



Cúirt Uachtarach na hÉireann
Supreme Court of Ireland

Centenary of the Irish Courts System

**Delivered by Mr Justice Donal O’Donnell, Chief Justice, at the
Commemoration of the Courts of Justice Act 1924 on 28 May 2024**

The Events of 1924

Almost exactly 102 years ago on the 3rd July, 1922, a man stood in the centre of this room, which was then a smouldering ruin. He was one of the first on the scene after the end of the bombardment, and the massive explosion and fire that destroyed the building. He was C.P. “Con” Curran, who was to become a noted figure in Dublin cultural life: a writer; theatre critic; artist; historian; and a particular expert in architecture and plasterwork. Curran was a friend of James Joyce and left a beautiful memoir of Joyce’s student days¹. He was standing amongst the ruins of this room in order to report to another friend, the new Attorney General, Hugh Kennedy on the damage done to the building. Curran was also a trained lawyer, and therefore he was perhaps the only person with sufficient knowledge to appreciate both the craftsmanship in the sculptures and friezes in the building, and the legal events and individuals they commemorated. And he was perhaps the best person to assess the damage done to the building, and as importantly, to the legal system to which it was home. He described in vivid terms, how the great dome had collapsed, and the destruction of the many statues² which once stood in the alcoves around this Round Hall, one of which he described as having “*the consistency of cream cheese.*”

C.P. Curran is an interesting figure in more ways than one. He, in due course, would become the registrar of the Supreme Court, and a close collaborator of the

¹ C.P. Curran, *James Joyce Remembered* (OUP 1968) He also left a memoir dealing in part with his memories of Hugh Kennedy and James Murnaghan, among others: C.P. Curran, *Under the Receding Wave* (Dublin: Gill 1970).

² One such statute was of Henry Joy, a cousin of Henry Joy McCracken, a leader of the 1798 rebellion in Ulster.

new Attorney General, Hugh Kennedy. Kennedy would become the first Chief Justice of the Free State almost exactly 100 years ago and, as Attorney General, was the principal draftsman of the Courts of Justice Act, 1924, which established the structure of the courts system which we have today. One of Curran's great skills was his capacity to retain friendships with a disparate group of people, spanning all political complexions and most artistic disciplines.

Most of you will know, but some of you may not, that the bombardment of the Four Courts in 1922 was the commencement of the Civil War, which was to drag on for almost two years, and leave a bitter legacy that ran through Irish life for much of the next century. The dispute between the pro-Treaty and anti-Treaty sides created a sharp binary division that tended to obliterate all other nuances in Irish life. Later, the force of Joyce's critique of the Ireland that he left behind, and which he observed becoming increasingly pietistic and conservative, created a further division which has tended to colour our understanding of that era.

Amid the power of these different critiques, much nuance can be lost. It is useful to look at the events through the eyes of C.P. Curran, who was capable of appreciating both the beauty of the past, and the radicalism and idealism of the new generation which was emerging.

The Rebuilding of the Four Courts

Another figure in the same vein, through the eyes of whom we can usefully look on the events of 1924, was T.J. Byrne, the State Architect at the time. In 1922, as this building lay in ruins, there were powerful forces arguing against its renovation. Byrne, however, convinced W.T. Cosgrave, the first President of the Executive Council of the Irish Free State, that the Four Courts, as part of our built heritage, should be rebuilt.

For ten years, work was undertaken on the Four Courts with a limited budget but considerable ingenuity and enthusiasm. But it would be a significant error to describe the work as simply a restoration. Some aspects were beautifully restored, like this Round Hall and dome, and the four classic courts – which had originally been the courts of King's Bench, Common Pleas, Exchequer and Chancery. The opportunity was also taken to substantially remodel a building of more than a century old, and which contained a warren of dark rooms. And very appropriately,

the new Supreme Court was an entirely new construction, and the features around that court, with its beautiful walnut panelling and 1920s lighting and clock that can be seen today, all date from that era.

