

BOOK REVIEWS

Law and Religion in Ireland, 1700–1970

Edited by KEVIN COSTELLO AND NIAMH HOWLIN

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As a long-time historian of the long nineteenth century, and of the legal history of church-state relations in that period, and as an erstwhile and somewhat more recent student of the legal history of the British Empire, the history of law and religion in Ireland holds an enduring if bemusing fascination for me. It is a history intertwined with that of Britain, a history which occasionally plays a key role in pivotal moments in the story of the Church of England, as in 1833, but it is a history about which, I fear, many ecclesiastical and legal historians know too little. Ireland is, or was, to historians such as me, something of an enigma. Its position is confusing, being neither that of a colony nor that of a unified part of the metropole.

Not the least charm of this long overdue volume is that when, having exercised the prerogative of the book reviews editor to have first dibs on any of the new volumes to come my way, I opened up the PDF file (printed review copies being increasingly hard to come by in these times) and I was reassured immediately to learn that the legal history of Ireland is largely bereft of accounts of the history of law and religion. So, evidently, not only had I not stupidly missed some vast body of literature to which I should have before now had reference, but my ignorance was about to be enlightened. For this volume, which began life at a Legal History Research Group event at University College Dublin in 2017, is concerned with ‘that series of legal events which make up some of the principal episodes in the legal history of religion in Ireland’ (p 2). Moreover, reading on considerably further, I found that my own sense of bafflement at Ireland’s place in the British Empire, was shared by no less a scholar than the late, and much missed Keith Robbins, who in his own contribution to this volume described Victoria’s United Kingdom as exhibiting a ‘puzzling and fluctuating picture of integration and diversity’ (p 241) and Ireland as ‘neither fully integrated nor completely “colonial”’ (p 245). So, in having pondered such things I was in good (the best) company, and I was now able to delve into these mysteries through the collected endeavours of a fine cadre of legal historians. Hurrah!

The sense of excitement and possibility which the publicity notice for this volume sparked in me was not unfounded. It is a work of rare breadth, with a uniformly astute and helpful sense of its place in, and contribution to, the existing literature, and a keen eye to avenues for future research and

exploration. Its rich and often voluminous footnotes alone provide a treasure trove which repays closer examination. Its scope is nothing if not ambitious, in terms of the period covered, the range of religious experience explored, and the approaches taken to that task. Thus, its contributing authors take us from the experiences of Catholics and Presbyterians under the Penal Laws of the seventeenth and eighteenth centuries, to the birth of the Irish Free State and Eire in the twentieth century, via a detailed study of the Church of Ireland and its disestablishment and disendowment in the nineteenth century. They do so through a mixture of closely observed local case studies and surveys of the national situation, often with a nod to their place in a broader imperial or European context. These accounts, diverse and varied as they are in their approach and subject matter, are unified by a narrative which repeatedly serves to highlight the impact of not only sectarian concerns, but also wider geopolitical concerns and movements in the history of law and religion in Ireland. They are united, too, in being grounded in meticulous primary source research, which serves to nuance and shade the general impressions which we may form about that history. It is a history shared with Britain, and in some senses familiar, but also, seen from this vantage point, much less well known than historians of British religious history might have anticipated.

Of all the chapters of this collection the first three substantive chapters, addressing the Penal Laws of 1691 to 1929, cover the ground least familiar to me as a modern legal historian. In his chapter on the origins, enforcement, purpose and impact of these laws, McGrath delves beyond the 'two centuries of myth-making and political polemic' (p 12) that characterise the popular histories and understandings of the Penal Laws. He charts the shift from reliance on royal proclamations to legislation in the period and traces the intertwining of the Penal Laws with events in England and elsewhere, their unique history and application in the Irish context, and the inevitable links between their fitful imposition and the embattled sensibilities of what became the Protestant Ascendancy. The overall message is that the Penal Laws were 'the product of a variety of ideas, beliefs and perceptions with a wide range of intended purposes' which shifted and evolved over time (p 31). Furthermore, just as their history is more complex than is commonly understood, so, too, McGrath argues, more work needs to be done to understand the varied impacts of the different aspects of the Penal Laws.

