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Breaking the Boundaries: Interdisciplinary research
approaches and methods

An Interdisciplinary Approach to the Legal History of Northern Ireland (1921 – 1948): Methods and Sources

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Abstract: Approaches from legal scholarship include primary sources such as statutes and case law, as well as legislative histories which legal scholars rarely consider ‘history’ in the same way as historians. Rather, legal scholars often look to legislative histories to discern the intent of the legislature in enacting laws for the sole purpose of interpreting a statute’s meaning. This study utilises the research tools employed by legal scholars – statutory law, case law, and legislative histories – to examine the establishment of the legal system in Northern Ireland. The study will focus on the early period of devolution (1921 – 1948) and explore how a subordinate Parliament at Stormont used the law and the creation of a legal system to solidify Northern Ireland’s identity as a nation-state.

In framing the query of the study, it is apparent that simply tracking the establishment of the legal system in Northern Ireland to understand later legal precedent does not enable key questions to be answered. Branching out from typical sources utilised in legal research, I undertook an interdisciplinary approach by drawing on not only legal scholarship, but also social and cultural history, sociology, and anthropology, as well as the general field of social science. The study was reimagined to answer the question: Is the establishment of a new legal system, upon the bones of Ireland under Union’s system, an act of nationalism? More completely, if nationalism can only exist when the nation-state is firmly established, was the maintenance of the old system a way of



maintaining continuity with national identity for the loyalists in Northern Ireland who firmly held Britishness as their identity?

Keywords: Northern Ireland, Legal History, Stormont, Method, Nationalism

1 Introduction

At the theoretical level, it can seem daunting to engage in the explanation of methodology. However, at its most basic level, method is simply *how something is done*. For people, whether consciously or not, employ methodologies without necessarily being conscious of using them. It is only when required to articulate the methods a person engages in that they are forced to confront the theory and application of methodology.

This paper seeks to identify methods employed in my research, both consciously and unconsciously, with the aim of clarifying their purpose and appropriateness for the project. To understand how these methodologies and theories are appropriate, this paper begins with an explanation of my larger project. From there, I give a brief explanation of traditional legal research before highlighting three distinct methodologies that I am employing in my research, regardless of discipline of material being used: comparison, models, and close reading. The paper ends with a discussion of the disciplines from which I am sourcing my methods, theories, and materials.

2 Background

It has been said, rightly so, that law does not exist in temporal isolation (Osborough, 1999, pp. 239). This is particularly true of the common law tradition to which Northern Ireland belongs. Before beginning a discussion of the methodologies and sources employed in my study, it is important to first ground that discussion in what the study explores.

Many studies exist that explore the legal history of the United Kingdom as a whole: Scots Law, English law, and the law of the Republic of Ireland. However, a similarly robust body of scholarship does not exist for the legal history of Northern Ireland (Casey,



2000; Kohn, 1932; Manchester, 1980). There is a small body of literature on the constitutional history of Northern Ireland, but much of it is teleological in its approach in that it assumes the period of sectarian violence known as the Troubles was inevitable. Furthermore, the scope of much of this literature is confined to an examination of *The Act of Ireland, 1920* (10 & 11 Geo. V., c. 67) and its enactment as the foundational piece of legislation for Northern Ireland.

A study of foundational legislation is a worthy pursuit when trying to understand a common law jurisdiction. However, most of these studies fail to incorporate intent, instead taking what is known in legal research as a ‘four-corners’ or ‘plain language’ approach. This approach looks solely to the language of the document and ignores legislative debates, earlier drafts of the bills, and statements made by politicians to news outlets as ways to discern intent behind the passage of the legislation in question. Rather, these studies focus on the application of the laws as passed (Hadfield, 1989; Quekett, 1928; 1933; 1945). When studies go beyond this approach, it is usually to explore the unusual relationship between the Parliaments at Stormont and Westminster (Newark, 1955).

