



Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

Opening of the Legal Year Address

**Delivered by Mr Justice Donal O'Donnell, Chief Justice, at the Opening
of the New Legal Year Ceremony on 2nd October 2023**

Many, indeed, most jurisdictions hold a ceremony to celebrate the opening of the legal year. In the common law world, the first Monday in October has by tradition been the date when the legal year commences, and this has been the case in Ireland not just since the founding of the State, but before.

Tradition is important, not just to lawyers but to everyone. The philosopher Samuel Scheffler has said that:

“Traditions are human practices whose organising purpose is to preserve what is valued beyond a lifespan of any single individual or generation. They are collaborative, multi-generational enterprises devised by human beings precisely to satisfy a deep human impulse to preserve what is of value”.

Respecting traditions is not, however, to allow the past to control the present. The fact that, as Scheffler puts it, tradition is a multi-generational enterprise means that, in fact, each generation chooses which traditions, or parts of traditions, it considers worth maintaining, and in some cases adding to, adapting or refreshing. It is always the present generation which decides whether a tradition of a past generation is worth following.

This is a very appropriate time and place to consider what is of value in the tradition of the opening of the legal year. 100 years ago, in October 1923, this great building was still a smoking ruin. One of the first people on the scene after the bombardment in June 1922 was Constantine Curran, and who is today known as a writer and chronicler of intellectual life in Dublin in the early part of the century friend of James Joyce who left a beautiful memoir of Joyce's student days, but who worked in the Four Courts, and later to become the Registrar of the Supreme Court. Curran described how, when he arrived in the Four Courts after

the explosion and fire, the famous statues which had once stood in the alcoves around this hall had, he said, "the consistency of cream cheese".

The same might be said of the legal system at that time. The official courts in October 1923 were held in Dublin Castle and in some offices around the city. It was by no means clear that scarce resources would be expended on the restoration of this building. The judges, whose retirement entitlements were a specific provision of the Treaty, were still those judges appointed under the old British system even though the Irish Free State Constitution was now in force, and they were apprehensive about their future.

There was no formal opening of the court sessions in 1923. In fact, a denial was published in the Irish Independent to put to bed a rumour circulating at the time that the courts would probably not sit at all for the Michaelmas term. The Irish Examiner, on the other hand, gave an account of the work anticipated in the courts and reported with evident disappointment that while it seemed the courts would in fact be quite busy, only one breach of promise action had been listed, but helpfully provided the names and addresses of the parties.

What was not examined in either newspaper article however was the ambiguous half-life in which these courts, judges and lawyers existed 100 years ago. They constituted one of two systems of justice that were in existence in the new State. The revolutionary Dáil Courts were being brought to a contentious close with remaining cases being dealt with by a commission in Dublin Castle before being transferred to the ordinary courts. And preparations were also under way for the creation of a new independent system of courts which were seen as a very visible manifestation of a new independent state.

At the time, the Courts of Justice Act establishing the new courts system had not yet come into force. It was only on 11th June 1924 that the courts were established in a formal opening ceremony in Dublin Castle designed and supervised by Hugh Kennedy, the first Attorney General of the Free State and the principal architect of the Courts of Justice Act, who on that same day became the first Chief Justice of Saorstát Éireann. The ceremony was attended by the senior members of the Government and accompanied by the Army No. 1 Band.

Part of the ceremony is thankfully captured on some evocative Pathé newsreel footage. To modern eyes, it looks quaint and formal; nine men (and only men) in morning suits constituting the entirety of the new Supreme Court and High Court walking in in single file through light drizzle in the Castle yard. But to contemporary eyes it was, and was intended to be, a very deliberate break with the past.

The ceremony was reported with what might be described as a pearl-clutching headline in the Irish Times that read: "*Judges without wigs and gowns in Dublin Castle*". The article noted, with barely concealed disappointment, that in previous years, the opening of term had been marked by a splendid procession of judges in red robes and ermine which it said had always drawn a number of interested onlookers. But on this occasion, the wig-less and gown-less Hugh Kennedy, the new Chief Justice, spoke in ringing terms:

"This is surely a precious moment – the moment when the silence of the Gael in the courts of law is broken. The moment when Irish courts are thrown open to administer justice according to laws made in Ireland by free Irish citizens".

It was clear that this was a very significant evolution of the tradition. Some things were the same – the courts, the procedure, and in many cases, the law – but others were very deliberately different. A new generation was, in every sense, choosing what parts of the tradition it found useful to maintain and what parts it wished to discard.

