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Irish Law Journals and the Emergence of the Irish State, 1916–22

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ABSTRACT

This article assesses the value of Irish law journals as historical sources for the transition between 1916 and 1922 that saw most of the island of Ireland leave the United Kingdom. It presents these law journals as sources that have not always received the attention that they deserve from historians and political scientists. The article also uses these sources to examine the response of the Irish legal professions to the six years of revolution and upheaval. This response is interesting because the legal professions and their journals spanned the traditional nationalist/unionist divide in Irish politics. The most important source is a journal called the *Irish Law Times and Solicitors' Journal* (now known as simply the *Irish Law Times*) although other journals of lesser significance are also considered.

KEYWORDS

Law journal; *Irish Law Times*; legal professions; 1916 rising; civil war; 1921 Treaty; partition; Irish Free State; Northern Ireland

Introduction

The purpose of this article is to assess the value of law journals as sources for a critical period of transition in modern Irish history. This period comprises the years between 1916 and 1922 that witnessed the secession of most of the island of Ireland from the United Kingdom. The main source for this analysis is a journal known as the *Irish Law Times* which, at this time, was the only major law journal in existence on the island. A number of other publications, of lesser significance as historical sources, will also be included in this analysis such as the *Irish Law Society Gazette*, a minor publication that was exclusively aimed at Irish solicitors. The first purpose of this article is to introduce this useful source material for the years of upheaval in Ireland between 1916 and 1922 that has not previously come under close scholarly analysis. Historians and political scientists often overlook legal source material in analyses of particular historical periods. It is hoped that this interdisciplinary analysis will provide a general guide to these sources for scholars interested in particular aspects of this period of revolution. The second purpose of this analysis is to examine the response of the Irish legal professions to these important years of revolution and upheaval. This response is of wider historical interest because the Irish legal professions spanned traditional political divisions between Irish unionists, who wished to maintain links with the United Kingdom, and Irish nationalists, who wished for substantial autonomy or complete independence from the United Kingdom. Consequently, Irish law journals had to maintain a difficult balancing act between these viewpoints during a difficult period of bitter conflict.

Two Periods of Political Change

Ireland experienced two periods of obvious political transition in the early twentieth century. The first concerned the secession of most of the south and west of the island of Ireland from the United Kingdom. This was a process that started with the nationalist rising of Easter 1916. Although the rising appeared to lack public support and was crushed within days, the situation changed when the British military rashly executed the rebel leaders. The surge of sympathy that followed ensured that a political movement aimed at securing an Irish republic gained considerable electoral support by 1918. In 1919 a low level, but nonetheless brutal, paramilitary conflict erupted. A truce followed by political negotiations produced an agreement popularly known as the ‘Anglo Irish Treaty’ that was signed in London on 6 December 1921.¹ Exactly one year later, on 6 December 1922, most of the island of Ireland, but not the six counties of Northern Ireland, was recognized as having seceded from the United Kingdom.²

Although the new ‘Irish Free State’ that emerged in 1922 had seceded from the United Kingdom it had not seceded from the British Empire. The Irish Free State came into existence as a British Dominion, the status enjoyed by the white-dominated colonies that enjoyed substantial powers of self-governance. In 1922 these Dominions included

- 1 The status of this agreement as a treaty was disputed by British authorities who tended to refer to it as the ‘Articles of Agreement’. For a discussion of this issue see Henry Harrison, *Ireland and the British Empire, 1937* (London: Robert Hale, 1937), pp. 131–70.
- 2 The date of 6 December 1922 is recognized under British law as the official date on which the self-governing Irish State came into existence. For example, see Order in Council of 17 March 1932 on the provision for the reciprocal enforcement of judgments in the United Kingdom and in other parts of His Majesty’s Dominions under Part 11 of the Administration Act 1920. This provides as follows: ‘And whereas on the 6th day of December, 1922, the Irish Free State was established under the provisions of an Act of Parliament shortly entitled the Irish Free State Constitution Act 1922 (Session 2)’.

Canada, Australia, South Africa, New Zealand, and Newfoundland.³ The Dominions enjoyed considerable autonomy and the experience of the First World War had boosted their sense of separate identity. Nevertheless, there remained important limits on their sovereignty in the early twentieth century in the legal and political spheres. Many Irish nationalists were hostile to the remaining ties with the Empire and resented all limitations on the sovereignty of their self-governing State. This resentment fuelled a bitter civil war that lasted between 1922 and 1923. The infant Irish Free State survived the conflict but continuing limits on its sovereignty remained a source of considerable controversy until a new Irish Constitution was enacted in 1937 that severed all but a few token links with the British Empire.⁴ This second period of obvious political transition in the early twentieth century concerns the gradual secession of the Irish Free State from the British Empire between 1922 and 1937.

This article examines the response of law journals to the first of these periods of political change and conflict within Irish history. The response of law journals to the second period, the years between 1922 and 1937, is a substantial topic that deserves an article in its own right. This article focuses on the period between 1916 and 1922 that saw the secession most of the island of Ireland from the United Kingdom. In some instances it will stray slightly outside these bounds to examine issues relating to the Irish civil war, which concluded in 1923, and the creation of a new court system that was completed in 1924. Having set these boundaries, the next task of any analysis of this nature must be to examine the law journals that are available for analysis in early twentieth century Ireland.

Irish Law Journals Past and Present

The oldest law journal in Ireland is the *Irish Jurist*. A journal bearing this name has been in existence since 1848 it has seen many changes of identity and structure in the succeeding 150 years. Although the *Irish Jurist* is a thriving journal in the early twenty-first century, matters were very different a century earlier. The early twentieth century was a troubled time for the *Irish Jurist*, which actually stopped publishing in 1904. Although the journal was revived in 1935 this lengthy lacuna ensures that the *Irish Jurist* is not available for the critical period between 1916 and 1922.⁵

Recent decades have witnessed an explosion of new Irish law journals.⁶ However the range of law journals was far more restricted in the early twentieth century. The Law Society of Ireland, responsible for regulating the solicitors' profession, did establish a gazette in 1907.⁷ However, its utility as a historical source remains limited as its

3 Under Article 2 of the Anglo Irish Treaty the constitutional status of the Irish Free State was specifically linked to that of Canada. Article 2 of the Treaty provided 'Subject to the hereinafter set out the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada, and the law, practice and constitutional usage governing the relationship of the Crown or the representative of the Crown and of the Imperial Parliament to the Dominion of Canada shall govern their relationship to the Irish Free State'.

4 These token constitutional links were finally severed in 1949 when the Irish State was declared to be a republic under the Republic of Ireland Act 1948 and the Republic of Ireland Act 1948 (Commencement) Order 1949, SI 27/1949.

5 A history of this journal can be found at irishjurist.com/history.htm [accessed 19 September 2017].

6 These include the establishment of the *Dublin University Law Journal* in 1976. This journal was preceded by the *Dublin University Law Review* in the late 1960s and early 1970s. Many specialist journals have emerged since the 1990s including the *Irish Criminal Law Journal*, the *Irish Journal of Family Law*, the *Medico-Legal Journal of Ireland*, the *Commercial Law Practitioner*, the *Conveyancing and Property Law Journal*, and the *Irish Employment Law Journal*. The early years of the twenty-first century have seen the emergence of a large number of student law journals including the *University College Dublin Law Review*, *Cork Online Law Review*, and *Trinity College Law Review*.

7 *Irish Law Society Gazette*, 1.1 (1907).

contents focused on the discussions of the governing council, reports of court decisions and other news relevant to Irish solicitors. Nevertheless, the contents of the *Gazette of the Incorporated Law Society of Ireland* (henceforth the *Irish Law Society Gazette*) do provide some interesting insights into historical developments. Otherwise, historians are largely reliant on a law journal known as the *Irish Law Times and Solicitors' Journal* for coverage of the revolutionary years between 1916 and 1922.

The *Irish Law Times and Solicitors' Journal*, which for the sake of convenience will henceforth be referred to by its modern name of *Irish Law Times*, was established as a practitioner journal in 1865.⁸ Since that time it has provided commentary on important cases and legislation together with short articles written by academics and practitioners. The *Irish Law Times* had close ties with many practitioner journals based in London and regularly reprinted short articles taken from them.⁹ It also contained legal news and commentary relevant to Ireland, a separate jurisdiction within the United Kingdom that always enjoyed its own system of laws and courts. The *Irish Law Times* also provided attention to decisions of the courts in England and Scotland and the occasional item of legal news from the overseas territories of the British Empire. Unfortunately, this journal followed a strict policy of anonymity and never revealed the authorship of its articles or news items. The reasons behind this policy were never made clear in the journal itself although it was not unique to legal publications of the time. The most likely explanation is a desire to encourage greater frankness among a profession notorious for inherent caution in all matters concerning personal reputation. Despite this unfortunate drawback, the *Irish Law Times* remains an invaluable source for tracking the political upheaval that accompanied the process of secession from the United Kingdom between 1916 and 1922.