What T.J. Byrne supervised in terms of physical work, echoed what was being done in the court system. He took the best of this building, discarded any features which no longer served their purpose, and replaced them with contemporary features, so that the building became not a monument to a colonial past, but a functioning courthouse for an independent future. This process mirrored an evolution, and a radical restructuring of the legal system in the 1924 legislation which retained those aspects of the common law system which were thought useful, quietly jettisoned others, and introduced innovations which would later be adopted in other jurisdictions and come to be regarded as normal.

Radical Changes to the Courts System in 1924

The fact that it took almost two years from the foundation of the State to establish the court system required by the Constitution of 1922 might be said by the cynic to be an early example of the law's delay in the new State. In fact, history shows something quite different. There was very vigorous discussion and detailed debate, precisely because the people involved understood the fundamental significance of the legal system to the new State that was being created.

The legal system until 1924 was a close copy of the legal system which applied in England and Wales at the time. The changes introduced by the Courts of Justice Act, 1924 were described in a book published that year by Gerald Horan K.C. as both "*striking*" and "*drastic*". In simple terms he said: "*The Act of 1924 has made a clean sweep of the old tribunals and set up an entirely new judiciary system*".³ Hugh Kennedy himself described the changes as a "*shattering of landmarks*".⁴

Another contemporary observer, Nicholas Mansergh,⁵ said the changes were revolutionary, particularly in relation to the District Court. Until then, at local level, minor criminal matters were dealt with by lay magistrates and justices of the peace predominantly landlords. The District Court established in 1924 was to have

³ *The Courts of Justice Act , 1924* (Dublin: John Falconer 1924).

⁴ Foreword Hanna, *The Statute Law of the Irish Free State 1922 to 1928* (Dublin: Thom and Co. 1929).

⁵ *The Irish Free State - Its Government And Politics* (Allen and Unwin 1934).

an expanded civil and criminal jurisdiction, but most importantly, it was to be staffed by professional lawyers. A number of young lawyers were dispatched to sit in District Courts around the country. One notable example was Philip O'Donoghue, who became a District Justice at the age of 28 in an area encompassing parts of Cork, Kerry and Limerick, and who later, as senior legal officer in the office of the Attorney General would become a key drafter of the 1937 Constitution. He would then go on to become a judge of the European Court of Human Rights. Another was Tom Finlay, then aged 31, who later became a senior official in the Department of Justice, a T.D. and Senior Counsel whose son would become Chief Justice and whose granddaughter, Mary Finlay Geoghegan, would also sit on the Supreme Court and I am very happy to say is here today.

In contrast to the pre-1924 system of County courts for each county, which had a very limited civil jurisdiction (with the High Court judges going on assize outside Dublin for criminal matters), eight Circuit Courts were established. The monetary jurisdictional limit was almost ten times that of the old County Court, with the power for the parties to consent to unlimited jurisdiction. The Court had an extensive criminal jurisdiction.

A Court of Criminal Appeal was established for the first time. A new Supreme Court was established and its jurisdiction defined as a final court of appeal. However, what is most striking is what is not said in the 1924 Act: no reference whatsoever is made to the right of appeal to the Privy Council. That remained in place by virtue of the Anglo-Irish Treaty but was quietly and tellingly ignored in the Act. As far as the Act was concerned the Supreme Court was the final court of appeal in Ireland.

According to the 1924 Act, all judges were required to make a declaration to uphold the Constitution and to the best of their skill and power to execute the office of judge without fear or favour, affection or ill will towards any man but without any reference to administering justice on behalf of the sovereign, as had previously been the case. The Act introduced, for the first time, a mandatory age of retirement for all judges. The Constitution had already provided in Article 69 that no judge was eligible to sit in Parliament, so quite deliberately, there was no equivalent to the position of the Lord Chancellor, who had been both the head of the judiciary and a significant member of the Executive. It is no exaggeration to

describe these changes as a radical evolution, which were, at every point, directed towards an improvement of the court system reflecting an egalitarian and reforming impulse.

Changes in the Last Century

If those involved in 1922 and 1924 could see the court system today, there would be much that they would recognise. Civil and criminal cases are argued before independent judges by professionally trained lawyers, and in many cases, in the same court rooms, including the four great court rooms off this Round Hall. But they would be surprised, and I hope impressed, by many of the changes that have occurred in the last century.