These studies are a necessary introduction into an exploration of the legal history of Northern Ireland, but they only scratch the surface when considering the establishment of the legal and political system, the application of law from two separate and unequal parliaments, and interpretation of those laws by the courts. In other words, they all but ignore the interplay of the legislative process, application of the law, and interpretation of the law, which is the crux of a common law system.

By ignoring this interplay, a gap in the study of Northern Ireland’s legal system has been created. To be fair to those who have studied Northern Ireland’s legal system in ways that differ from my approach, it is an odd duck - neither fish nor fowl, as frequently said by Professor Michael Brown. As a result, the polity is generally understudied in the broader context, and in studies of devolution. As Walker and Greer (2023, p. 53) point out, “Jaundiced appraisals of the Northern Ireland experience of devolution have shaped much of the historical analysis of the region and have led to a tendency among scholars to disregard, or marginalise, Northern Ireland as a freakish exception in discussions of devolution more broadly.”



I approached this study assuming that I would be examining this gap, asking the question: what did the establishment of the common law system, on the bones of an already established common law system, look like? In other words, what did the fact that Northern Ireland's legal system was not being built from scratch, but starting from the legal system that was already in place and then modifying as needed, mean? However, as I began to delve into a deeper exploration of legislation and debates, I found that there was something lacking in the question and the approach. While I could certainly add to a body of literature that explored how the legal system of Northern Ireland was established, the reasoning behind why it was established in the way that it was is more intriguing.

Here, I must clarify. Though I do find the intent at Westminster intriguing – and it will explore – my deeper curiosity surrounds the intent of the politicians and law makers in Northern Ireland. This is a group of men who were vehemently opposed both to Home Rule or a divided Ireland who suddenly found themselves in a devolved 'state' that was neither Dominion (such as the south of Ireland was at the time) nor colony. How did they navigate the establishment of a new legal system upon the bones of the Kingdom of Ireland's legal system? What choices did they deliberately make, and which were coincidence? More than that, once the devolved system of government was set up, what did the push and pull of legislation from the local Parliament (Stormont) and the Parliament at Westminster look like, and how did it affect the lives of ordinary citizens?

In other words, did the men in charge of setting up the structure of government and the judiciary intentionally do so in a way that would keep them in line with the how things had functioned during the period of union (1800 – 1921)? Northern Ireland functioned as the rump of the union, and to the men in charge that often meant a distinctive protestant unionism was driving the ship. How did the legal structures and practices function to prop up the national identity of the majority as British rather than Irish – or perhaps some other identity altogether? And, on the opposite side, where did national or political identity have relatively little to do with the way that structures and laws were put in place and interpreted? These are questions that cannot be effectively answered by using sources and methodology from one discipline.



As I began to view the establishment of the legal system as potentially being an act of nationalism itself – one that would help the majority population in Northern Ireland retain their ‘British’ identity – a world of possibility opened itself up in terms of sources and application of method and theory.

3 Methods & Theories

There are several methods appropriate to such a study. While it is concerned with only one theme, that theme is broad and spans a relatively wide date range from the establishment of Northern Ireland as a distinct polity, to the enactment of the *Republic of Ireland Act 1948* (and corresponding *Ireland Act 1949* from Westminster) which established Ireland as an independent nation. Because of this, a comparative methodology is suitable for the study. Not only is the date range large, but the study is one which examines two legal systems looking for overlap, intention, and divergence. By using a comparative methodology, I can break the legal systems of Northern Ireland and England into like parts to locate those overlaps and divergences. While normally employed by linguists to do side-by-side comparisons of languages with a common descent, this method is uniquely appropriate for examinations of legal history.

In addition, I use close textual reading to examine Parliamentary debates, statements to news outlets, and previous versions of the law to understand the intent of each legislative body at issue. The full run of newspapers for this time in Northern Ireland and England have been digitised, as well as the parliamentary debates from both Westminster and Stormont. Accordingly, the contemporary understanding of those in England and Ireland across the political spectrum is accessible. This is a rich body of materials to be mined.