Law Journals and the 1916 Rising

The political orientation of the *Irish Law Times* in the early twentieth century reflects that of the legal professions in contemporary Ireland. This included a greater proportion of persons with unionist sympathies than would have been present in the general population. This sentiment is evident in the prominence given to messages from King George V in special supplements to issues of the *Irish Law Times* and to reports on the celebration of the king's birthday.¹⁰ The Irish legal professions also included a considerable number of 'home rulers'. These were constitutional nationalists who supported the attainment of substantial Irish autonomy within the United Kingdom. This sentiment is evident in the generous tribute paid to John Redmond, former barrister and leader of the Irish parliamentary party or 'home rule' party, at the time of his death in 1918.¹¹ The journal also employed a number of case reporters whose nationalist views may have gone further than seeking autonomy within the United Kingdom. These included John

8 This journal was originally titled the *Irish Law Times and Reports* when it was established in 1865. It was acquired by Round Hall Press in 1983 and re-launched under the name *Irish Law Times*.

9 Examples include the *Law Journal*, the *Law Times* and the *Solicitors' Journal and Weekly Reporter*. On occasion the *Irish Law Times (ILT)* also reprinted items taken from newspapers such as the *Times*.

10 For example, see *ILT*, 50.2561 [War Supplement] (1916), p. 1, and *ILT*, 52.2680 (1918), p. 136. The *Irish Law Society Gazette* included references to the 'integrity and honour of the Empire' during the prosecution of the First World War. *Irish Law Society Gazette*, 9.2 (1915), p. 11, and *Irish Law Society Gazette*, 12.6 (1918), pp. 33–35.

11 John Redmond (1856–1918) was an Irish nationalist politician who served as leader of the Irish Parliamentary Party from 1900 to the time of his death in 1918. *Dictionary of Irish Biography* (Cambridge: Cambridge University Press, 2009), VIII, pp. 411–18. *ILT*, 52.2667 (1918), pp. 56–57, and *ILT*, 52.2668 (1918), p. 63.

A. Costello a future Taoiseach or prime minister of Ireland.¹² However, case reporters had limited opportunities to assert their political views. Although barristers and solicitors from Catholic and nationalist backgrounds were becoming increasingly common in the twentieth century, the Protestant and unionist traditions remained strong in the Irish legal professions.

Irish unionists and constitutional nationalists were united in offering firm support for the war against Germany after 1914. Special war supplements of the *Irish Law Times* contained recruitment appeals from the British army and lists of the names of members of the legal professions fighting in the war.¹³ The contributors to the journal certainly displayed little sympathy for the nationalist uprising of Easter 1916 which began the process of secession from the United Kingdom.

The news section of the *Irish Law Times* apologized for the non-appearance of the issue of the journal intended for 29 April 1916. This was blamed on the disruption caused by 'the deplorable rising in Dublin known as the Sinn Féin rebellion'.¹⁴ The *Irish Law Times* and the *Irish Law Society Gazette* followed the example of the British press in attributing the rising to Sinn Féin, a small nationalist party that favoured a measure of separation that went much further than 'home rule' within the United Kingdom. In fact, Sinn Féin had no connection with the rising, although this would not become clear for some time. The progress of events was succinctly summarised by the *Irish Law Times*:

The unprecedented events of the week beginning on Easter Monday [24 April 1916] will be a life-long memory to all persons living in Dublin or having business connection therewith. The insurgents took possession of the General Post Office and other buildings, including the Four Courts, on Easter Monday. Martial law was proclaimed and a Military Governor of Ireland was appointed. The arrival of large bodies of military and the co-operation of the navy soon made further resistance vain, and the rising came virtually to an end on Saturday evening, 29 April.¹⁵

The journal also included a resolution passed by the council of the Law Society of Ireland which expressed their 'abhorrence and condemnation of the scenes of outrage and destruction which have taken place' and assured King George V of their 'continued loyalty to his person and Throne'.¹⁶ The news section recorded the conclusions of the special commission that investigated the causes of the rising. This commission blamed the conflict on inadequate enforcement of law in Ireland. It concluded 'The main cause

12 John Aloysius Costello (1891–1976) served as attorney general of the Irish Free State from 1926 to 1932. He entered politics as a member of the Fine Gael party and served as Taoiseach between 1948 and 1951 and between 1954 and 1957. Costello's political inclinations between 1916 and 1922 are ambiguous. He steered clear of any political involvement in these years and focused on his legal work. There is no evidence that he supported Sinn Féin in this period. One commentator has speculated that 'his attitude at the time may have been influenced by the views of the church authorities, who had consistently condemned the use of physical force'. See *Dictionary of Irish Biography* (Cambridge: Cambridge University Press, 2009) II, pp. 886–96 (p. 887). The person responsible for reports on probate and matrimonial matters in the *Irish Law Times* for 1919 and 1920 was 'C. Davitt'. This is likely to be Cahir Davitt (1894–1986), who was initially a supporter of the Irish parliamentary party. Although Davitt did not join Sinn Féin, he did become a judge of Dáil Éireann's Circuit Court from 1920 to 1921. After the signing of the 1921 Treaty he contributed to the creation of the legal services of the army of the Irish Free State. He was President of the High Court between 1951 and 1966. *Dictionary of Irish Biography* (Cambridge: Cambridge University Press, 2009) III, pp. 87–88.

13 For example, see *ILT*, 50.2561 (1916). This was mirrored in the *Irish Law Society Gazette* which printed regular lists of solicitors and apprentices to solicitors 'serving in His Majesty's Forces'. For example see *Irish Law Society Gazette*, 8.5 (1914), pp. 48–49. Deaths and the award of military honours were also recorded; for example, *Irish Law Society Gazette*, 11.4 (1917), p. 18.

14 *ILT*, 50.2570–71 (1916), p. 108.

15 *Irish Law Society Gazette*, 10.1 (1916), p. 4.

16 *Irish Law Society Gazette*, 10.1 (1916), p. 4, and *ILT*, 50.2572 (1916), p. 120.

of the rebellion appears to be that lawlessness was allowed to grow up unchecked, and that Ireland for several years past has been administered on the principle that it was safer and more expedient to leave law in abeyance, if collision with any faction of the Irish people could thereby be averted'.¹⁷

A special double issue appeared in the summer of 1916 in which contributors expressed sympathy for members of the legal profession who had had their offices destroyed in the rising. It also expressed relief that a minimum of damage had been inflicted on the Four Courts buildings that housed the Irish superior courts in addition to a great wealth of legal archives. The journal did devote some initial attention the fate of those who took part in the rising. The news section informed its readership that the prisoners had been divided into two classes. The great majority of prisoners were being sent to special prison camps in Great Britain. A minority of special prisoners were being tried by the British military under a field general court martial. The *Irish Law Times* reported that some of these prisoners had been executed. The journal was careful to add the announcement of the British military 'that no rebels have been shot without trial'.¹⁸ Nevertheless, the journal did include reports of the impediments placed before solicitors representing prisoners, who were only given restricted access to their clients and were excluded from the military trials.¹⁹ The trial of Roger Casement for high treason, the only major figure in the rising to be tried by the ordinary courts, was followed with great interest and provoked some academic discussion on the nature of the law on treason.²⁰

Secession from the United Kingdom

By late 1916 the *Irish Law Times* had moved on to more conventional legal concerns. A new law on larceny needed to be analysed.²¹ In 1917 the *Irish Law Times* was busy celebrating its fiftieth anniversary.²² The First World War continued its dismal course and the news section of the *Irish Law Times* returned to reports of wounds and deaths suffered by members of the legal profession involved in the conflict. Yet, it soon became clear that the British military had badly miscalculated when it executed the leaders of the 1916 rising by firing squad. News of the executions provoked a growing wave of sympathy that resulted in a new enthusiasm for the objectives of the dead leaders, who were now treated as martyrs.

The pages of the *Irish Law Times* are more remarkable for their omissions than for their contents during the troubled years that followed the 1916 rising. Sinn Féin's erroneous association with the rising ensured that it became the centre of attention for Irish nationalists who supported complete secession from the United Kingdom in the form of a fully sovereign Irish republic. The years that followed saw a substantial rise in support for Sinn Féin, which augmented its popularity by associating itself with

17 *ILT*, 50.2583 (1916), p. 189.

18 *ILT*, 50.2570–71 (1916), pp. 108–09.

19 *ILT*, 50.2573 (1916), p. 128.

20 *ILT*, 50.2579 (1916), p. 164; *ILT*, 50.2580 (1916), p. 171; *ILT*, 50.2584 (1916), p. 196; and *ILT*, 50.2578 (1916), pp. 229–30. Roger Casement (1864–1916) served with the British Foreign Office as a diplomat until 1913. He became increasingly involved with Irish nationalist activities and was executed in 1916 for attempting to secure German assistance for the 1916 rising. *Dictionary of Irish Biography* (Cambridge: Cambridge University Press, 2009) II, pp. 402–06.