The observer from 1924 would be struck by the difference in the judiciary and the legal professionals appearing in those courts, most notably in terms of gender balance. They would also be astonished by the legal business that is now transacted outside court rooms in major law offices and they would be surprised, I think, by the extent to which cases are case managed in advanced: written submissions are provided for; time available for argument is limited; and of course, the availability now of video link and remote technology. If they listened closely, they would, notice the extent to which the business of the court is taken up not just with criminal law, tort, contract and property disputes that they might recognise, but also with matters of public law, constitutional law, judicial review, asylum, European Arrest Warrants and environmental matters. When the new courts were opened on the 11th of June, 1924, Hugh Kennedy, the new Chief Justice said:-

"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."

I think that he and his listeners would be particularly pleased, then, to see how much of the business of the courts is now involved with the law of the European Union and the European Court of Human Rights. C.P. Curran said that Kennedy and the drafters of both the Constitution of the Irish Free State and the 1924 Act looked very deliberately to Europe and indeed the US. The collection of modern European Constitutions they compiled in 1922 became a minor classic and found

its way to India in 1934, where it has been constantly reprinted and was a resource for the drafters of the Indian Constitution. This was only one of a number of Irish influences upon the Indian Constitution of 1949/50.

We are pleased and honoured, therefore, to be joined today by senior judicial figures from India, Tanzania, from the Supreme Courts and Constitutional Courts of Europe, and our good friends from the United Kingdom. We have also had the privilege of hearing addresses from the President of the Court of Justice of the European Union, Koen Lenaerts, and the President of the European Court of Human Rights, Síoifra O’Leary; the first Irish person to hold that position, and the first woman to do so. And I would like to particularly welcome the Lady Chief Justice of Northern Ireland, our neighbouring jurisdiction, whose legal history is intertwined with that of ours.

Taking Stock

However, the object of an occasion like this is not merely to commemorate and to celebrate. It surely allows us, indeed requires us, to take stock and to reengage with the same spirit of radical evolution and indeed idealism that was present in 1924. We should be willing to ask the same questions that are our predecessors were prepared to ask 100 years ago: what parts of this system are essential to a functioning legal system in a modern State, and what parts should be adapted, changed, or improved?

It is easy to answer the first part of the question. A legal system is central to any civilised modern society. At the core of any such legal system is a truly independent mechanism for the resolution of disputes in public in as efficient a way as possible, using relevant expertise and respecting the dignity of everyone involved. No one looking around the world today should take that for granted or think that it is easy to achieve or, once achieved, can be easily maintained. An independent court system needs to be reinforced and defended from challenges, whether violent and strident, or subtle and insidious.

It is easy to say that an independent court system ought to be maintained. But it is a job that demands the attention of us all, whether we work as judges, practising lawyers, in the Courts Service, departments of Government or in non-governmental organisations. That is the precious legacy of the last 100 years. It is more important in today’s world than even in those turbulent and uncertain

days of the early years of the State that we do everything we can to reinforce that system and to pass that legacy on to future generations.

One thing from 1924 that we can jettison is the idea that a court system could be run, and justice delivered to the people of Ireland, simply by appointing judges, and allowing them to sit with a pencil and paper in increasingly ageing courthouses, relics of a colonial era dealing with an ever-increasing workload of growing complexity with limited and outdated resources.

The Judicial Planning Working Group (“JPWG”) was established in 2021. It delivered its report last year. The report recognised the fact that Ireland had the lowest number of judges per capita in Europe and had been historically under resourced for most of the 20th Century. It recommended the appointment of 44 judges before the end of 2024, and that additional judicial positions should be determined by a review in 2025 of the need for more judges up to 2028.

