

Centenary Lecture on the Lord Chief Justices of Northern Ireland

[1] I want to start by thanking those who have helped me with this lecture. I have shamelessly relied on material from Sir Anthony Hart's book on the history of the Bar and am grateful to John Gordon, President of the Irish Legal History Society, and Sir Malachy Higgins who have been particularly helpful. I also want to offer my congratulations to the Lady Chief Justice for arranging this series of events to mark the centenary of the courts in Northern Ireland.

[2] The role of the courts in any society is influenced by its structure and the underlying values which the society seeks to promote and protect. Sometimes this is achieved by way of a written constitutional instrument. That does not mean, however, that the interpretation of the instrument is fixed. In Western Europe the concept of the constitution as a living instrument is broadly accepted.

[3] In the United Kingdom we do not have a written constitution but we have statutes which are recognised as having constitutional importance. Thankfully in this lecture I shall not have to grapple with the issue of competing constitutional statutes but in reflecting on the role of the Chief Justices in Northern Ireland over the last one hundred years it is I think possible to identify through their periods in office three distinct developments within our unwritten constitution.

[4] The first is the period of establishment. In examining that period I will focus principally on the first Lord Chief Justice of Northern Ireland, Sir Denis Henry. That period runs up to the appointment of Lord MacDermott in 1951. The second period is the assertion of the independence of the judiciary running from 1951 until 1998 which also includes Lord Lowry, Lord Hutton and Lord Carswell. In 1998 we entered the third period where the courts not alone protected the citizen from power as described by Lord MacDermott in his Hamlyn lectures but developed a rights based jurisprudence. That is the shortest of the three periods but includes the work of Lord Carswell, Lord Kerr, myself and the Lady Chief Justice.

[5] Although I intend to touch on all of those who have held the office of Lord or Lady Chief Justice over the last 100 years up to my appointment I cannot hope to cover the contributions of all my predecessors in a short lecture of this kind. I am going to concentrate on three of those who held that office but intend no disrespect to those whose contribution I cannot describe as fully as I would like. The first is Sir Denis Henry who was the architect of the establishment period. The others are Lord MacDermott and Lord Lowry each of whom held office for long periods of time. I do not intend to examine each period in office for its quality of legal learning but will try to explain how the background and character of the judges contributed to the manner in which each influenced the development of our judicial framework. In a number of cases the judges went on to sit in the House of Lords or the Supreme Court. If I were to include a review of the contribution each made in those offices I suspect that I would have to extend this lecture series for many months. You will be relieved to know that I am not going to do so. As it is, in the time available I will really only be able to touch briefly on the background of many.

[6] Finally, by way of introduction, when looking at the first three men who held this office I will spend a little time looking at their political backgrounds. Over the last 100 years the separation of powers between the executive and the judiciary has been the subject of administrative and statutory development culminating in the Constitutional Reform Act 2005. The position in the United Kingdom was rather different in the earlier part of the last century and Northern Ireland was no exception.

[7] I want to give two examples. In early 1913 the Liberal MP Rufus Isaacs was Attorney General and together with a number of leading Liberal MPs, including the Prime Minister, was accused of insider trading and corruption in connection with the award of a contract to the Marconi Company. Isaac's brother was the managing director of the Marconi Company and had provided the shares at a favourable price. He was cleared by a parliamentary enquiry in which the majority Liberal MPs voted in his favour and the remainder concluded that he had acted with grave impropriety.

[8] Later that year the position of Lord Chief Justice became available and as Attorney General he was entitled by convention to first refusal and took it up. The outbreak of the First World War occurred the following year and he attended the War Cabinet. He presided over the trial of Roger Casement and in 1917 he went to the United States as a High Commissioner and subsequently Ambassador to the United States. He returned to England in 1918, again attending the War Cabinet, and then spent some further time in the United States as Ambassador. He continued in office as Lord Chief Justice throughout this period until 1921 when he became Viceroy of India. Given his past history one wonders whether he considered continuing in office even as Viceroy!

[9] Upon his resignation Gordon Hewart, then Attorney General, asked to replace him. The Prime Minister was anxious not to lose Hewart at that stage and agreed to appoint the 77 year old Lord Trevethin as a stopgap. His Lordship was required to provide Lloyd George with an undated letter of resignation as a condition of his appointment. He subsequently resigned on 3 March 1922, a fact which he learned from reading The Times, and was replaced by Hewart who stayed in office until 1940. It was a different world!