While my study focuses on the establishment of the legal system, and its functioning during the early period of devolution in Northern Ireland, the study would be incomplete without a comparison to the laws passed by the Parliament at Westminster. Because only some legislative power was vested in Parliament at Stormont, the laws passed by the Parliament at Westminster and their intended effect in Northern Ireland is necessary to understand the whole picture. In order investigate this intent, close



readings of debates at Westminster and statements made to the press will shed light on why laws that would affect Northern Ireland were passed in the way that they were.

Because of the length of the period, the study could quickly become too broad. Therefore, I am also using modelling as method for studying the period of devolution. Often used in scientific disciplines, modelling allows for the simplification of complex systems, such as the law, to examine the bigger picture. Here, modelling is used in the form of case studies. Rather than trying to explain the entire legal system for the entire period, I am selecting a handful of areas such as education law and housing law to highlight how the legal system worked in a devolved Northern Ireland.

At this point it is worth noting that there may come a point in the future when a quantitative methodology will become useful for this study. Quantitative methodologies are often employed in legal scholarship, and typically highlight the application of laws. For my purposes, the use of a quantitative method would allow for the examination of specific laws to determine whether there was disparate impact on specific segments of the population. Again, because I am not interested in taking an approach that assumes the inevitableness of the Troubles, this would not be a law that would obviously have disproportionate impact – such as housing law which became particularly contentious after the Second World War. Rather, it would be laws that appear to be neutral, such as the requirements for holding a driving license.

By examining the impact of apparently innocuous laws, one can study how the application of the law potentially created a disproportionate impact. Because the *Government of Ireland Act, 1920* forbade discrimination based on religious affiliation, no law passed by Parliament at Stormont could reference religious affiliation. However, even the most casual observer of Northern Ireland's history will know that there was frequently a disproportionate impact on the Catholic minority. Using a quantitative method to explore that impact alleviates the chance for the researcher's bias, one way or the other, to influence the study.

3.1 Traditional Legal Research

Traditional legal research, whether done in service of client matters or for an academic purpose, often seems method-less to the researcher. It is a very process



driven pursuit, typically focusing on small and discrete questions. Those outside of legal academia or practice might think of the law as bifurcated between criminal and civil law in the common law tradition. Within the law there are myriad areas in which one can be an expert: law of armed conflict, telecommunications law, torts, civil procedure, and so on. For every substantive area of law, there is a body of academic work upon which to draw as well as a body of jurisprudence. Thus, when one asks a question in legal research it is typically more along the lines of ‘how has law x been interpreted?’ rather than ‘why was law x interpreted in that way?’.

In traditional legal research, the question what elements constitute the crime of arson might be asked. To answer the question, the relevant statute would be identified and read. If there are any questions of interpretation, the researcher then references court opinions to determine how the court interpreted the language of the statute. This can be a time-consuming process, but it is one with limited methodology. In fact, if one looks to legal research manuals, the term ‘method’ is eschewed for the term ‘process,’ if a term to describe it is used at all (Barkan *et al.*, 2015).

4 Sources

4.1 Law

The obvious starting point for this project is primary source law. It bears stating that the foundational document for the creation of Northern Ireland as a distinct polity was intended to be legislation for the whole of the island of Ireland. *The Government of Ireland Act, 1920* (10 & 11 Geo. V., c. 67) must be read with that understanding because it has separate language for the south of Ireland and the north. It does not speak directly to the creation of a ‘state’ called Northern Ireland. As a foundational document, it is important to disregard all mentions of the south of Ireland and the aspiration of the legislation that the two halves would become whole again in the (then) near future.

The document lays out the powers that are reserved to the Crown, matters reserved to the Parliament at Westminster, and matters on which the Parliament at Stormont could legislate. Hadfield (1989, pp. 49-88) lays out in detail the powers reserved to the Parliament at Westminster section by section. It is a useful way to read



the document but does not always highlight what Parliament at Stormont was left to legislate. While there are few matters left to Stormont, it is important that they are concretely identified before attempting to begin an interpretation of the establishment of the system.