In addition, the report, underpinned by a comprehensive OECD study, recommended a review and restructuring of the way in which the courts do business, a more planned approach to judicial appointments, and appropriate and enhanced resources to support the judiciary. I am very happy to acknowledge that the report was accepted by Government and has been implemented in part. Following the publication of the JPWG report, I established a Judicial Implementation Group, which has been extremely diligent in engaging with other actors in the justice system, in particular the Department of Justice, in order to ensure that the anticipated benefits can be obtained. I think it is already apparent that there is almost direct linear correlation between the number of judges appointed, and the efficiencies achieved as a result of a reduction in backlogs. But addressing the backlogs created by the Covid-19 pandemic and reducing historic backlogs more generally is, however, only part of what is required.

It is appropriate to acknowledge the significant institutional reforms that have been taken in relatively recent times to improve the system: the establishment of the Courts Service; a Judicial Council with a strong educational function as well as a disciplinary one; reform of the judicial appointments system; the establishment of a Court of Appeal; and the consequent major reform of the jurisdiction of the Supreme Court. Other positive developments have been the building of new courthouses across Ireland, first with the Criminal Courts of Justice complex here

in Dublin, and subsequently new courthouses in Letterkenny, Limerick, Kilkenny and Drogheda. The proposed dedicated family law building in Hammond Lane with nineteen new courtrooms and ancillary rooms and facilities will, I hope, contribute to the significant improvement of the way these most difficult and personal disputes are dealt with and help to ensure that they are addressed in a calm supportive environment that respects the dignity and worth of every individual involved.

There has been significant investment in the Courts Service modernisation programme, which seeks to use new digital technology and modern ways of working to make access to justice easier and quicker to navigate for court users. I do not have time today to list all of these changes, but they include technology-enabled courtrooms, a digital jury system, commencement of work on a unified case management system, a new digital desktop for staff and judges, and a new family law information resource. The Courts Service's journey on this important ten-year programme is now well underway. Very recent technological developments in the Supreme Court include a new website, supremecourt.ie, which has just gone live. We have also agreed, in principle, to run a pilot project commencing before the end of this year to consistently broadcast hearings in the Supreme Court.

This will not be, and is not intended to be, a very elaborately produced service. The resources of the Supreme Court of Ireland and the Courts Service would not allow for the production of a full state of the art video service as is provided in some other Supreme Courts, and we are, therefore, working on the best technical solution that we can offer. However, if the position is that the Supreme Court hears legal argument on issues of general public importance, my colleagues and I consider that arguments in such cases should be as widely available to the public as possible. That said, there is, in my view, a very clear distinction between this type of hearing, and hearings in other courts, in particular trial courts where very different considerations apply, and I would not anticipate at this time that there would be, or should be, televising or streaming of proceedings in other courts. We will engage with interested parties in advance of any proceedings being broadcast and will review the pilot project in light of the experience and feedback gained.

All of these recent and proposed developments have been successful, and they should increase rather than satisfy our appetite for reform. They have occurred against a history of a century of under-investment in the system, and against the background of a rapidly changing country, with significant population growth, an increase in the types of disputes coming to court and an increase in their complexity. What we should be looking to do in the next century is to improve the conditions in which justice is administered in every courtroom. It is not simply a question of the number of cases disposed of – it is a question of how they are disposed of. That involves giving judges the time, space and resources to carry out their function in the best way possible, which in turn allows justice to be administered in an efficient way that is respectful of the dignity of the parties involved. These changes have to be made "*in-flight*" as it were, while the system is operating on a daily basis and there are always challenges to be overcome. It should not just be a question of playing catch up. We should take this opportunity to try to put in place the foundations for the next century.

I hope that the experience of the Judicial Planning Working Group can represent a step change in the approach to relationships between the courts and the other branches of government. The independence of the judiciary does not mean the isolation of the judiciary and should not mean the neglect, even if benign, of the court system. The administration of justice performs a vital role in a modern state based on the rule of law – a model which is under increasing threat and which we should not take for granted. We all have a shared interest in the delivery of an efficient court system. What this requires are transparent and robust structures for engagement with the Executive, and where appropriate the Legislative branches which respect and reinforce the separation of powers.