Sir Denis Henry

[10] Denis Stanislaus Henry was born on 7 March 1864. His father was a prosperous farmer and businessman and the family lived in a comfortable estate on the edge of Draperstown which at that time was an important commercial centre in mid Ulster. As was not uncommon in Catholic families, two brothers and two sisters took up vocations in the church and Denis and two of his brothers entered the legal profession. He was schooled like the other boys in his family by the Jesuits and achieved notable academic distinction as a scholar when a law student at Queen's College Belfast.

[11] He was called to the Irish Bar in 1885 at the age of 21 and began what was to be an illustrious professional career. Like many others in his profession he developed a keen interest in politics. Although the family were initially Liberals the introduction

of the first Home Rule Bill by Gladstone in 1886 was opposed by a number of prosperous Catholic Liberals in the south and west of Ireland who were concerned about the effects on trade. Henry was one of a very small number of those of his religious persuasion in the north of the island to adopt that position and pursue it politically.

[12] His commitment to political Unionism appears to have been established by 1895 when he publicly supported two Unionist candidates standing in South Derry and East Donegal. He took silk in 1896 and there are sufficient contemporaneous reports to demonstrate that he was even then a highly skilled barrister with a very high reputation. The evidence also indicates that he was very personable and despite the different political allegiances held by members of the Bar in what was a highly charged political atmosphere it seems that Denis Henry kept on good terms with those who were on the other side of the argument.

[13] Turning back to politics he attended the inaugural meeting of the Ulster Unionist Council on 3 March 1905 and subsequently delivered a number of speeches in support of the unionist cause in early 1906. These may have been with a purpose because he was selected in the 1906 general election to contest the North Tyrone seat as a Unionist candidate. Although he secured the support of the Orange Order he lost the seat by 9 votes.

[14] The successful candidate, who was also a member of the Bar, was appointed to the Bench the following year. Membership of the Bar and election to Parliament was the “traditional route” to the Bench. Henry was once again chosen as the Unionist candidate in the by-election. On this occasion he lost by 7 votes and his supporters urged him to petition for a recount but he declined. It seems clear, however, that his reputation as a firm defender of the union was established and this was evidenced by the presentation of a plate by the unionist ladies of the constituency to record his efforts in two spirited contests. He had also been able to secure a full turnout of the protestant unionist population in what was a very sectarian environment. That attested to the vigour of his unionist rhetoric.

[15] After his efforts in Tyrone Denis Henry returned to the Bar where he quickly established his reputation as one of the leading if not the leading barrister of his generation. His next opportunity for political success occurred in 1916 when the incumbent for South Derry was appointed to the Bench. He was selected as the unionist candidate after a three-way contest and comfortably won the seat against an independent candidate. Although it was not unexpected the victory provided some comfort for those of a Unionist persuasion since it was the first test of the electorate after the 1916 Rising.

[16] It was no surprise when Henry was appointed to the position of Solicitor General in November 1918 and was returned in South Derry in that year's election. He was appointed Attorney General a few months later and held that position until June 1921. The IRA's campaign of violence directed towards the security forces had commenced in January 1919 a few months before his appointment. As Attorney General he attended Cabinet and argued forcefully against any discussions with or concessions to Sinn Fein.

[17] In April 1920 Sir Hamar Greenwood was appointed Chief Secretary for Ireland. For a range of reasons he was absent from the House for long periods and Henry had to deal with policy questions, in many cases without adequate briefing. In order to confront the deteriorating security situation legislation was introduced providing for abolition of jury trial and the introduction of courts martial. The Black and Tans were deployed at the end of March 1920. Complaints about their activities were raised from time to time in Parliament and Henry spoke in their defence.