For an exploration of the foundation of the legal system of Northern Ireland, I examined the legislation to determine what was left to Parliament at Stormont, rather than what was reserved. Though the two types of reading may appear to be the same, the subtle difference is profound. By reading the legislation with an eye toward Parliament at Stormont's responsibilities, rather than what the responsibilities of the Parliament at Westminster were, areas of law for case study and follow up are easier to identify.

It is, of course, important to understand the powers reserved to the Parliament at Westminster, especially as time moves forward and there are eventual conflicts between the reserved powers and the power of Parliament at Stormont. *The Representation of the People (Equal Franchise) Act, 1928*, for example, enfranchised women in the entirety of the United Kingdom to vote in elections to determine those who would sit for Parliament at Westminster (18 & 19 Geo., c. 12). This was at odds with language in the *Government of Ireland Act, 1920* (10 & 11 Geo. V., c. 67) which expressly allowed for Northern Ireland to alter any election laws made by Westminster. However, to keep local, Stormont, and Westminster voting rolls uniform, the members of Parliament at Stormont allowed the *Equal Franchise Act* to stand. This conformed with what would come to be known as 'in step' or 'step by step' legislation that deliberately mirrored legislation enacted by the Parliament at Westminster by the Parliament at Stormont.

4.2 Legal History

At this point, I turned to an examination of legal history. The shift from legal research to legal history can be subtle, and in this case the distinction is two-fold. First, I am examining the intent of law makers in the creation of legislation both at the Parliament at Stormont and at the Parliament at Westminster. Intent can be discerned several ways, but the most effective way is to read parliamentary debates and to



compare bill drafts and readings for changes based on comments made during debates. Even when changes are not made, the debates shed light on the reasons for this decision.

For example, when Sir James Craig, the first Prime Minister of Northern Ireland, moved from proportional representation to simple majority, Parliament at Westminster chose not to intervene. That non-intervention, however, does not tell the whole story. By examining the debates and statements made by politicians in Parliament at Westminster, it becomes clear that there were distinct reasons for not interfering in the voting system in Northern Ireland. In what turned out to be a great irony, Churchill said that they were choosing not to interfere because they thought interfering would lead to greater problems down the road (Bardon, 1992, pp. 500). Statements such as this are particularly intriguing because my approach and method do not assume that the Troubles were inevitable. Had proportional representation remained in place, rather than being replaced by a first-past-the-post system, the Catholic minority in Northern Ireland would have had more direct representation both in the Parliament at Stormont and at Westminster. It is possible that with more direct representation, sectarian violence in the polity would not have reached the scale of incredible bloodiness that it did.

The second distinction is that I am investigating the ways that law-making, enactment, and interpretation changed over the period of devolution. Any multi-decade period is likely to see profound changes in the legal landscape of a common law jurisdiction, but this period is notable for a number of reasons. First and foremost, it was the first twenty-seven years of the existence of Northern Ireland as a distinct polity. Secondly, it was also a period that saw civil war on the other side of a soft border as what would become the Dominion of Southern Ireland (and later the Republic of Ireland) came into being. Violence occurring with regularity on either side of the border necessarily affected how some of the laws were made and passed. Finally, it was a period that saw a great deal of change globally. The dominant form of communication and entertainment switched from telegram and the post to radio and newspapers. The Second World War had many and varied profound impacts that changed the social and cultural landscape of the Western world. In response to these massive changes, laws were changed.



4.3 History

Not only does the law not exist in temporal isolation, it also does not exist in a vacuum. To undertake a true and accurate legal history of any jurisdiction or period, contemporary events need to be brought into the study to give context to the laws proposed and passed, and the debates that accompany them. As mentioned above, the period of devolution in Northern Ireland was also a time of great change locally and at a global level.

