France going to be any different today with Greece? You know what I mean? Those poor people in Haiti, France took their pound of flesh out of it. The same people that are running Europe today in France and Germany and Britain, all those countries, and the people at the top...are they going to be any different to the likes of Greece, or the likes of Ireland or Portugal today? They'll suck us dry.”

- Male, 57, Blower, 38 Years Service

In the 1980s, the Irish government initiated a neoliberal economic development model, which became known as “the Celtic Tiger.” During this period, Ireland experienced unprecedented economic growth and near full employment. Ireland's Celtic Tiger was “widely regarded, [especially within the EU], as a model to be followed by other countries seeking ‘economic success.’”⁷ However, the success of the Celtic Tiger proved ephemeral, depending as it did on foreign, particularly US, direct investment aimed at accessing the European common market; low corporate tax rates; a deregulated financial sector; and, a property bubble. In 2008, Ireland's major banks were hit hard by the financial crisis largely because they were heavily involved in risky lending practices in both the domestic and international property markets. In order to re-capitalize the banks, the Irish government negotiated an €85 billion joint-loan from the EU and

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IMF. So, in bailing out the banks, the Irish people have been saddled with a huge debt, which some critics of the loan argue is unmanageable as the Irish economy continues to contract under its austerity programmes.

As part of the EU-IMF loan agreement, the Irish government agreed to structural reforms that reduce public spending. These include cuts to social welfare, education, health services, child benefits, the civil service, and old age pensions. Ireland has also introduced new taxes and increased some existing taxes. Many of these new taxes disproportionately affect low and middle income earners, particularly, property taxes, water taxes, and consumption taxes. At the same time, there has been no increase in corporation taxes or other taxes targeting wealth and capital. Ultimately, the Irish government's response to the financial crisis has intensified neoliberal economic practices.⁸ It is also important to note that the bailout is being administered by the European Commission, European Central Bank, and the IMF, none of which are democratic institutions. When they visit Ireland for their quarterly reviews, they are often referred to as absentee landlords coming to collect their rents, a reference to colonial Ireland under British rule. Ireland has received considerable praise from the EU and IMF for the implementation of its tough economic policies. The Irish Finance Minister, Michael Noonan, boasts that: "Ireland has consistently achieved – or exceeded – all of the targets set in the EU/IMF programme of assistance. We have implemented over 160 separate conditions of the programme and are determined to emerge from it at the end of 2013 and return to sustained market access." Once the "poster child" for neoliberal economic development in Europe, Ireland is now the "poster child" for austerity, which led Finance Minister Michael Noonan to declare, "Ireland is not Greece."⁹ So, what does the economic situation in Ireland mean for the former glass workers?

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With official unemployment statistics around fifteen percent in Ireland and twenty-five percent in Waterford City (the highest in the country), many Irish are, once again, emigrating. For most of the former glass workers, this is not an option given their stage in life. Many of them now depend on state welfare, which is being cut back under the new austerity measures. So, despite paying into the social welfare system for most of their lives, the workers find themselves with very little in terms of state support and are finding it increasingly difficult to get by on a day-to-day basis. As a consequence, the former glass workers are dealing with social issues that include mental illness (e.g. Depression), drug and alcohol abuse, gambling addictions, broken marriages, bankruptcies, and suicide.

While the former glass workers' circumstances are tragic, everything I learned about them showed that they do not want pity. They identify strongly as workers. They want jobs and to be able to support themselves and contribute to the family income, as they have for most of their lives. They also want the Irish state to recognize their contribution to Irish society as good, productive workers. They take offense to popular accounts that brand the unemployed as work-shy leeches on the state. Unemployment is not the result of personal deficiencies; it is a structural problem. The workers often make the argument that during the Celtic Tiger unemployment statistics were as low as three percent some years—it's not like a significant segment of the population arbitrarily decided to live off social welfare once the financial crisis hit. The former glass workers feel disillusioned and often wonder why they are being forgotten after spending the bulk of their lives as productive Irish citizens.

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Democratic Citizenship and the Capitalist State

“I’m angry with the government in particular because they allowed a company to close that didn’t have to close. That’s the crime in all of this. And, I consider it a crime, maybe not on the statute books, but it is a crime in my books. The government is supposedly here to protect the people and society in general...The government is the real enemy in all of this. The government let us down. It made no intervention whatsoever. It did absolutely nothing to help. It completely abandoned Waterford Crystal and completely abandoned the workforce.”

- Male, 55, Cutter/Manager, 36 Years Service

Many of the former glass workers feel completely disconnected from the pension case. It is just something that is happening “out there” that has no bearing on their day-to-day existence until some sort of ruling is made. For example:

“Yeah, it [the legal action] takes it away from the people, you now? It’s gone out of your realm. Like I walk around the town, and I’m sure — would tell you the same. And, you meet fellas and say, “Any news?” Now, you have no more news than they have. You know what I mean? You just don’t know what’s going on and it’s taken away from that realm and put into someone else’s hands and you have no control over it. You either accept or reject and you really, when it’s finished, won’t be in a position to reject it. That’s it, done and dusted. And, the decision is made and there is no negotiation on it.”

“In terms of being in control of it yourself...getting the politicians to make a political decision, being active and doing things, occupying places, being a nuisance and forcing them into doing something...if we were doing that as a group, I think it would have been more effective.”