[18] In early 1921 instructions had been issued to the military to administer summary justice in martial law districts within a narrow time limit. There were at least four counties in Ireland subject to martial law. Where a person was arrested in possession of arms or explosives an application could be made by an officer not under the rank of Field Officer to convene a Drumhead Court at the nearest convenient place. That court would consist of three officers, no adjournments were to be allowed and nothing was to be done to delay the commencement and conclusion of the trial. If the sentence was death the confirming officer was to instruct its immediate

execution. It was described by its critics in Parliament as a reprisal policy. Death within 25 hours of arrest was often the outcome. Denis Henry defended this in May 1921 as an appropriate deterrent having regard to the terrorist campaign against the security forces.

[19] On a different note from April 1920 the Government of Ireland Bill was being taken through the House of Commons. Henry was required to explain many of the provisions and deal with numerous proposals for amendment. Of particular importance were the provisions about the courts in respect of which he was the principal advocate on behalf of the Government's position. In the course of those debates it is clear that he and Sir James Craig, the future Prime Minister of Northern Ireland, were heavily involved. Their mutual respect for each other was clearly established by that stage.

[20] There were many reasons why Denis Henry was the obvious choice for appointment as Lord Chief Justice. He was an able lawyer and much respected at the Bar. He had guided the Government of Ireland Bill through the House of Commons and would be well placed to establish the new Supreme Court of Northern Ireland. He had acquired as a government law officer administrative skills which would also assist in that process and he was personable and able to engage even with those who disagreed with his political viewpoints.

[21] The decision as to who should be appointed was decided jointly by Ernest Clark, a civil servant with responsibility for the proposed wider Northern Ireland administration, and Sir James Craig. Henry's relationship with Craig was clearly an advantage. During this period there was ongoing sectarian violence particularly in Belfast. In part this was fuelled by economic circumstances as men discharged from the army after the war found that the prospects of employment in civilian life were limited. It is also important to remember that the position of the Northern Ireland administration was precarious. There were, in some quarters, considerable doubts as to whether it would last more than a few months.

[22] From Craig's point of view his objective was to ensure that the position of Lord Chief Justice was filled by someone who was committed to the unionist cause, who had the skills to quickly put in place in Northern Ireland a courts administration as this would be an indicator of permanence and who was likely to be robust in dealing with those who challenged the establishment of Northern Ireland by whatever means. Henry satisfied all three.

[23] Henry was sworn in as Lord Chief Justice at Portrush Town Hall on 15 August 1921. The venue seems to have followed from the Lord Chancellor's holiday arrangements. The administrative tasks facing him were enormous. The County Court and Petty Sessions broadly continued as before but he had to find judges to service the High Court and Court Of Appeal, draw up relevant Rules and Protocols, establish and obtain relevant personnel for the Offices of Registrar and Chief Clerk and find accommodation within which to house them. Furthermore the implementation date for the Government of Ireland Act 1920 was 1 October 1921.

[24] It was by no means plain sailing. He initially had a promise from Antrim County Council that they would cooperate and make available space in their courthouse at Crumlin Road. The Council then changed its mind and Craig had to intervene to ensure that there was some space available by the appointed day. There was initial resistance to Henry's proposed structure which he successfully overcame but securing experienced personnel proved difficult as civil servants in Dublin were not inclined to come north unless there was a promotion opportunity.

[25] Despite the many pressures on him Henry played a significant part in the interview of civil servants for senior positions. He also, of course, played a significant role in the appointments to his court. Each of the first two appointments to the Court of Appeal went on to occupy the office of Lord Chief Justice and I will turn to them rather more briefly later. The two High Court judges were Mr Justice Wilson, who had held the post of Solicitor General for Ireland when Henry was Attorney General, and was sworn in on 17 October 1921 with the two court of appeal judges and Mr Justice Brown, the last Attorney General for Ireland, who was sworn

in on 8 February 1922. The High Court judges were, therefore, well known to Henry as law officers.

[26] By the end of 1922 a great deal had been achieved in establishing the court system as described in a Memo prepared by Lord Justice Moore but there remained significant problems over accommodation and appropriately experienced staff. There is no doubt that Henry worked tirelessly on these administrative problems over the next few years as well as doing his fair share of court work. That was not without some controversy. Perhaps the most controversial case was his rejection of a compensation claim in respect of the families of three young Catholics who had been shot dead by a patrol of Specials and British Army in Cushendall. An enquiry by an independent barrister from England had concluded that there was no foundation for the allegation that the three men were engaged in an ambush and there was a finding that the only shots fired were those by the Specials and British Army. In the subsequent trial for compensation Henry concluded that the deaths arose as a result of an unlawful assembly and rejected the claims. It is not my intention to comment upon the outcome of this or other decisions and I have not researched the circumstances sufficiently to do so. I record this simply to indicate that there were some who considered him partial in the conduct of his judicial office.