21 Larceny Act 1916. See *ILT*, 50.2604 (1916), pp. 333–34, and *ILT*, 50.2605 (1916), pp. 339–40.

22 For example, see *ILT*, 51.2608 (1917), p. 15.

the campaign to resist the extension of military conscription to Ireland.²³ Evidence of this rise in sympathy is almost entirely absent from the pages of the *Irish Law Times*. The *Irish Law Times* was, of course, a law journal and not a newspaper. Nevertheless, it did include commentaries on legal aspects of major political events. These included the aftermath of the October revolution in Russia, the conclusion of the First World War as ‘the greatest drama in human history’ and proposals to create a new League of Nations.²⁴ Closer to home the journal had also provided factual reports on the progress of the special ‘Irish Convention’ organized by the British government in 1917 to consider Ireland’s political and constitutional future.²⁵ This failure of this convention to reach an agreed solution left a void for extreme nationalists to fill.

Although the holding of the 1918 election and a reformed electoral law, which allowed women to vote for the first time, received extensive attention in the *Irish Law Times* the electoral triumph of Irish republicans and their radical agenda of constitutional change was not reported.²⁶ The upsurge in support for Sinn Féin saw the party win seventy-three out of a possible 105 Irish seats in the 1918 election for the Westminster parliament. The Irish parliamentary party that had dominated Irish politics since 1874 was reduced to a mere six seats.

The constitutional agenda of Irish republicans soon became apparent. Sinn Féin representatives declined to take their seats in the parliament of the United Kingdom at Westminster and created their own parliament in Dublin known as ‘Dáil Éireann’. The first meeting of this parliament on 21 January 1919 saw the adoption of a declaration of independence.²⁷ Sinn Féin began to organize its own State institutions including a ‘Constitution for Dáil Éireann’, legislation and a system of courts.²⁸ By 1920 the ‘Dáil courts’ were attracting a considerable amount of litigants at the expense of the British

23 On the history and aftermath of the Easter rising see Max Caulfield, *The Easter Rebellion* (Dublin: Gill and Macmillan, 1965), and George Dangerfield, *The Damnable Question* (London: Barnes and Noble, 1979). The divisive issue of conscription in Ireland can be seen in a stormy meeting of the council of the Irish Law Society. *Irish Law Society Gazette*, 11.2 (1917), pp. 8–9.

24 *ILT*, 52.2659 (1918), p. 9; *ILT*, 52.2703 (1918), pp. 278 and 281; and *ILT*, 52.2704 (1918), pp. 284–85.

25 For example, see *ILT*, 51.2634 (1917), p. 180; *ILT*, 51.2638 (1917), p. 198; *ILT*, 51.2639 (1917), p. 204; and *Irish Law Society Gazette* 11.2 (1917), pp. 19 and 49. See also R. B. McDowell, *The Irish Convention, 1917–18* (London: Routledge, 1970).

26 *ILT*, 52.2668 (1918), pp. 61–62; *ILT*, 52.2669 (1918), pp. 67–68; *ILT*, 52.2670 (1918), pp. 73–74; *ILT*, 52.2671 (1918), pp. 79–80; *ILT*, 52.2672 (1918), pp. 85–86; and *ILT*, 52.2705 (1918), pp. 291–92. The *Irish Law Times* did report on a candidate for the Irish parliamentary party bringing an action for slander against Sir Edward Carson, leader of the Irish unionists, for referring to him as a ‘Sinn Féiner’. *ILT*, 52.2707 (1918), p. 302, and *ILT*, 52.2728 (1919), p. 114.

27 See J. M. Curran, *The Birth of the Irish Free State, 1921–1923* (Alabama: University of Alabama Press, 1980); George Dangerfield, *The Damnable Question* (London: Barnes and Noble, 1979); and Arthur Mitchell,

28 The status of the 1919 Dáil Constitution remains disputed. It only consisted of five short articles all dealing with the regulation of Dáil Éireann. Brian Farrell argues that there was a desire to create a basic law for an ‘emerging state’. Brian Farrell, ‘A Note on the Dáil Constitution, 1919’, *Irish Jurist*, no. 4.1 (1969), p. 135. By contrast, Seán McBride wrote, in a submission to the New Ireland Forum, ‘In addition, the first Dáil adopted “The Democratic Programme of Dáil Éireann”, and a “Provisional Constitution of Dáil Éireann”. [...] Neither of these instruments purported to be a Constitution for the Republic.’ University College Cork (UCC) Archives, O’Rahilly papers, U. 118, Box 6, Submission to the New Ireland Forum, 1984. See also Basil Chubb, *The Constitution of Ireland* (Dublin: Institute of Public Administration, 1966) p. 8, and *The Government and Politics of Ireland* (Oxford: Oxford University Press, 1974), pp. 62–63. For an analysis of the legislation passed by Dáil Éireann between 1919 and 1922 see Brian Farrell, ‘The Legislation of a “Revolutionary” Assembly, Dáil Decrees, 1919–1922’, *Irish Jurist*, 10.1 (1975), p. 112.

courts.²⁹ None of these developments elicited any commentary in the pages of the *Irish Law Times* in 1919 or for much of 1920. The first detailed reference to the Dáil courts appears in November 1920 in a discussion of a resolution passed by the Bar Council that it would be professional misconduct for a barrister to appear before these courts.³⁰ The *Irish Law Society Gazette* mirrored this policy in 1920 when it published a message advising Irish solicitors to avoid practice in any court that was not established by law.³¹

Despite the stance adopted by the *Irish Law Times*, the Sinn Féin policy of organising a parallel State had obvious legal implications and attracted significant public participation. Lawyers, juries and the general public were persuaded or intimidated to boycott the British Crown courts in order to entrench the position of the rival Dáil courts. Legal business before the established courts began to slow down.³² Courts such as the Petty Sessions and Quarter Sessions that dealt with criminal matters at a local level were worst affected. On the other hand, the County Courts, which dealt with civil matters, were forced to deal with a surge of applications for compensation for deaths, injury, and other damage caused by the conflict.³³ Nevertheless, contributors to the *Irish Law Times* avoided detailed commentary on these developments in the early stages of the period of conflict.

For the duration of the Anglo Irish conflict (1919–1921) the *Irish Law Times* only reported on the activities of the Crown courts and legislation emanating from Westminster. The activities of Dáil Éireann and the Dáil courts were largely ignored. By contrast the *Irish Law Times* did provide sustained attention to the development of the embryonic courts of ‘Northern Ireland’ which came into existence as a separate and autonomous part of the United Kingdom following the enactment of the Government of Ireland Act 1920.³⁴ In addition, the journal reported on the opening of the parliament of ‘Southern Ireland’, an entity that comprised the larger part of the island, that was also created by the 1920 Act as an autonomous part of the United Kingdom. The failure of this institution, intended as a political compromise, was indicated in the journal’s report that only fifteen out of sixty-four senators turned up for the formal opening while just four out of 128 members of the House of Commons were present.³⁵ The *Irish Law Times* did not mention the Sinn Féin boycott which ensured that this parliament had no chance of survival.

Although the *Irish Law Times* could be accused of burying its head in the sand in 1919 and 1920 it is clear from the pages of the journal that matters were far from normal in Ireland in these years. The first meeting of Dáil Éireann coincided with the beginning of a low-level, but undeniably vicious, conflict between British security

29 For the history of the Dáil courts see Cahir Davitt, ‘The Civil Jurisdiction of the Courts of Justice of the Irish Republic’, *Irish Jurist*, 3.1 (1968), p. 112; James Casey, ‘Republican Courts in Ireland 1919–1922’, *Irish Jurist*, 5.1 (1970), p. 321; and Mary Kotsonouris, *Retreat from Revolution: The Dáil Courts, 1920–24* (Dublin: Irish Academic Press, 1994). For an analysis of the use made by Irish revolutionaries of the British and Irish courts between the Easter rising and the civil war see David Foxton, *Revolutionary Lawyers — Sinn Féin and Crown Courts in Ireland and Britain 1916–1923* (Dublin: Four Courts Press, 2008).

30 *ILT*, 52.2806 (1920), pp. 272–73.

31 A special Law Society committee concluded that it ‘cannot advise Solicitors of the Supreme Court to practice in any Courts acting in Ireland under any authority other than the authority established by law’. *Irish Law Society Gazette*, 14.5 (1920), p. 33.

32 See *ILT*, 54.2802 (1920), p. 247; *ILT*, 55.2836 (1921), p. 139; *ILT*, 55.2839 (1921), p. 156.

33 *ILT*, 55.2818 (1921), p. 30.

34 For example, see *ILT*, 55.2851 (1921), pp. 230–31; *ILT*, 55.2853 (1921), pp. 240–41 and 243; *ILT*, 55.2854 (1921), pp. 246–47; *ILT*, 55.2856 (1921), p. 259; *ILT*, 55.2857 (1921), pp. 266–68; and *ILT*, 56.2870 (1922), p. 24.