- Male, 57, Blower, 38 Years Service

In the four years since the closure of the factory, former workers have died without ever seeing the issue resolved. And even, if the Irish High Court only awards the former workers fifty per cent of their pension entitlements, does that constitute justice?

Over the last thirty years, the tenets of neoliberalism have formed the basis of both Ireland and the EU’s political and economic development—a period that coincides with some of the

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most significant treaties advancing European integration. This is significant because under neo-liberalism “the individual [is] the foundational element [of] political [and] economic life.”¹⁰ In turn, this gives the judicial system ever more importance as a site to claim, fight for, and exercise rights. According to Harvey, “by focusing on those rights rather than on the creation or recreation of substantive and open democratic governance structures, the opposition cultivates methods that cannot escape the neoliberal frame.”¹¹ Some scholars argue that the EU functions primarily as an economic and legal union, as opposed to a rigorously democratic political union. The EU has put considerable effort into promoting a European identity as a way of legitimizing it as a democratic governance structure.¹² Despite these efforts, the EU is perceived as distant and unresponsive and suffers from a major democratic deficit, which is exacerbated by the likes of the European Commission, European Central Bank, and the IMF undemocratically prescribing austerity across Europe. Following this line of thought, the former glass workers capacity to claim citizenship rights through legal action at the supra-state level may give them another avenue to exercise their rights, but only on the terms of the same system that engendered the workers sense of disconnection from their pension case in the first place. The workers' pension case demonstrates the ways in which the courts can work to depoliticize rights-based issues.

Holston and Caldeira argue that “the development of [democratic] citizenship is never cumulative, linear, or evenly distributed for all its citizens, but is always a mix of progressive and regressive elements, uneven, unbalanced, and heterogeneous—in short...disjunctive.”¹³ They also maintain that “different societies and cultures must, by force of their different histories, produce differences in democracy.”¹⁴ Based on these assertions, Holston and Caldeira seek to understand the ways in which different democracies are disjunctive. While I agree with Holston

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and Caldeira's argument that differences in contemporary democracies and the rights they afford their citizens are historically specific, I think that any such examination must place the capitalist state at the centre of its analysis.

The formation of the state becomes a necessity at a particular stage of economic development following society's division into social classes.¹⁵ The role of the "state is to administer the class society in the interests of the ruling class...through its various military, legal, ideological, and economic arms."¹⁶ Moreover, as Gramsci argues, "the fact that the State/government, conceived as an autonomous force, should reflect back its prestige upon the class upon which it is based, is of the greatest **practical** and **theoretical** importance, and deserves to be analyzed fully if one wants a more realistic concept of the State itself."¹⁷ With respect to Ireland and Europe, the interests of the ruling class at the state and supra-state level are for the most part congruent. The lesson from the glass workers is that if we are to take Holston and Caldeira's argument seriously, we must give the capitalist state analytical centrality because that is where disjunctions in democratic citizenship are contested and, ultimately, realized.

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² Ibid.

³ "Imminent Decision Awaited from the European Court of Justice on the Failure of Ireland to Establish a Fund to Protect Employees Entitlements to a Pension on Waterford Crystal's Insolvency." *August Cullen Law*. March 19, 2013.

<http://www.aclsolicitors.ie/news-events/current-news/imminent-decision...employees-entitlements-to-a-pension-on-waterford-crystals-insolvency/> Accessed: 01/04/13.

⁴ Ibid.

⁵ "European court rules in favour of Waterford Crystal workers in pension case." *RTE*. April 25, 2013. <http://www.rte.ie/news/2013/0425/385516-waterford-crystal/> Accessed: 25/04/13.; Genevieve Carbery. "Court rules in favour of Waterford Crystal workers." *Irish Times*. April 25, 2013.

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⁶ "European court rules in favour of former Waterford Crystal workers." *Irish Examiner*. April 25, 2013.

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⁷ O'Hearn, Denis, 2003. "Macroeconomic Policy in the Celtic Tiger: A Critical Reassessment." In Coulter and Coleman (eds.), *The End of Irish History?* Manchester: Manchester University Press. Pg. 36.

⁸ Allen, Kieran. 2012. "The model pupil who faked the test: Social policy in the Irish crisis." *Critical Social Policy* (32)3: 422-439.

⁹ "Noonan: We're not Greece... put that on a t-shirt." *Irish Independent*. June 23, 2011.

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¹⁰ Harvey, David. 2005. *A Brief History of Neoliberalism*. Oxford: Oxford University Press. Pg. 176.

¹¹ Ibid.

¹² Shore, Cris. *Building Europe*. Routledge: London, 2000.

¹³ Caldeira, Teresa and James Holston. 1999. "Democracy and Violence in Brazil" *Society for Comparative Study and History* (41)4: 691-729. Pg. 692.

¹⁴ Ibid. Pg. 727.

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¹⁵ Engels, Frederick. Chapter IX: Barbarism and Civilization. In *Origins of the Family, Private Property, and the State Origins*.

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¹⁶ Ibid.; Smith, Neil. 2008. *Uneven Development Third Edition*. Athens: University of Georgia Press. Pg. 61.

¹⁷ Gramsci, Antonio. *Selections from the Prison Notebook*. New York: International Publishers. Pg. 269.