[27] Henry died unexpectedly on 1 October 1925. He was 61 years old. He had been working at an extraordinary level from the time of his appointment as Solicitor General in 1918 and his family were entirely satisfied that the stress of this work had prevented him living longer. There is no doubt that through his efforts the Supreme Court of Northern Ireland was well established by the time of his death. Many commentators were disappointed that he did not have the opportunity to further demonstrate his considerable skills as a lawyer on the Bench and did not live to see the opening of the Royal Courts of Justice, which he had pursued vigorously, in 1933.

William Moore

[28] Henry was succeeded by William Moore. He was the only one of the original five judges appointed to the Supreme Court of Northern Ireland who had held judicial office having been appointed to the High Court in 1917. He was born in the same year as Henry in County Antrim. He attended Trinity College Dublin where he was an outstanding student. He was called to the Irish Bar in 1887 and practised in the north-east circuit. He took silk 12 years later which was an indication of his success as a junior.

[29] In 1899, the same year in which he took silk, he was elected as a Unionist MP for Antrim North. He was an Orangeman and a committed Unionist. He earned a reputation as a disruptive figure in the House of Commons. Together with James Craig's brother, Charles, he established the Ulster Unionist Council in March 1905. By January 1911 he was stridently defending Ulster's right to armed resistance and was strongly in favour of the amendment to the third Home Rule Bill in 1912 which would have excluded the four counties of Antrim, Armagh, Down and Londonderry. On the passing of the Government of Ireland Act 1920 he rather intemperately expressed satisfaction at being cut off from southern protestants, whom he denounced vehemently as cowards.

[30] He was a man who clearly provoked strong opinions on the part of those who knew him. It seems to be common case that although he had enjoyed a successful junior practice at the Bar his focus was almost exclusively on politics after taking silk. Appointment to the Bench in Ireland prior to partition was, of course, strongly influenced by politics. There was also a prevailing view that there were too many judges for the available work.

[31] Sir John Ross was a Chancery judge who later became Lord Chancellor of Ireland and swore in the first Lord Chief Justice. He wrote to Austen Chamberlain MP, then UK Chancellor of the Exchequer, in 1919 complaining about what he called the degradation of the Irish Bench. He was supported in this by an experienced official called Sir Henry Robinson. Ross singled Moore out in his correspondence noting that "he was appointed to the astonishment of everybody at a cost of about £4000 per annum".

[32] Moore was appointed a Lord Justice of Appeal in Northern Ireland on 17 October 1921. There are limited records dealing with the nature of life on the bench in Northern Ireland in the 1920s but in his lecture to the Irish Legal History Society in February 2010 Lord Carswell produced sufficient evidence to indicate that the workload was light and the four judges supporting Henry were not unduly taxed.

[33] There is evidence that Moore worked with Henry on some of the administrative issues including preparations for the construction of the Royal Courts of Justice and after appointment as Lord Chief Justice he continued to oversee that project. The main work, however, was taken forward by Sir Anthony Babington who was Attorney General in Northern Ireland from 1925 until 1937.

[34] To some extent by the time of Moore's appointment the risk to the establishment of Northern Ireland as an entity had disappeared and the worst of the sectarian violence had abated. The economic conditions were very difficult and all of this contributed to what would have been a quiet period for the Supreme Court. The evidence tends to indicate that Moore conducted the business of the court in an orderly and professional manner and his judgments were described by Lord Carswell as workmanlike.

James Andrews

[35] On the retirement of William Moore in 1937 there were competing claims for the Office of Lord Chief Justice. James Andrews had been appointed along with Moore in 1921 as a Lord Justice of Appeal. He was born in 1877 and attended Inst for a short period before continuing his education at a school in Dublin. He read logic, ethics and modern literature at Trinity graduating with first class honours. He joined the Bar in 1900 and after a hugely successful career as a junior he took silk in 1918.