35 *ILT*, 55.2840 (1921), p. 165. On the courts of Southern Ireland, see *ILT*, 55.2853 (1921), p. 241; *ILT*, 55.2857 (1921), p. 267; and *ILT*, 55.2866 (1921), pp. 324–25.

forces and the Irish Republican Army (IRA).³⁶ The realities of the conflict occasionally impinge on the pages of the *Irish Law Times* in 1919. In July of that year a small news item appeared concerning the assassination of a resident magistrate in Westport Co. Mayo. This was John Charles Milling, a native of the town and still remembered as a fair and compassionate magistrate, whose death was one of the first assassinations in an increasingly bitter conflict.³⁷ The journal also reported the reluctance of members of the public to give evidence concerning the incident.³⁸ In these circumstances it is not surprising that Milling's killers have never been identified. A later issue reported on the explosion of an illegal arsenal of bombs and gelignite in a tenement house in Cork city.³⁹ Only a few sporadic indicators of the conflict are reflected in late 1919.⁴⁰ This soon changed. In early 1920 reports of slain and wounded police officers begin to appear with depressing regularity.⁴¹ By mid-1920 reports of this nature begin to decline, most likely because such incidents had now become commonplace. By this time two units of special constables known as the 'Black and Tans' and the Auxiliaries had reinforced the Irish police.⁴² These special constables were former British soldiers who were veterans of the First World War. They soon acquired a reputation for poor discipline and for ruthless reprisals against the civilian population. The accuracy of this reputation is confirmed by frequent reports in the *Irish Law Times* of legal actions aimed at getting compensation for damage to property, in particular the burning of houses and creameries, caused by these paramilitary forces.⁴³

One of the earliest signs that this disorder might extend to the courts came in July 1920 when the *Irish Law Times* reported a resolution passed by Westmeath County Council, which was controlled by Sinn Féin. The resolution demanded the closure of Crown courts, the eviction of their officials and the prevention of judges from entering courthouses in the county.⁴⁴ In mid-1920 a short article was published on the intimidation of juries as a result of the increase in this phenomenon.⁴⁵ Reports of incidents of agrarian disorder, which paralleled the conflict between the IRA and the security forces in many parts of the country, gained greater prominence.⁴⁶ Readers also encountered announcements concerning increases in the salaries of resident magistrates to reflect the greater risks of the office.⁴⁷ The *Irish Law Times* reported instances of judges being presented with white gloves, a ceremony than indicated that there were no criminal cases to hear.⁴⁸ This phenomenon may have reflected the decline of the regular

36 See Curran, *The Birth of the Irish Free State, 1921–1923*, and Charles Townsend, *The British Campaign in Ireland, 1919–1921* (Oxford: Oxford University Press, 1975).

37 'The Three Joes and the Westport Murder', *Mayo News* (1 November 2016) [accessed 11 May 2018].

38 *ILT*, 53.2738 (1919), p. 178.

39 *ILT*, 53.2739 (1919), p. 180.

40 Exceptions include a reference in one issue to compensation for the widows of police officers who are likely to have been shot by the IRA (although this is never made clear in the reports) and the suppression of certain organisations associated with Sinn Féin. *ILT*, 53.2750 (1919), p. 245, and *ILT*, 53.2752 (1919), p. 257. For a report on a raid on a Sinn Féin bank, see *ILT*, 54.3773 (1920), p. 69.

41 *ILT*, 54.3773 (1920), p. 69; *ILT*, 54.3775 (1920), p. 82; *ILT*, 54.3776 (1920), p. 87; *ILT*, 54.3778 (1920), p. 99; *ILT*, 54.3779 (1920), p. 106.

42 The term 'Black and Tans' was derived from an Irish hunt and referred to the colours of their uniform. The Auxillaries was made up of former officers in the British army. Charles Townsend, *The British Campaign in Ireland, 1919–1921* (Oxford: Oxford University Press, 1975).

43 For example, see *ILT*, 54.3800 (1920), p. 247; *ILT*, 54.3803 (1920), p. 254; *ILT*, 54.3809 (1920), pp. 286–87; *ILT*, 55.2832 (1921), pp. 116–17; *ILT*, 55.2840 (1921), p. 164; *ILT*, 55.2864 (1921), p. 313. See also *ILT*, 56.2904 (1922), p. 230.

44 *ILT*, 54.3791 (1920), p. 181. See also *ILT*, 54.2796 (1920), p. 211.

45 *ILT*, 54.3780 (1920), p. 113, and *ILT*, 54.3789 (1920), p. 162. See also *ILT*, 55.2827 (1921), p. 87; *ILT*, 55.2828 (1921), p. 94; and *ILT*, 55.2841 (1921), p. 170.

46 For example, see *ILT*, 54.3780 (1920), p. 116.

47 For example, see *ILT*, 54.3788 (1920), p. 155; *ILT*, 54.3789 (1920), pp. 162–63; and *ILT*, 54.3790 (1920), p. 167.

48 For example, see *ILT*, 55.2837 (1921), p. 146.

Irish police, the Royal Irish Constabulary, who found themselves targeted in the conflict. It may also have reflected increased reluctance on the part of the civilian population to report crimes to Crown authorities. Nevertheless, the fact that such instances were considered worthy of record indicates that, although legal business before the Crown courts had slowed down, a complete absence of cases remained a rarity.⁴⁹

The immediate response of the British government to this state of disorder was the enactment of the Restoration of Order in Ireland Act 1920. This allowed for the replacement of jury trials with courts martial without the need to declare martial law. Reports and comments on proceedings in courts martial soon gained prominence in the *Irish Law Times*.⁵⁰ The *Irish Law Times* also reported on the prohibition on holding coroners' inquests, official enquiries into causes of death, under the 1920 Act.⁵¹ This was deemed necessary as a result of their tendency to find the British security forces liable for the deaths of Irish civilians. The policy inherent in the Restoration of Order Act — that is, minimising the necessity to declare martial law — ended in failure. This is reflected in the small notices that appeared in the *Irish Law Times* in 1921 announcing the declaration of martial law in the parts of Ireland in which the conflict was most intense.⁵²

By mid-1920 the IRA began to directly target the premises of the Crown courts. Although the courts in the large towns were protected behind troops and barbed wire fences, the smaller courthouses in provincial Ireland remained vulnerable. The news section of the *Irish Law Times* provided accounts of courthouse after courthouse going up in flames in the smaller towns.⁵³ The challenges in protecting smaller courthouses and the perceived failings of civilian institutions ensured that the British military itself closed courts in areas that were under martial law.⁵⁴ The news section also provided the occasional story of defiance. For example, in August 1920 the journal reported the burning of the courthouse in Borrisokane, Co. Tipperary. The following morning the presiding judge insisted on holding court in the smoking ruins. The Irish climate conspired to increase the misery of attending lawyers and litigants when it began to rain in the afternoon. The judge refused to adjourn and the soaked court continued to sit in the burnt-out court until business was complete.⁵⁵

49 For example, see *ILT*, 55.2836 (1921), p. 139, and *ILT*, 55.2854 (1921), p. 248. Difficulties did not end with the signing of the 1921 Treaty. See *ILT*, 56.2875 (1922), p. 54; *ILT*, 56.2884 (1922), p. 114; and *ILT*, 56.2891 (1922), p. 154.

50 For example, see *ILT*, 54.2808 (1920), pp. 281–83; *ILT*, 54.2812 (1920), p. 306; *ILT*, 54.2813 (1920), pp. 312–13; and *ILT*, 55.2819 (1921), p. 35.

51 *ILT*, 54.2798 (1920), p. 224, and *ILT*, 56.2872 (1922), p. 38.

52 For example, see *ILT*, 54.2812 (1920), p. 306.

53 *ILT*, 54.3783 (1920), p. 130 (Cloyne, Co. Cork); *ILT*, 54.2784 (1920), p. 135 (Cashel, Co. Tipperary, and Baltinglass, Co. Wicklow); *ILT*, 54.2795 (1920), p. 206 (Borrisokane, Co. Tipperary, and Omagh, Co. Tyrone); *ILT*, 54.2800 (1920), p. 236 (Donegal, Co. Donegal); *ILT*, 54.2801 (1920), p. 241 (Ennistymon, Killaloe, Kilrush, and Tulla, Co. Clare); *ILT*, 54.2802 (1920), p. 247 (Ballinamore, Co. Leitrim). See also *ILT*, 54.2798 (1920), p. 223; *ILT*, 54.2803 (1920), p. 255; *ILT*, 55.2828 (1921), p. 94 (Monaghan, Co. Monaghan, and Newtownbutler, Co. Fermanagh). Less destructive methods of halting legal proceedings were also employed including the seizure of vital records. For instance, *ILT*, 55.2829 (1921), p. 100. On other occasions courthouses were locked up by local authorities controlled by Sinn Féin. *ILT*, 54.2800 (1920), p. 236. On other occasions the magistrates simply failed to attend appointed sessions due to intimidation. *ILT*, 54.2800 (1920), p. 236, and *ILT*, 55.2841 (1921), p. 170. It should be noted that intimidation continued after the signing of the 1921 Treaty. For example, *ILT*, 56.2884 (1922), p. 114. For the rebuilding of some of these courthouses see *ILT*, 59.3066 (1925), p. 261; *ILT*, 61.3163 (1927), p. 219; and *ILT*, 64.3303 (1930), p. 119. On the completion of the reconstruction of the Four Courts see *ILT*, 65.3370 (1931), p. 209, and *ILT*, 65.3371 (1931), pp. 214–15.

54 *ILT*, 55.2830 (1921), p. 106.

55 *ILT*, 54.2795 (1920), p. 206. A similar event was reported in Cloyne Co. Cork in May 1920. See *ILT*, 54.2783 (1920), p. 130.