Some legislation, like the enfranchisement of women, was passed to keep Northern Ireland's laws in line with the rest of the United Kingdom. Other legislation was passed in reaction to purely local circumstances. For example, Parliament at Stormont passed legislation to address the damage done to property during the Belfast Blitz in 1941. The legislation covered not only the landlord's obligation to repair property as soon as was practicable, it also laid out requirements for notices to quit by the tenant (Landlord and Tenant Act, 1941). Without the benefit of a holistic understanding of contemporary events, it is impossible to ascertain the context behind the intent in creating laws. All legislatures act in concert with the events of the wider locality to create and pass laws. Because Northern Ireland was effectively governed by two parliaments, it becomes even more important to understand the general history of the period for both countries.

4.4 Nationalism

Northern Ireland is an incredibly unique legal jurisdiction. It shares a soft border with the Republic of Ireland (and did for much of this period) and is across the Irish Sea from England and the seat of the Parliament at Westminster. Its geographic placement also makes it central to the region, giving it a unique strategic and commercial importance. Because of this, politicians and the public alike had unique leverage with the Parliament at Westminster. Though I am approaching my study with the assumption that the Troubles were not inevitable, it would be disingenuous to ignore that sectarian violence tied to national identities occurred during this period.

Nationalist sentiment was at the core of the foundation of Northern Ireland's legislative body. Prime Minister Craig has been famously misquoted as declaring



Parliament at Stormont to be “a Protestant Parliament for a Protestant People.” (Moody, 1974, p. 27). What he said, during a Parliamentary debate, was that Northern Ireland was “a Protestant Parliament and a Protestant State” (Debate, 1923, p. 1095). Both the misquote and the original quote speak to the nationalist sentiment inherent in Northern Irish legislation. They also hint at the competing nationalisms that existed in Northern Ireland.

Because of this, it is necessary to employ theories of nationalism when exploring the establishment of Northern Ireland’s legal system. Thinking about the subjective antiquity of the nation state in the eyes of nationalists allows this study to explore the unique relationships between the Northern Ireland and the south of Ireland, Northern Ireland and England/Britain, and the island of Ireland and mainland Britain regarding their legal systems and the ways in which there was interplay and divergence.

Citizenship, and ideas of nationalism and national identity, have long been contentious issues on the island of Ireland. The notion of national identity is complicated in Northern Ireland by sectarian rifts and partition of the island into two ‘nations.’ It is here, in a region comprised of people who feel that they belong to two very different nations, that Benedict Anderson’s notion of the nation as an ‘imagined community’ is very useful. In real terms, the nation is a conceptual abstraction and does not exist in any tangible form, but “Through representations and rhetoric it appears to exist in concrete form” (Anderson, 1991, p. 7).

It is compelling that Anderson’s (1991) study focused on the printed word, and newspapers. In Northern Ireland, newspapers such as *Irish News* ran with a distinctly nationalist bent, in this case a pro-unified Ireland nationalism with Joe Devlin as the mouthpiece. Because newspapers typically run their stories with a bias to attract like-minded readers (and turn a profit), knowing the biases of the most popular newspapers of the time is important.

5 Conclusion

In the end a question as complex and nuanced as one exploring the foundation of a legal system cannot be effectively answered using sources and methodologies from a single discipline. To effectively answer a question about the interplay of a legal system



and national identity sources from the law, legal history, traditional history, and studies of nationalism need to be utilised.

Because Northern Ireland was born out of legislation that was intended for the island, its legal structure must be analysed as one that deliberately kept certain elements that were already in place under Union. Using multiple methodologies, disciplines, and theories my study will examine the reasoning behind the decisions made when setting up the legal system of Northern Ireland. Viewing those decisions through the lens of nationalism will allow me to determine where national identity and political identity played a part in those decisions, and where it did not.

This paper has identified the three most useful methods for answering questions related to the establishment of Northern Ireland's legal system: comparative, modelling, and close reading. It has also identified the reasons behind using legal research, legal history, social history, and nationalism studies to look at the period of early devolution in Northern Ireland's legal history.

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