Returning to where I started, a hundred years ago, this building was in ruins. When it was restored by 1932, it housed only nine judges of the Supreme and High Courts, a few judges of the Circuit and District Court and ancillary offices and staff. The Four Courts building and adjacent Áras Uí Dhálaigh building are now required to hold over fifty judges (in addition to close to 20 in other buildings in the complex), with a vastly increased workload and requirement for ancillary support staff who are scattered throughout the complex. The working conditions and supports fall well below what would be taken for granted in even a medium size law firm. This leads to inefficiency, loss of momentum, and an inability of

judges and the team that supports the courts being able to collaborate in a way that the business of courts requires.

The Four Courts building is now beyond bursting point and I hope it will be possible to identify a suitable premises to house a modern administrative and judicial office system for the 21st century, while preserving this building for its core historic function of hearing cases. It is unusual, for example, in the modern world that a Supreme Court is not located in a dedicated building. There are advantages and pleasures to working in such an historic building, but doing so should not come at a sacrifice to support, facilities or efficiency. This building will always be an important symbol for the administration of justice in Ireland and in my view that it should continue to be the place where the cases of most public importance are heard and decided in a calm, respectful, dignified and historic environment. But, just as in 1924, we have to make it work in a modern world.

In addition to reorganising and modernising administrative office facilities, we should not forget the process of making the building reflect our legal culture. If you look up, you will see eight blank curved rectangular panels just below the dome. In 1922 there were four beautiful friezes, which were lost in the conflagration. Drawings of these beautiful friezes are held in the Irish Architectural archive. They contained depictions of scenes understood to show the triumph of the common law, such as:-

- i) William the Conqueror establishing the common law courts after the Battle of Hastings ;⁶
- ii) Henry II receiving the Irish Chieftains in Waterford in 1171;⁷
- iii) King John signing Magna Carta (1215); and
- iv) James I abolishing the Brehon laws in 1603.⁸

It was anticipated that the four other panels would be added to as time went on. When the panels were destroyed in 1922, it was not surprising that self-evident

⁶ Following the defeat of the Anglo-Saxons by the Normans at the Battle of Hastings in 1066.

⁷ Following on from Strongbow's invasion in 1170.

⁸ By proclamation in 1603.

considerations of political and nationalist sensibilities coincided with those of cost, and it was decided they would not be restored or replaced.

I am glad to be able to say, however, that the Office of Public Works, under the direction of the State Architect, Ciaran O'Connor, are now undertaking an exciting project, to restore the four original panels and to commission works to fill three more panels, to tell the story of Irish law since 1922, in its Irish and European context. Consistent with Gandon's original vision, one panel will be left to be completed in the future. In that way the building will reflect the evolution of the legal system in Ireland from its common law roots to its modern day Irish and European manifestation.

The area around the Supreme Court, has recently been upgraded and refurbished, and some of the beautiful 1920s lighting and equipment has been restored and upgraded. I would draw your attention to one small but significant addition. Outside the Supreme Court there is an oval opening in the ceiling, which lets in light from above. We have taken the opportunity to set out on that oval, the words of Article 40, paragraph 1 of the 1937 Constitution, in both Irish and English:-

"Áirítear gurb ionann ina bpearsain daonna na saoránaigh uile i láthair an dlí – All citizens shall, as human persons, be held equal before the law".

Although these provisions were contained in the text of the Constitution for the first time in 1937, they express something that ran through the 1922 Constitution and the changes made in 1924.

The inscription echoes and complements the inscription on the Bridewell Courts at the back of this building: *fiat justitia ruat caelum* - "Let justice be done though the heavens fall". These words in Irish, English, and Latin are placed in these prominent locations, not as a description, and certainly not as a boast. They are instead both an inspiration and a challenge to us. A challenge as we hurry through this building and all court buildings, whether as judges, lawyers, litigants or, as the successors to C.P. Curran, staff and officers of the Courts Service, to raise our gaze, and our sights. To connect with the evolutionary radicalism and idealism of the generation of 1924 and to strive each day to live up to those ideals. And a reminder to ensure that justice is administered, to every person coming before the courts in those great words inherited from the common law system, which we adapted and made our own 100 years ago in the 1924 Act that we celebrate today:

“without fear or favour, affection or ill will”. That is what the founders of our system 100 years ago believed in, and worked for. It is our job to carry on that work into a new century.