By 1920 the *Irish Law Times* began to report on the deliberate burnings of country houses belonging to prominent magistrates and other legal figures.⁵⁶ The IRA was prepared to target any person believed to be assisting the British administration while British security forces carried out similar reprisals against persons believed to be assisting the IRA. This policy of destruction and reprisals often placed ordinary people in impossible situations. In 1920 the *Irish Law Times* provided an account of a hearing at Avoca Petty Sessions in which the police opposed the renewal of the licence of a local hotel and public house to serve alcoholic drinks. The owners of both establishments had refused to serve refreshments to the police and military. The presiding magistrate, Lord Wicklow, noted that in ordinary times the licences would have been refused but added that it had to be recognized that conditions were not normal in the Ireland of 1920.⁵⁷ He and his colleagues recognized that serving drinks to the military and police would place these establishments in a dangerous position and that the security forces could not possibly protect them. In these circumstances the licences were granted despite the objections of the police.⁵⁸

The burning of legal records contained in Dublin's Custom House in May 1921 is not reported in the *Irish Law Times*. This strike at the heart of the British administration proved to be a propaganda coup for the IRA even though it suffered disastrous losses in its accomplishment. Nevertheless, the effects of this event can be traced in the *Irish Law Times* through announcements concerning alternative facilities for work formerly carried out in the Custom House.⁵⁹ Although it was not apparent at the time, this proved to be the last major event of the Anglo Irish conflict.

The calling of a truce between the IRA and British security forces on 11 July 1921 brought a period of relative calm to the conflict.⁶⁰ One historical account of this period claims, 'The suddenness with which all serious outrage ceased was impressive testimony to the IRA's overall control'.⁶¹ However, the news section in the *Irish Law Times* provides ample evidence that the truce did not entirely eliminate attacks against the Crown courts. Kidnappings of persons associated with the administration of law continued. It remained impossible to enforce formal written orders issued by the courts known as 'writs'.⁶² Jurors continued to decline to report to the courts either through conviction or intimidation.⁶³

The tendency of the *Irish Law Times* to ignore the Dáil courts continued after the declaration of a truce in 1921, even though these courts could now operate in the open. The truce allowed some Irish barristers to begin appearing before the Dáil courts. These included John A. Costello, who worked as a case reporter for the *Irish Law Times*.⁶⁴ This dual role is a testament to a certain degree of tolerance of differing

56 *ILT*, 54.2803 (1920), p. 255; *ILT*, 54.2804 (1920), pp. 259–60; *ILT*, 54.2805 (1920), p. 265; *ILT*, 56.2910 (1922), p. 265; and *ILT*, 57.2966 (1923), p. 296.

57 Ralph Francis Howard (1877–1946) became the seventh Earl of Wicklow on the death of his father in 1891. He served with the British army in the Second Boer War (1899–1902) and served as a magistrate after his return home. He was appointed to Seanad Éireann in 1922 and served as a senator until 1928. See Oireachtas members database www.oireachtas.ie/en/members/member/Ralph-Howard.S.1922-06-12/ [accessed 25 May 2018].

58 *ILT*, 54.2801 (1920), p. 241.

59 For example, *ILT*, 55.2835 (1921), p. 135; *ILT*, 55.2836 (1921), p. 139; and *ILT*, 55.2837 (1921), p. 146. A direct reference is only made to the destruction of the custom house in early 1922. *ILT*, 56.2870 (1922), p. 23.

60 *ILT*, 55.2845 (1921), p. 194, and *ILT*, 56.2870 (1922), p. 23.

61 Charles Townsend, *The British Campaign in Ireland, 1919–1921* (Oxford: Oxford University Press, 1975).

62 *ILT*, 55.2848 (1921), p. 212, and *ILT*, 55.2856 (1921), p. 260. These difficulties continued after the signing of the Treaty. *ILT*, 56.2875 (1922), p. 56.

63 *ILT*, 55.2854 (1921), p. 248, and *ILT*, 55.2863 (1921), p. 308.

64 See footnote 12 above.

political views on the part of contributors to the *Irish Law Times*. Nevertheless, this did not result in reversal of the policy of the journal in relation to the reporting of decisions of the Dáil courts. The few exceptional references to the Dáil courts that do appear in the *Irish Law Times* in early 1922 are largely confined to their treatment of decisions of the Crown courts.⁶⁵

The declaration of a truce was followed by a series of difficult political negotiations between the British government and the leaders of Sinn Féin.⁶⁶ On 6 December 1921 British and Irish representatives signed the ‘Articles of Agreement for a Treaty between Great Britain and Ireland’ in London. This document is often called the ‘Anglo Irish Treaty’ or the ‘1921 Treaty’ but the importance of this document is reflected in the common practice in Ireland of referring to it as simply ‘the Treaty’. This agreement facilitated the creation of a self-governing State in the south and west of the island that would be known as the ‘Irish Free State’. It also recognised the right of Northern Ireland to remain part of the United Kingdom.⁶⁷ The *Irish Law Times* welcomed the signing of the Treaty with ‘profound satisfaction and relief’ and added that ‘No profession has suffered more than that of the law by the unrest of the past few years’. The news section of the journal expressed hopes of better days to come.⁶⁸ Sadly, these hopes proved to be premature.

The Irish Civil War

The Irish Free State was not the sovereign republic that many Irish nationalists had hoped and expected. Instead, it enjoyed the same status as the self-governing Dominions of the British Empire. In addition, there was a transition period that lasted exactly one year between the signing of the 1921 Treaty and the formal creation of the Irish Free State under British law.⁶⁹ This period of transition saw a bitter civil war break out in Ireland between those who supported and those who opposed the settlement imposed by the 1921 Treaty.⁷⁰ This conflict had a serious impact on legal affairs that could not be ignored in the pages of the *Irish Law Times*. The Civil War ensured that the provisional government appointed to take over the embryonic Irish Free State made extensive use of military courts, which replaced those formerly operated by the withdrawing British army.⁷¹

The *Irish Law Times* reported on the sad destruction of the Four Courts buildings during the fighting that followed the outbreak of hostilities on 28 June 1922. The loss of the buildings that housed the most important Irish courts was a serious blow to the administration of justice. Even more devastating was the blow to Irish legal history. The Public Record Office within the Four Courts complex was the main repository of Irish legal documents dating back to the thirteenth century. An explosion of munitions reduced these valuable records to ashes. The *Irish Law Times* reported, ‘It is with feelings of great sorrow we record the fact that the Four Courts [...] are now piles of gaunt ruins as a result of the recent fighting in the city’. The journal mourned the loss of ‘the Record

65 For example, see *ILT*, 56.2876 (1922), p. 62.

66 The classic historical account of these negotiations can be found in Frank Pakenham (Lord Longford) *Peace by Ordeal — The Negotiation of the Anglo-Irish Treaty, 1921* (London: Sidgwick and Jackson, 1935).

67 See Articles 11 to 15 of the Articles of Agreement for a Treaty between Great Britain and Ireland, 6 December 1921. Under Article 11 the Northern Ireland parliament was given the right to opt out of the Irish Free State. This option was duly exercised.

68 *ILT*, 55.2863 (1921), p. 307

69 See Thomas Mohr, ‘Law and the Foundation of the Irish State on 6 December 1922’, *Irish Jurist*, no. 59 (2018), 31–58.

70 See Curran, *The Birth of the Irish Free State, 1921–1923*, and Michael Hopkinson, *Green Against Green: The Irish Civil War* (Dublin: Gill and Macmillan, 1988).

71 *ILT*, 56.2905 (1922), pp. 234–35.

Office with its priceless treasures of the past, which are absolutely irreplaceable, are all gone'.⁷² Happily, this conclusion proved not to be entirely accurate. The next issue of the *Irish Law Times* reported on the salvage operation at the Four Courts. This included reports of documents held in safes and strong rooms that had been preserved.⁷³ Partly burnt documents had been blown all over the city of Dublin and the *Irish Law Times* published notices appealing to the public to preserve these documents and return them to the authorities.⁷⁴ The journal also reported the discovery of the Great Seal of Ireland, which was discovered intact in the ruins some weeks after the explosion.⁷⁵

The *Irish Law Times* and the New Legal Order

The signing of the Anglo Irish Treaty on 6 December 1921 altered the relationship between the *Irish Law Times* and institutions dominated by Sinn Féin. The new Irish provisional government created in January 1921 was composed entirely of members of Sinn Féin who supported the 1921 Treaty. The provisional government had no official status under British statute law until 31 March 1922.⁷⁶ Nevertheless, the *Irish Law Times* did not wait for the completion of the official process of providing legal recognition to the provisional government before reporting on its activities and printing its proclamations.⁷⁷ This *de facto* recognition of the power and position of the new provisional government represented an abandonment of strict adherence to the law of the United Kingdom. It was clear that the provisional government represented the future in Irish politics and the *Irish Law Times* had to adapt to reality.