In some common law countries, particularly those in which there is an established state religion, a religious service is not merely a marker of the opening of the legal year but is part and parcel of it. Indeed, it might be said that this is a logical consequence of an established state religion, just as coronations occur in cathedrals. Whether the status of state religion was the origin or not, we have had in Ireland both a Church of Ireland service and a Roman Catholic Red Mass, which traces its origin to a time before the Reformation. Somewhere along the way, the opening of term in the courts fell away and increasingly these services have been seen, perhaps by default, or by analogy with what occurred in other jurisdictions, as marking or even constituting the formal opening of the legal year.

We have been lucky to have such beautiful ceremonies in the evocative surroundings of the two St Michan's churches. They are touching services that memorialise those members of the legal profession who have died in the past year and they provide an opportunity for quiet reflection and often some challenging thoughts offered by a preacher coming from outside the legal profession. All of that is valuable and often beautiful.

However, there has always been, in my experience, some discomfort with the idea of the opening of the legal year being marked by not one but two religious ceremonies, and also, increasingly, with the idea that the opening of the year was associated, almost by default, with religion. While I am not sorry to lose the formal procession of 1924, whether in ermine or morning suit, I do believe that something was lost when the opening of the legal year in court fell away.

And although the Republic was only formally declared in 1948, the form of government established in the 1922 Constitution and, if anything, defined more clearly in 1937, was fundamentally a republican form of government based on the essential equality of every citizen whether they had any religious affiliation or none. And despite the considerable piety of a large, indeed overwhelming, number of the population at different times, neither constitution provided for a state religion.

Therefore, I established late last year a committee chaired by my colleague, Ms. Justice Elizabeth Dunne of the Supreme Court, to discuss with all interest groups and stakeholders the possibility of holding a simple secular ceremony which would constitute the official opening of the legal year and, if so possible, to recommend the form of ceremony. And so, here we are today, making a new tradition. I would like to express my gratitude to Ms. Justice Dunne and to everyone else on that committee who contributed to that discussion and the ultimate report, not only for their valuable input but for the almost universally positive way in which everyone approached the task.

A question is never far from a lawyer's mind, and so it might be asked why have any court ceremony at all? Indeed, President Paul Kelly would be quick to point

out that the District Court has been in full swing for the month of September, and there has been a steady stream of hearings and judgments in other courts during what is still called "*the vacation*". But there is, I think, a value in having a fixed point from which to measure and press the reset button. And the value of marking that point can be seen today.

There are a number of things a ceremony does. For example, it places the courts system in the constitutional scheme. We have heard from the Attorney General who is, under the Constitution, the legal advisor to the Executive branch, and he has spoken about the important role the courts system plays in the State. It is often said that the separation of powers created by the Irish Constitution is not hermetically sealed. Critically, the judicial power, as Alexander Hamilton famously put it, holds neither the sword nor the purse and relies solely on judgment. It depends upon the Executive to enforce its decisions. It also depends upon the executive and legislative branches to provide the resources necessary to permit the courts system to function.

It is particularly appropriate to acknowledge – in a world where this is no longer a given – that over the last century, the legislative and executive branches of government have consistently accepted the decisions of the Irish courts and the operation of the separation of powers, and they have also accepted their responsibility to provide resources for the courts system. The relationship between courts system and the executive branch is not always frictionless, nor is it meant to be, but it is based upon respect, and on that note, I am pleased to acknowledge the presence of both the Secretary General and Deputy Secretary General of the Department of Justice.

We have also heard from the Chief Executive of the Courts Service, and this is a visible reminder of the fact that the administration of justice is not the preserve of judges or lawyers. Rather, it is something which requires collaboration with now more than 1,200 members of Court Service staff employed to support the operation of courts all over the country.

Our ceremony today serves to remind us of our place in the legal world, and we are both pleased and honoured to be joined by and Advocate General and judges

of the Court of Justice of the European Union, and by judges of the Court of Appeal of England and Wales, the Inner House of the Court of Session of Scotland, and the Court of Appeal of Northern Ireland.

We are also joined by the leaders and members of both branches of the legal profession in Ireland, as well as representatives from the corresponding bodies in Northern Ireland, Scotland, and England and Wales. We also welcome the Director of Public Prosecutions, the Chief State Solicitor, the Director of the Probation Service, and many others involved in the administration of justice. Our guests today illustrate the broad sweep and impact of the business conducted daily in Irish courts.

Our ceremony today also affords us a timely opportunity for reflection. As many of you know, next year we will celebrate the centenary of the Courts of Justice Act 1924. My hope for that significant occasion is that we not only celebrate what has been achieved in the last hundred years, but as importantly, that we set goals and ambitions for the next century, and in doing so, identifying those things in our system that deserve preservation, and those which can be adapted, improved or changed.