In the case study which follows, Lyons explores the ways in which Irish Catholics (and colluding Protestants) evaded and defeated them. Echoing some of the recent legal historical work exploring the agency and experience of Quakers as legal subjects in the Restoration period (see especially the work of Sally Gold), Lyons shows that, far from being passive sufferers under the law, Roman Catholics in fact exercised considerable vigilance, ingenuity and agency in circumventing the legal disabilities to which they were subjected. In the final of this trio of chapters, Kelly tells the story of the repeal of the Penal

Laws between 1760 and 1790. He traces the themes of the breakdown of the Protestant consensus as to their necessity as means of self-defence, the Catholic leadership's abandonment of the Jacobite cause, and their accommodation of the Hanoverian Dynasty. He explains, too, the consequences of a mismatch between English imperial agendas, focused on the needs of a growing empire, and more domestically focused Irish concerns to maintain the Protestant character of Ireland's Parliament as the ultimate signifier of a continued commitment to the Protestant Ascendancy in Ireland.

Costello's chapter on the lingering residues of the Penal Laws even after 1829 rounds off the consideration of the Irish Catholic experience of the Penal Laws and their slow demise. He shows us how their impact on the taxation of Catholic religious institutions, and their operation within charity law, perpetuated a sense that the English Constitution denied Catholics full political equality, long after the 'anti-Catholic provisions' contained within the Roman Catholic Relief Act 1829 had apparently become 'dead letter'. The focus of the Catholic story then shifts, in Rafferty's chapter, to a consideration of the legal and constitutional status and governance of the Catholic Church of Ireland in the era after the 1829 Act. Further chapters, by Mohr and Leathlobhair and Coffey carry the story of the Catholic Church's (and other denominations') role in shaping the constitution, life and experiences of the Irish State into the twentieth century.

However, the history of law and religion in Ireland is not a history only of the Catholic Church, and the remaining chapters, dividing their attention between the experiences of Protestant dissent and the history of the Protestant Church of Ireland, reflect this. Thus, a wonderfully rich chapter by Whan explores Irish Presbyterian efforts to secure relief from their legal disabilities, while Calvert's chapter provides us with a fascinating survey of the activities of the Presbyterian church courts in regulating the lives and relationships of that embattled and minority (in most parts of Ireland) community in the interests of maintaining its integrity and harmony, and of safeguarding the reputation of the Presbyterian Church. Calvert's exploration of the laity's willing participation in the activities of such courts (or sometimes not), and of their decision to submit themselves to that, legally rather shaky, jurisdiction even in areas governed by the secular laws and courts, provides much food for thought.

The history of the Church of Ireland is dealt with in chapters by Osborough, exploring its role in raising charitable relief for the victims of disasters through the authorisation of church briefs, by Robbins, setting out the story of its disestablishment in 1869, by Dawson, examining the mechanics of its disendowment after 1869, and by Marshall, reflecting on the operation of its constitution and its unique contribution to the history of ritualist litigation in the (very) long nineteenth century. In many respects, these chapters take events which are broadly familiar to British historians of religion but move them from the sidelines to centre stage. In doing so, the authors have made

me realise how much there is that I do not in fact know about the religious history of the British Isles in that period, and what obvious gaps there are in both contemporary literature and subsequent academic commentary. Rare, for example, is the discussion of the Irish experience of synodical self-government in debates about the Church of England's efforts in that direction.

All in all, this volume, its editors, and the contributors have done an admirable job of breaking new ground and making this subject accessible to new audiences. They had too much ground to cover for it to have been reasonable of me to expect them to do more than they have already done so well, but inevitably their endeavours have left me hungry to learn more and to reflect further. Most especially, and perhaps this is the work of a future volume, I would have liked to know more about the tantalisingly alluded to place of Ireland and its religious institutions in the history of Europe, of the British Empire, and of what has become the Worldwide Anglican Communion.

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A Still More Excellent Way: Authority and Polity in the Anglican Communion

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The term 'province' can be a confusing one for Anglicans. It can refer to dioceses grouped in an ecclesiastical province and often overseen by a metropolitan Archbishop, such as the province of Canterbury or York. It can also be used to refer to any of the 46 member churches (or 'national churches') of the Anglican Communion, such as the Church of England. Each 'province' in this sense may be internally organised as one ecclesiastical province, may be composed of several internal provinces, or may instead be extra-provincial. For Alexander Ross, this terminological confusion parallels a deep ecclesiological confusion in Anglican polity. What, he asks, is the fundamental unit of ecclesial polity within the Anglican Communion? As Rowan Williams explains in his introduction, 'Ross's ground-breaking and profoundly illuminating study grows out of a dissatisfaction with the simple repetition of mantras about autonomous national churches' (p viii). This may elicit a sharp intake of breath from ecclesiastical lawyers. The legal autonomy of the Communion's member churches is so ingrained into Anglican polity that it is all but taken for granted. Ross asks how it came about, if it was inevitable, what problems it might cause, and whether there could be an alternative.