This new policy ensured that the journal reported the funeral of the chairman of the provisional government, Michael Collins, when he was killed in an ambush in August 1922.⁷⁸ Collins occupied a complicated place in Irish popular opinion at this time. His formidable organisational ability had had an incalculable effect on the strength of the IRA campaign of 1919 to 1921, a reality that did nothing to endear him to unionists or many moderate nationalists. Yet, he was also one of the signatories of the Anglo Irish Treaty and had taken firm action against militant opponents of that agreement in 1922. Consequently, the report on his funeral simply noted that Collins' funeral was 'probably the largest ever seen in Dublin' and noted the prominent legal figures in attendance. No attempt was made to praise or condemn his career or assess his place in Irish history.⁷⁹

72 *ILT*, 56.2892–93 (1922), p. 161.

73 *ILT*, 56.2898 (1922), p. 193, and *ILT*, 58.2976 (1924), p. 38. The Irish Law Society gained permission to remove many of their records before the destruction of the Four Courts. *Irish Law Society Gazette*, 16.3–4 (1922), pp. 15–17. In more recent years some of the lost records have been reconstructed by reference to copies held outside Dublin. These can be accessed online thanks to 'CIRCLE', the [Calendar of Irish Chancery Letters](#).

74 *ILT*, 56.2892–93 (1922), p. 164, and *ILT*, 56.2898 (1922), p. 193.

75 *ILT*, 56.2896 (1922), p. 177.

76 Irish Free State (Agreement) Act 1922. This legislation finally clothed the 1921 Treaty with legal status under British law. It also allowed the British to formally transfer powers to the Irish provisional government by means of Order in Council.

77 For example, see *ILT*, 56.2869 (1922), pp. 14–15; *ILT*, 56.2872 (1922), p. 38; and *ILT*, 56.2877 (1922), p. 66. When the *Irish Law Times* recognized the provisional government it began to report on the affairs of bodies set up by Dáil Éireann. *ILT*, 56.2881 (1922), p. 96, and *ILT*, 56.2883 (1922), pp. 107–08. The *Irish Law Society Gazette* also printed the decrees of the Irish provisional government before 31 March 1922. (1922) 15:9 *Irish Law Society Gazette*, 15.9 (1922), pp. 53–54.

78 *ILT*, 56.2901 (1922), pp. 210–11. Michael Collins (1890–1922) was an Irish nationalist leader who fought in the 1916 rising and was appointed minister for finance in 1919 by the first Dáil Éireann. He was a member of the Irish delegation who negotiated and signed the 1921 Anglo Irish Treaty. He served as chairman of the Irish Provisional Government until his assassination in 1922. *Dictionary of Irish Biography* (Cambridge: Cambridge University Press, 2009) II, pp. 678–82.

79 *ILT*, 56.2901 (1922), pp. 210–11.

The recognition of new authorities in Dublin did not have a significant impact on the reporting of court cases in the *Irish Law Times*. This was because the Irish provisional government decided that it would maintain the established Crown courts used under British rule until such time as it could create a new Irish court system. This decision doomed the Dáil courts, which were gradually suppressed.⁸⁰ The pragmatism of the provisional government soon yielded dividends. By October 1922 the *Irish Law Times* was able to report that, despite the continuing civil war, the local courts were now functioning normally in almost all the counties of Ireland.⁸¹

The *Irish Law Times* itself was not immune to the disruption that accompanied the periods of conflict during these revolutionary years. Issues failed to appear during the two worst periods, the outbreak of the 1916 rising and the outbreak of civil war in 1922. Special double issues containing editorials replete with apologies followed these absences.⁸² The premises of the *Irish Law Times* was fortunate to survive the outbreak of the Irish civil war in 1922 as the adjoining buildings were all burned to the ground.⁸³ Nevertheless, the absence of electric power hampered the publication of the journal for some time after the fighting in Dublin had ceased.⁸⁴

The nature of the *Irish Law Times* ensured that its academic articles tended to be short and were often written by practicing lawyers for the benefit of other practicing lawyers.⁸⁵ Nevertheless the periods of conflict did have a significant impact on the articles that appeared in this journal. As is often the case, academic attention followed political events. For example, articles on the meaning and nature of martial law begin to appear in the law journal soon after martial law was imposed in 1916.⁸⁶ However, readers hoping for articles about the legislation of Dáil Éireann or the decisions of the Dáil courts between 1919 and 1922 were bound to be disappointed.⁸⁷ The inclusion of articles from English law journals sometimes included remarks that would not have pleased all Irish nationalists. One example is an article reprinted from the *Solicitors' Journal and Weekly Reporter* that referred to the 'soi disant Irish Republic' and concluded that the Irish Free State created by the 1921 Treaty would, in reality, be a 'Non-Sovereign State'.⁸⁸

Notices and articles began to appear on the drafting of the new Constitution of the Irish Free State as 1922, a year of political and legal transition, progressed.⁸⁹ The articles encountered during this period occasionally include reflections on the magnitude of the change that was occurring in Ireland. A new Irish State was being born and was

80 *ILT*, 56.2896 (1922), p. 178, and *ILT*, 56.2909 (1922), p. 261. The background to the decision to abolish the Dáil courts is discussed in Thomas Mohr, 'British Involvement in the Creation of the Constitution of the Irish Free State', *Dublin University Law Journal*, 30.1 (2008), p. 166.

81 *ILT*, 56.2908 (1922), p. 252. However, difficulties in using the courthouses in small towns still remained. *ILT*, 56.2909 (1922), pp. 260–61. See also *ILT*, 56.2909 (1922), p. 258, in relation to the functioning of the courts in Northern Ireland.

82 See *ILT*, 50.2570–71 (29 April and 6 May 1916); *ILT*, 50.2892–93 (1 and 8 July 1922); and *ILT*, 50.2894–95 (15 and 22 July 1922). The publication of the *Irish Law Society Gazette* was also disrupted by the outbreak of civil war. See *Irish Law Society Gazette*, 16.3 and 16.4 (1922).

83 *ILT*, 50.2892–93 p. 161.

84 *ILT*, 50.2892–93 p. 160.

85 The short articles in the *Irish Law Times* in the 1920s and 1930s were usually around 1000 words in length. Longer articles were usually serialised into segments of approximately 1000 words. For example, see the three part anonymous article on 'Article 73 of the Constitution, Irish Free State' in *ILT*, 63.3253 (1929), pp. 127–28; *ILT* 63.3254 (1929), pp. 133–34; and *ILT* 63.3255 (1929), pp. 139–40.

86 *ILT*, 50.2570–71 (1916), p. 111. This was followed some weeks later by a notice issued by the British military authorities forbidding civilians to carry firearms. *ILT*, 50.2582 (1916), p. 184. See also *ILT*, 50.2572 (1916), p. 125; *ILT*, 50.2575 (1916), pp. 135–36; and *ILT*, 50.2576 (1916), pp. 141–42.

87 Isolated references to the Dáil courts do appear in the *Irish Law Times* but these are largely confined to their treatment of decisions of the Crown courts. *ILT*, 56.2876 (1922), p. 62.

88 *ILT*, 56.2892–93 (1922), pp. 164–65.

89 *ILT*, 56.2871 (1922), p. 33; *ILT*, 56.2877 (1922), p. 68; *ILT*, 56.2879 (1922), p. 79; and *ILT*, 56.2891 (1922), p. 155. See also *ILT*, 57.2920 (1923), p. 7; *ILT*, 57.2928 (1923), pp. 61–62; *ILT*, 57.2929 (1923), pp. 67–68; *ILT*, 57.2930 (1923), pp. 73–74; and *ILT*, 57.2931 (1923), pp. 79–80.

moving away from the old certainties of the United Kingdom of Great Britain and Ireland. Yet the transition proved surprisingly smooth. In December 1922 the *Irish Law Times* noted 'The Irish Free State came into existence on Wednesday [6 December 1922] and is now one of the group of countries which form the Commonwealth of British Nations'.⁹⁰ The only noticeable signs of the change was the appearance of Irish tricolour flags over the city and large queues at the post offices waiting to buy the first postage stamps of the Irish Free State.⁹¹ The *Irish Law Times* concluded 'The transition was hardly noticeable [...] in the city of Dublin: and yet the change is tremendous and far-reaching'.⁹² Civil war still raged in parts of the country but the victory and survival of the new State was no longer in doubt. The civil war finally ended in May 1923 and the process of building a new Irish State could finally begin without hindrance.

Did the *Irish Law Times* itself change with the formal establishment of the Irish Free State? Obviously, the journal had to adapt to the emergence of a new legal system. The journal devoted considerable attention to the creation of a new Irish court system introduced in 1924.⁹³ Once again, the change was extremely smooth and the retention of many members of the judiciary from the Crown courts won praise from contributors to the *Irish Law Times*.⁹⁴ Although the journal declared the 'beginning of a new era in legal matters' one commentator noted 'Going into any of these Courts it was hard to realise the change that had taken place. The work was proceeding with the utmost regularity and expedition'.⁹⁵

The creation of a new legal order resulted in lawyers becoming acquainted with new terminology. New courts required new judicial titles and, in any case, the old term 'Lord Justice' was no longer considered appropriate.⁹⁶ The terms related to the new legislature were drawn from the Irish language with 'Oireachtas' for parliament, 'Dáil Éireann' for the lower house and 'Seanad Éireann' for the senate or upper house. Yet by the late 1920s the *Irish Law Times* was still referring to 'nisi prius courts'⁹⁷ and 'Chancery courts' even though these terms enjoyed no official status in the new Irish legal system.⁹⁸ Contributors to the journal were often unenthusiastic about the new terminology that came with the new legal system. For example, one complained that no explanation had been given for the decision to create the title of 'Senior Counsel' to describe the higher rank of barrister as an alternative to 'King's Counsel', even though the republican sentiment behind the decision was obvious.⁹⁹

It is also possible to detect some resistance to Irish language terms. In 1924 the Chief Justice of the Supreme Court used the Irish language when opening the new

90 *ILT*, 56.2915 (1922), p. 295.