If someone from the legal year 1923/24 could see the system today, they would, I hope, recognise the building and admire the way it has been restored, and perhaps even recognise some aspects of the procedures still followed. But they would also, I think, be astonished by the demonstrable level of change which has taken place, not just in the evident use of technology in even the oldest courtrooms, but also and most importantly, by the activity inside the courtrooms – by those appearing and those presiding in courts, by what the judges wear, by the issues being debated, and even by the law being applied.

And that change is ongoing. Earlier this year saw the delivery of the long-awaited Report of the Judicial Planning Working Group (“JPWG”). That was an interdepartmental group with members from key government departments and two observers from the judiciary. To inform the work of the Group, an OECD study was commissioned for the purpose of making the best possible assessment of the number of judges needed for the next 5-year period and beyond. Ireland has

consistently had the lowest number of judges per capita of the now 46 members of the Council of Europe. I think all involved were weary of the depressing cycle of senior judges complaining about the lack of judges and central government officials retorting that judicial numbers had only just been increased.

The report's conclusions were, I think, really quite dramatic. It found that Ireland needed between 60 and 108 additional judges over the next five years, which was a figure arrived at not by merely extrapolating from the number of judges and work done, but also by taking into account a number of efficiencies recommended by the Group. This figure must be understood in context: at the time of the report's publication, there were in total 172 judges in Ireland.

I would like to acknowledge that the report has been accepted in full by the Government. That is a really welcome development and a clear demonstration of commitment to and support for the administration of justice in Ireland. Indeed, a number of the judges recommended in the first tranche of appointments have now been appointed. However, the pace of delivery has been slower than initially promised and we are still awaiting 5 appointments in the High Court and 2 in the Circuit Court which were expected in May. Inevitably this slows down the pace of developments and causes delay and frustration, but I hope that the process will be followed through to completion of this tranche of appointments as soon as possible.

It is worth mentioning at this point that the scale of these appointments is unprecedented and has already delivered positive impacts above and beyond the provision of much needed numbers – most obviously in accelerating a trend of bringing younger lawyers onto the bench. This naturally introduces welcome energy and enthusiasm to the system, and it would be a real pity if that spirit was not supported encouraged and built upon.

Inevitably, change at this level puts demand on every area of the system, and reducing even one, albeit substantial, pinch point in the pipeline often highlights other areas of constraint. In particular, it is impossible to implement change of this scale without placing additional demand on the resources currently available, whether physical or technological, and on the staff who are needed to support the

new and existing judges. However, we must take this opportunity to catch up on years of under resourcing and endeavour to provide a system of administration of justice worthy of a modern society in the 21st century. And that simply cannot be done with 19th century infrastructure. This is all acknowledged in the JPWG report, and I hope that the commitment to implementing the recommendations will be followed through in these areas as well.

I do also hope that the JPWG report can be seen in time as an important and decisive step change, in the relationship between the courts and central government on the question of resources. I hope that the speedy acceptance by the Government of the report and the commencement of its implementation is a recognition of the fact that the courts system has, for far too long, been significantly under-resourced, and that that position requires to be remedied not just to the point of judicial numbers, but also in the areas of judicial support, technology, infrastructure, and accommodation.

But it is worth noting that the process engaged in by JPWG in and of itself represents a significant step change, a game changer if you will, in the way the courts and the judiciary interact with government on issues relating to the administration of justice more generally . There is much to be said for careful study, expert analysis and frank discussion. It is always possible to disagree with the outcome of a report, and there are features of the report I would disagree with, but adopting the approach means at that any discussion proceeds upon the basis of analysis and argument, rather than misunderstanding rumour and suspicion.

In the aftermath of Brexit, Ireland finds itself effectively as the largest common law country in Europe and we have had to take on an even more active role in legal affairs in Europe as a result. That has had some perhaps unexpected benefits. It is encouraging to see at first-hand the respect in which the Irish courts system is held. But if Ireland wishes to play its full role as a modern European society, then it is important to recognise that the justice system is not something to be left to private endeavour. It is an important societal good, just like health and education, which goes to establishing and maintaining the sort of modern civilised society that we, as a people, value.

A distinguished American lawyer Dean Wigmore said more than 100 years ago that the State has been in the business of justice long before it was in the business of health or education or, indeed, social welfare. In an increasingly fissiparous world, the administration of justice plays an important role in maintaining the bonds of a society. This is often discussed at an elevated constitutional level in terms of the separation of powers, and the importance of judicial review of administrative action and review of legislation for compatibility with the Constitution. The system of checks and balances that we take for granted is fundamentally dependent on an independent courts system.

