

BOOK REVIEWS

Guardian of the Treaty: The Privy Council Appeal and Irish Sovereignty. By THOMAS MOHR [Dublin: Four Courts Press, 2016. xv + 186 pp. Hardback €50.00. ISBN 978-1-84682-587-3.]

In this impressive and thoughtful book, Mohr charts the role that the Judicial Committee of the Privy Council played in the Irish Free State from 1922 until the abolition of the Irish Privy Council appeal in 1935.

Mohr observes that Irish involvement with the Judicial Committee of the Privy Council made little impact on Irish popular opinion for much of the nineteenth century (during which the primary route of appeal was to the House of Lords), but that the institution of the Privy Council gained new prominence when it became associated with Irish attempts to win home rule. The book provides a comprehensive review of the disputes that arose between Irish and British authorities as the Irish Free State attempted to end Ireland's relationship with the Privy Council.

In his framing of the narrative, Mohr points to several features that made the relationship between the Irish Free State and the Judicial Committee of the Privy Council unique among the many territories that had recourse to the Privy Council. Not only was the Irish Free State the first to withdraw from the Judicial Committee of the Privy Council but, in the process of abolition of the Irish appeal, it met opposition from London unparalleled in the experience of any other state. That response derived in part, says Mohr, from the geographic proximity of the Irish Free State to Great Britain and its status as a former part of the UK; but it finds its source predominantly in the terms of the 1921 Anglo-Irish Treaty and 1922 Constitution of the Irish Free State, both of which became notoriously divisive instruments.

Mohr describes in detail the processes and conflicts that occurred in the drafting of both the Treaty and the Constitution, and the importance and controversy of the Privy Council appeal in both of those settlements. In particular, he highlights the British Government's intention that the Privy Council should serve as both arbiter and guardian of the Treaty settlement, thereby ensuring that the balance it struck (in particular, the enshrinement of the subservience of Irish law to English law) was preserved despite the demands of Irish nationalists for true independence. When moves began for abolition of the Privy Council appeal from Ireland, the extent to which that judicial oversight had formed part of the 1921 Treaty became a contentious issue: it was suggested that withdrawing from Privy Council appeals would amount to a breach of the Treaty. But the text of the Treaty itself contained no reference to the Judicial Committee of the Privy Council and Mohr marshals evidence from the subsequent constitutional negotiations in 1922 to suggest that it was not part of it. Rather, he submits, it had been brought in "by the backdoor" through the Treaty's avowed constitutional link with Canada, which had preserved Privy Council appeals as of right.

When the 1922 Constitution was drafted, the drafting committee made no reference to the Judicial Committee of the Privy Council and instead made explicit provision for the Supreme Court to be the final court of appeal. That, as Mohr observes, "guaranteed a confrontation with the British government" whose response was "overwhelmingly negative". Acceptance of the Privy Council appeal became one of six key areas of conflict – and the one that proved to be the most intransigent. When, however, the British conceded that Irish appeals could come by special

leave (as was the case from South Africa) rather than by right (as was the case from Canada), begrudging agreement was reached and the Privy Council appeal made its way into the draft Constitution.

Controversy and dispute continued, however, to plague the Irish Privy Council appeal that “would never entirely escape the serious complications that had accompanied its birth”. Mohr sets these out comprehensively and engagingly, detailing the slide from the brief period of goodwill between 1923 and 1926 to the deterioration of relations that followed. That deterioration arose at least in part from Lord Cave’s perceived bias against the Irish Free State, which crystallised in the grant of leave to appeal in the case of *Lynham v Butler* [1925] 2 I.R. 82 (it should be noted, however, that, following the passage of legislation by the Oireachtas, the appeal was not in fact pursued), and in his judgments in the controversial case of *Wigg and Cochrane v A-G for the Irish Free State* [1927] I.R. 285 (PC) and the Canadian case of *Nadan v The King* [1926] A.C. 482 (PC). Another facet that Mohr identifies as being damaging to the Irish Government’s relationship with the Privy Council was the latter’s purported role as a safeguard for Protestant minority rights – an insinuation that the Irish Government felt to be insulting of their protection and treatment of Protestants.

By 1930, the abolition of the Privy Council appeal was one of the main policy objectives of the Irish Government and, by the middle of 1931, five draft bills to do just that were circulating. As Mohr describes, however, none of these was introduced to the Oireachtas and it was not until the de Valera Government came into power in 1932 that concrete progress towards abolition was made. The abolition of the Privy Council appeal (by way of constitutional amendment in 1933) then formed part of de Valera’s wholesale withdrawal from the terms of the 1921 Treaty and his consequent restructuring of the relationship between the Irish Free State and the UK.

When, notwithstanding this piece of legislation, the *Erne Fishery Case* (*Moore v A-G for the Irish Free State* [1935] A.C. 484) made its way to the Privy Council in 1935, a preliminary issue was whether the abolition was effective. Despite no participation from the Irish Free State in the proceedings, the Privy Council “upheld the validity of de Valera’s amendments of the Irish Constitution and so upheld the legality of its own abolition in relation to the Irish Free State” because the passage by then of the Statute of Westminster had “removed any fetters that might have been placed on the Irish Free State in amending its own law”. Those fighting for Irish sovereignty were vindicated, and no more Irish appeals ever came before the Privy Council.

In detail and in an engaging style, Mohr comprehensively charts this chronology, and draws out its relevance to the key events in and the development of the fledgling Irish state. In *Guardian of the Treaty*, Mohr has created an accessible and interesting volume that will surely consolidate his status as one of the key figures in Irish constitutional and legal history.

LORD KERR OF TONAGHMORE
SUPREME COURT OF THE UNITED KINGDOM

Hollywood and the Law. By PAUL McDONALD, EMILY CARMAN, ERIC HOYT and PHILIP DRAKE (eds.) [London: British Film Institute/Palgrave, 2015. 288 pp. Paperback £26.99. ISBN 978-1-844-57477-3.]

It is widely recognised that James Boyd White’s critiques of technical legal language influenced the growth of the Law and Literature movement, and the wider