91 *Irish Independent* and *Irish Times*, 7 December 1922.

92 *ILT*, 56.2915 (1922), p. 295.

93 For example, see *ILT*, 58.2988 (1924), pp. 107–08; *ILT*, 58.2989 (1924), pp. 113–14; *ILT*, 58.2990 (1924), pp. 119–20; *ILT*, 58.2991 (1924), pp. 130–31; and *ILT*, 58.2994 (1924), pp. 151–52.

94 *ILT*, 58.2993 (1924), pp. 143 and 144.

95 *ILT*, 58.2994 (1924), p. 149, and *ILT*, 58.2998 (1924), p. 172.

96 *The Law Journal — Irish Free State Section* (1931), p. 20.

97 For example, *ILT*, 58.2998 (1924), p. 172; *ILT*, 60.3101 (1926), p. 167; *ILT*, 63.3247 (1929), p. 93; 'Nisi prius' can be translated as 'unless before'. In the middle ages nisi prius courts were courts of original jurisdiction. By the twentieth century, the term was used to refer to criminal courts on circuit.

98 For example, see *ILT*, 58.2994 (1924), p. 149. The Court of Chancery was a court of equity that developed in medieval England. A parallel Court of Chancery also developed in medieval Ireland. Following the enactment of the Supreme Court of Judicature Act (Ireland) 1877 the 'Chancery Division' of the Irish High Court of Judicature maintained jurisdiction in matters of equity. The enactment of the Courts of Justice Act 1924 saw this jurisdiction transferred to a new Irish High Court. The term 'Chancery Division' was not maintained under the new court system created in 1924.

99 *ILT*, 58.2999 (1924), pp. 179–81. For more details, see Eamonn Hall, 'Mr Solicitor', *Law Society Gazette*, 99.3 (2005), p. 14.

courts and declared ‘the silence of the Gael in Courts of Law is broken’.¹⁰⁰ Nevertheless, in the late 1920s commentators in the *Irish Law Times* were still referring to the official government publication as the ‘Dublin Gazette’ even though it had been renamed the ‘Iris Oifigiúil’ in 1922.¹⁰¹ Pamphlets containing protests at the imposition of compulsory Irish language examinations in order to qualify for the legal professions were published in full.¹⁰² The journal was also slow to recognize the change in place names that had come with the creation of the Irish Free State. For example ‘Dún Laoghaire’ in county Dublin was still referred to as ‘Kingstown’ for some years after 1922.¹⁰³ The continued reliance on British journals and newspapers ensured that the *Irish Law Times* tended to refer to the ‘British Empire’ in the 1920s in place of the term ‘British Commonwealth’ preferred by the Irish government.¹⁰⁴

A deliberate effort appears to have been made by the *Irish Law Times* to court the new judiciary of the Irish Free State. In particular, articles on the career and accomplishments of Hugh Kennedy, who became the first attorney general of the Irish Free State and later the first Chief Justice of the Irish Supreme Court, began to appear in the journal.¹⁰⁵ Kennedy had not been associated with Sinn Féin before the signing of the 1921 Treaty but he was one of the first senior barristers to recognize the emergence of a new legal order in the early 1920s. He was appointed to the position of ‘Law Officer’, or legal adviser to the provisional government in early 1922.¹⁰⁶ Soon after the *Irish Law Times* recognized the Irish provisional government it also began to pay significant attention to its leading legal figure. The contributors to the *Irish Law Times* joined the rest of the legal professions in embracing a man who represented a new legal order.

The deference shown to Kennedy in the years that followed are reflected in the publication of a series of letters from the Chief Justice’s tour of North America in 1928. These publications include a description of Kennedy’s railway journey across America, complete with an exhaustive account of the layout of his private carriage.¹⁰⁷ Readers of

100 *ILT*, 58.2994 (1924), pp. 153–54. The *Irish Law Times* provides a quote in Irish in 1932. *ILT*, 66.3436 (1932), p. 295.

101 The *Irish Law Times* recognizes the new name in a short article in early 1922 and immediately reverts to the old name a few sentences later. *ILT*, 56.2882 (1922), p. 101. See also *ILT*, 57.2958 (1923), p. 248; *ILT*, 57.2958 (1923), p. 284; *ILT*, 58.3001 (1924), p. 192; *ILT*, 58.3003 (1924), p. 203; *ILT*, 59.3051 (1925), p. 172; *ILT*, 59.3095 (1925), p. 127; *ILT*, 59.3056 (1925), p. 203; *ILT*, 59.3061 (1925), pp. 232 and 250; *ILT*, 60.3054 (1926), pp. 187–88; *ILT*, 60.3003 (1926), p. 180; *ILT*, 61.3130 (1927), p. 22; *ILT*, 63.3132 (1929), p. 4; and *ILT*, 63.3275 (1929), p. 262.

102 *ILT*, 63.3241 (1929), pp. 58–59. By the mid-1930s the *Irish Law Times* was prepared to print short news items in the Irish language. For example, see *ILT*, 68.3533 (1934), p. 283; *ILT*, 69.3565 (1935), p. 140; and *ILT*, 69.3593 (1935), p. 339. For articles on the constitutional position of the Irish language see *ILT*, 69.3565 (1935), pp. 137–38, and *ILT*, 69.3566 (1935), pp. 143–44.

103 For example, see *ILT*, 59.3035 (1925), p. 76; *ILT*, 62.3210 (1928), p. 186; *ILT*, 62.3215 (1928), p. 216. See also the references to ‘Bagenalstown’ Co. Carlow in place of ‘Muine Bheag’ *ILT*, 64.3326 (1930), p. 256. See also *The Law Journal — Irish Section* (1933), pp. 162–63.

104 For example, see *ILT*, 58.3009 (1924), p. 240, and *ILT*, 59.3024 (1925), p. 10. The terms ‘Commonwealth’ and ‘Empire’ were used interchangeably in the 1920s and 1930s. This is apparent in the text of the Anglo Irish Treaty of 1921 which uses both terms. In this period the word ‘Commonwealth’ tended to be used by those who favoured greater Dominion autonomy while ‘Empire’ tended to be used by those who favoured maintaining strong links between the Dominions and the United Kingdom.

105 See *ILT*, 56.2871 (1922), p. 30; *ILT*, 56.2872 (1922), p. 38; *ILT*, 56.2879 (1922), p. 79; *ILT*, 56.2882 (1922), p. 101; *ILT*, 56.2888 (1922), p. 148; *ILT*, 57.2927 (1923), p. 56; *ILT*, 57.2953 (1923), pp. 216–17; *ILT*, 57.2958 (1923), p. 248; *ILT*, 57.2959 (1923), pp. 255–56; *ILT*, 57.2962 (1923), p. 271; *ILT*, 58.2979 (1924), p. 57; and *ILT*, 58.2993 (1924), p. 143. See also *Irish Law Society Gazette*, 16.6 (1922), p. 30. Hugh Kennedy (1879–1936) was an Irish barrister who was appointed law officer to the Irish Provisional Government in 1922. He served as the first attorney general of the Irish Free State between 1922 and 1924 and as the first chief justice of the Irish Supreme Court between 1924 to 1936. *Dictionary of Irish Biography* (Cambridge: Cambridge University Press, 2009) V, pp. 111–13.

106 *ILT*, 70.3647 (1936), pp. 341–43, and *Irish Jurist*, vol. 3 (1937), pp. 6–7.

107 *ILT*, 62.3229 (1928), pp. 302–04.

the *Irish Law Times* could read about his excursions to national parks, his impressions of the Canadian Mounted Police, his delight at eating corn on the cob for the first time and his disappointment at missing the Grand Canyon.¹⁰⁸ These eccentric letters contained more than mere travel stories. Those interested in the details of the dances that Kennedy attended, his conversations with American reporters or his observations on American farming techniques can access them in the pages of the *Irish Law Times*.¹⁰⁹ No doubt these letters were of some interest at a time when opportunities for international travel were more limited than today. Kennedy's flashes of vanity must also have allowed country practitioners to enjoy a harmless chuckle at the expense of their Chief Justice. However, many of the letters must also have provoked the occasional yawn. Kennedy provided details on American dairies, Canadian wheat production, the inadequacies of school geography textbooks, the natural advantages of the port of Seattle and the book collections of American judges.¹¹⁰ The *Irish Law Times* even provided its readers with a free portrait of Kennedy to accompany the first instalment of his travel reports.¹¹¹ It is possible that the editor or proprietor of the *Irish Law Times* had a personal affection for Kennedy who had worked been a reporter and contributor to the journal in his younger days.¹¹² Nevertheless, the *Irish Law Times* showed extraordinary deference to the new Irish judiciary in allowing the Chief Justice to use the journal as his personal Facebook page.¹¹³

The Partition of Ireland

Another major change that is reflected in the *Irish Law Times* concerns the partition of the island of Ireland. Partition had been on the political agenda for some years but finally crystallized into reality with the enactment of the Government of Ireland Act 1920 and also reflected in the provisions of the Anglo Irish Treaty of 1921. Northern Ireland remained a part of the United Kingdom and, therefore, became a separate jurisdiction to the south. This required a separation of the court system together with a separation of the judiciary and the legal professions. The *Irish Law Times* and the *Irish Law Society Gazette* greeted the prospect of partition with unrestrained regret.¹¹⁴ There were real fears that the judiciary and legal professions in Belfast and Dublin, once very tight knit, would drift apart. One member of the council of the Law Society had declared in 1916 that those who favoured partition 'ought to be confined in a lunatic asylum'.¹¹⁵

108 *ILT*, 63.3235 (1929), p. 23; *ILT*, 63.3239 (1929), p. 47; *ILT*, 63.3245 (1929), pp. 83–84; *ILT*, 63.3248 (1929), pp. 101–02.