In an era of sometimes aggressive populism amplified by social media, and in a society which is no longer as homogenous as that in the Ireland of 1922, it is important to remember that one critical test of a society is the manner in which it treats what were famously described as discrete and insular minorities. The system of judicial protection of rights is an important balance in that regard and goes some considerable way to maintaining society on an even keel.

This template was adopted in Ireland in 1922 and had existed in a few other countries, but it became the model of choice, particularly in Europe, in the aftermath of the Second World War, and underpins both the Council of Europe and the European Union. It is however being questioned and challenged in a number of countries, and we in Europe have been forced to confront basic questions of what is meant by the Rule of Law. We should, therefore, not be complacent in Ireland.

But the importance of the legal system in a society operates at an even more fundamental level. It provides for a system of enforcement of law which is necessary if people are to have the right to live their lives in peace. It provides for a system of resolving disputes by reference to clear rules, and by reason alone, and by ensuring that those decisions – once made – are enforced. Ronald Dworkin highlighted the truly fundamental importance of the law when he said:

"We live in and by the law. It makes us what we are: citizens and employees and doctors and spouses and people who own things".

If, however, the administration of justice is delayed, or worse, if it does not happen at all, or if people no longer trust the system, or if a victim of a crime, or a person accused of a crime, has to wait an inordinate and unacceptable period of time for trials and decisions, or to take another example, if people cannot have their relationship differences resolved speedily and decisively so that they can get on with their lives, then they, their family and friends, and the wider society will lose faith and belief in the system.

In Dworkin's terms, they will increasingly not live "*in and by the law*" and an important part of the social fabric will fray. It is important therefore to remind ourselves on an occasion such as this why it matters what happens in buildings like this across the country, and why it matters that it should be done to the best of our abilities.

But that is not to say that we do not have things to be proud of and to celebrate. Next year will mark 100 years of an independent courts system in Ireland. The Courts of Justice Act 1924 established the Supreme Court, High Court, Circuit Court and a new District Court. That centenary will be a meaningful opportunity to reflect upon the achievements of that system and preparations are well underway in respect of a number of projects which I hope will truly capture and celebrate the significance of the occasion.

Indeed, it will be important that we take advantage of the centenary to look back on those 100 years and to consider the successes and the failures and to evaluate and celebrate the achievements. But it will also be important to identify those aspects of the system which should be maintained and reinforced if the administration is to be placed upon a sound footing to maintain a civilised society based upon the rule of law for the next century.

Occasions such as this therefore prompt us to ask ourselves what values we, as actors in the justice system, think are worth preserving, dedicating ourselves to and defending. I do not presume to predict what future generations will find valuable in what we now do. But it has been said that a constitution, particularly in a legal system like Ireland's, which permits of popular amendment, is itself a multi-generational project involving a conversation between successive

generations. As Professor Linda Colley put it recently, constitutions are a story we tell ourselves about ourselves and, it might be added, about our best selves.

In 1922 and 1937, we made constitutions for ourselves in which we set out some things which were new, but in which we also sought to entrench some features which we had found valuable in the past. Before I conclude today, I would like to take this opportunity to point to some of the values which I suggest are of enduring importance and of particular relevance to us here. These include:

- that justice is administered in courts by judges (Art. 34.1),
- that such justice shall be administered without fear or favour, affection or ill-will (Art. 34.6.1°),
- that Ireland has a republican form of government which does not permit of titles of honour or nobility (Art. 40.2),
- and that that form of government is based upon the essential equality of all human persons (Article 40.1).

Article 40.1 of the 1937 Constitution is important in its own terms, but also structurally as a bridge between those portions of the Constitution establishing the structure of the State, and that portion guaranteeing fundamental rights. It provides that all citizens shall, as human persons, be held equal before the law. That provision is often encountered in courts in challenges to legislation, or sometimes administrative decisions. But it is also an injunction to the courts to hold every citizen, and indeed every human person coming before them equal before the laws – not just those laws made in Ireland, but now also those laws which apply in Ireland by reason of our membership of the European Union. These were the ideals expressed in 1937 and they are ideals to which we should commit ourselves this year.

Chief Justice Hugh Kennedy was a cultured man who left an enduring legacy. But we do not have to accept or be bound by all of his views, some of which reflected the thinking of his time. We are, instead, free to pick and choose those ideas and thoughts which still have value to us, much as future generations will choose what is valuable in our time. We can, however, take some inspiration from the obvious sense of pride in the endeavour that was being undertaken, the sense of commitment and obligation and, perhaps in particular, his belief in the importance

of the courts playing their role in the new state. We can and should commit ourselves to work together to do the same today.

Go raibh maith agaibh go léir.