109 *ILT*, 63.3238 (1929), pp. 41–42.

110 *ILT*, 62.3231 (1928), pp. 314–15; *ILT*, 63.3238 (1929), pp. 41–42; *ILT*, 63.3240 (1929), p. 53; and *ILT*, 63.3241 (1929), pp. 59–60.

111 This was intended to be the first of a series that included other prominent judges in the Irish Free State and Northern Ireland. (1928) *ILT*, 62.3229 (1928), p. 299.

112 *ILT*, 70.3647 (1936), pp. 341–43. It is also possible that the editor or proprietor of the *Irish Law Times* only asked Kennedy to send copies of the addresses he gave to the Canadian and American Bar Associations and then felt obliged to publish the travel stories that Kennedy actually sent. Hugh Geoghegan, 'The three judges of the Supreme Court of the Irish Free State, 1925–1936: their backgrounds, personalities and mindsets' in Norma Dawson and Felix Larkin, eds, *Lawyers, the Law and History* (Dublin: Four Courts Press, 2013), p. 36.

113 See also *The Law Journal — Irish Free State Section* (1931), p. 7.

114 The President of the Irish Law Society declared the hope, as early as 1914, that 'the unity of our profession will not be destroyed, and that no Irish Solicitor will be deprived of his Statutory right of practicing his profession in every part of the country'. *Irish Law Society Gazette*, 8.6 (1914), p. 57; *Irish Law Society Gazette*, 10.4 (1916), p. 21; *Irish Law Society Gazette*, 10.6 (1916), p. 42; *Irish Law Society Gazette*, 14.2 (1920), p. 14; *Irish Law Society Gazette*, 14.6 (1920), pp. 39–42; *Irish Law Society Gazette*, 16.2 (1922), pp. 7–9; *Irish Law Society Gazette*, 17.6 (1923), p. 30; and *Irish Law Society Gazette*, 20.6 (1926), p. 30. See also *ILT*, 54.2810 (1920), pp. 292–96; *ILT*, 56.2886 (1922), p. 125.

115 *Irish Law Society Gazette*, 10.6 (1916), p. 44.

The breaches in tradition and in the legal community caused by the partitioning of Ireland were heavy blows to Irish legal publications. The editors of the *Irish Law Times* did make a determined effort to adapt to these new conditions. The opening page of every issue from November 1921 onwards declared that the journal would continue to include reports and commentary on court cases and legislation in Northern Ireland.¹¹⁶ This proved to be a significant strain on the resources of the *Irish Law Times* that would be exacerbated by the eventual emergence of competing law journals that broke its effective monopoly in the 1920s and 1930s.

Conclusion

It remains a matter of some regret that only one Irish law journal was available to cover the most important period of transition in Irish history that occurred between 1916 and 1922. The *Irish Law Society Gazette* was available in these years but its limitations as a journal ensures that it is only a useful source in examining responses to the growing reality of the partitioning of the island of Ireland. As mentioned earlier, the usefulness of *Irish Law Times* as a historical source is also reduced by its strict policy of anonymity in relation to all of its articles and news items. Even the identities of its editorial staff were never made public.

The *Irish Law Times*, as a law journal, focused on news with a definite legal dimension. This could, on occasion, lead to a sense of unreality. For example, the journal did not make any reference to the agreement for a truce in the Anglo Irish war that was concluded on 11 July 1921 or to the peace negotiations that followed. By contrast, the *Irish Law Times* did provide extensive coverage of the issuing of the legislative act known as an ‘Order in Council’ that marked the official cessation of the First World War under British law. This took place in the summer of 1921 even though the actual fighting had concluded several years earlier.¹¹⁷ The timing of commentary and news items in the *Irish Law Times* tended to wait until official announcements had been made in government publications.¹¹⁸

The most important feature of the *Irish Law Times* as a historical source in its coverage of the revolutionary years between 1916 and 1922 is that its readership spanned the division between Irish nationalists and unionists. This feature was not shared by national newspapers in Ireland which were sharply divided along these traditional lines. It is possible that the long-standing policy of anonymity in relation to its contributors and editorial staff may have been partly influenced by the desire to ensure that this journal spanned this traditional divide between nationalist and unionist identity which could often, though not always, be surmised from a person’s surname. This policy proved highly advantageous during this period of conflict between 1916 and 1922 in

116 ‘The Proprietor of the Irish Law Times and Solicitors’ Journal begs to announce that the Reports of Cases in the Court of Appeal and in the High Court of Justice in Northern Ireland will be published in the Irish Law Times Reports; also the Statutes, Rules and Orders enacted and passed there.’ *ILT*, 55.2858 (1921), p. 271. The journal also paid significant attention to the operation of the Boundary Commission that was charged with determining the final border between the Irish Free State and Northern Ireland. The Commission collapsed in 1925 and the border remained unchanged. See *ILT*, 59.3057 (1925), p. 208, and *ILT*, 59.3070 (1925), pp. 283–84. Geoffrey J. Hand, ed., *Report of the Irish Boundary Commission, 1925* (Shannon: Irish University Press, 1969); and Paul Murray, *The Irish Boundary Commission and its Origins 1886–1925* (Dublin: University College Dublin Press, 2011).

117 *ILT*, 55.2847 (1921), pp. 203–04.

118 For example, the *Irish Law Times* did not comment on the content of the 1921 Treaty until it was published as a government publication. *ILT*, 56.2868 (1922), p. 9.

which different sides intimidated journalists and even smashed the printing presses of publications that offended their sensibilities.¹¹⁹

Despite these attributes the *Irish Law Times* cannot be presented as a neutral source, a stance that was almost impossible to maintain in a time of conflict. The journal's focus on the courts and legal professions ensured that the outrages committed by the IRA received far more attention than equivalent acts committed by forces loyal to the British Crown. Despite this imbalance, the *Irish Law Times* never appears to have been harassed by the IRA during all the years of conflict. The limitation of its readership to members of the legal profession ensured that it did not attract the attentions of the IRA suffered by Irish unionist newspapers. At the same time the journal never appears to have been censored by the British government which enjoyed sweeping powers under the Defence of the Realm Act 1914 and later under the Restoration of Order in Ireland Act 1920. Although the imposition of martial law received considerable attention the *Irish Law Times* did not adopt the stance of a watchdog of government policy. The realities of martial law were acknowledged but were not subjected to detailed criticism.¹²⁰

Although the readership of the *Irish Law Times* spanned the divide between unionists and nationalists it could not be presented as representative of Irish society as a whole in this period. The Irish legal professions were male-dominated and overwhelmingly belonged to the middle and upper classes. Unionists were disproportionately represented in the Irish legal professions in these years. In addition, nationalist lawyers were a major bulwark in the moderate 'home rule' movement which only campaigned for autonomy rather than independence from the United Kingdom. Consequently, the legal professions proved slower than most to accept the radical nationalist agenda offered by Sinn Féin and this is reflected in the coverage of the *Irish Law Times* between 1916 and 1922. This journal proved implacably hostile to the 1916 rising and attempted to ignore the paramilitary conflict that broke out in early 1919. This policy only changed when the march of events ensured that this conflict could not be ignored any longer.

The signing of the 1921 Treaty paved the way towards the creation of a self-governing Irish Free State in the south and west of the island while Northern Ireland remained part of the United Kingdom. The historical significance of the *Irish Law Times* lies in its efforts to adapt to these political realities but also in its unique analysis of the emergence of new legal orders in both parts of Ireland. The 1921 Treaty, the 1922 Constitution and the legislation that was required to create new institutions for the Irish Free State and for Northern Ireland were legal documents and no other contemporary publication in Ireland was capable of examining them in this context. Scholarly analyses of the crucial period in Irish history between 1916 and 1922 should not make the mistake of neglecting this unique and valuable source material.

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119 For example, see 'The Sledgers', *Freeman's Journal* (1 April 1922), p. 1; and Peter Martin, *Censorship in the Two Irelands 1922–1939* (Dublin: Irish Academic Press, 2006).

120 For an account of media censorship in this period see Martin, pp. 9–44.

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