[36] The other claimant was Sir Anthony Babington who by this stage had been Attorney General for 12 years. The convention in Ireland and as we saw in England and Wales was that the Attorney General was entitled to the Office of Lord Chief Justice if it fell vacant during his period in office. That was the basis of Babington's claim.

[37] It appears that the matter was resolved when a number of members of the Andrews family attended at Craig's home for an all-night discussion about the position. The Andrews claim was assisted by the fact that John M Andrews, a brother of the claimant, was Minister of Labour in the Northern Ireland government and had held that post since 1921. His seniority is emphasised by the fact that in November 1940 after Craig's death he became Prime Minister. John threatened to resign if his brother was not appointed! The end result was that James Andrews became Lord Chief Justice and stayed in post until his death in February 1951. Babington went to the Court of Appeal in his place.

[38] During this period the workload still appeared to be relatively modest. Andrews used his time productively to work in harmony with the legislature and produced various reports recommending legislative change. One outcome of his endeavours was the enactment of the Juries Act (Northern Ireland) 1953.

[39] Probably his most controversial case was an appeal in respect of the murder convictions of Thomas Williams and five others for the murder of Police Constable Patrick Murphy on Easter Tuesday 1942. Each of the six was convicted on the basis of common purpose and sentenced to death. Williams accepted that he was the leader of the group. The other five had their sentences commuted by the Governor but Williams was hanged in Crumlin Road prison.

[40] Until the Second World War, although appointment to the judiciary was formally a matter for the Lord Chancellor, in practice the Unionist government selected the preferred candidate and they were duly endorsed by the Lord Chancellor of the day. The arrival of the Labour Government in 1945 led to the appointment of Baron Jowitt as Lord Chancellor. On the death of Lord Justice Edward Sullivan Murphy in December 1945 Sir Basil Brooke, who had become Prime Minister in 1943, claimed to be entitled to nominate his successor.

[41] Samuel Porter, a barrister and long-time Labour activist, advanced his claims directly to the Lord Chancellor and at the age of 72 was appointed directly to the Court of Appeal. Evidently this was an era where the advantages of maturity and

experience were well appreciated! The other appointment during this period which departed from the mould was that of Charles Leo Sheil, John's father, to the High Court in March 1949.

Baron MacDermott

[42] John Clarke MacDermott was born on 12 April 1896. His father was the Minister of Belmont Presbyterian Church and he attended school at Campbell College. By his own admission his interests as a youth and young man were primarily focused on practical outcomes rather than academic learning. He did, however, obtain a scholarship to Queen's University which he entered in 1914 to study History.

[43] The Great War had just started and two of his older brothers signed up. In January 1916 news came that his older brother Robin had been killed in action in France and he decided that he should make some contribution to the war effort. He left Queen's and initially obtained employment as a labourer in a shell factory in East Belfast working from 6:30 AM until 5:30 PM and sometimes later.

[44] There is no doubt that he found this practical experience of working with a team of skilled tradesmen and labourers very satisfying. It is also clear he formed a very positive view of the industry and general good humour of those with whom he was working and I suspect that the respect for the working man which he developed in that period probably stayed with him for the rest of his life. By reputation he believed in modest damages for the working man injured in his employment.

[45] He had a rather unnerving experience on Easter Monday 1916 when he and a friend travelled by train to Dublin for the day. They walked from the train station up to Grafton Street and beyond before they realised that they were in the middle of the Rising. The railway link to Belfast had been severed and it took them a week to get home.

[46] In November 1916 he signed up with the Royal Artillery as an officer in the Machine Gun Corps and spent most of 1917 being trained in England. He was posted to France in early 1918. He experienced trench warfare and the confusion and feeling of weariness when it was necessary to retreat and the exhilaration of

advancing. He found himself under enemy machine gun fire and on one occasion got a bullet through his trench coat which nearly cut his electric torch in half. He was engaged in numerous actions and awarded the Military Cross in respect of his engagements in the Marne. I mention these matters because it seems clear that the boy who left Queen's University at the start of 1916 bore no relationship to the man who returned there after the summer of 1919 on his discharge from the army.

[47] A career in law was not necessarily his first choice. As a practical man he was much attracted to the notion of becoming a surgeon like one of his brothers. He realised, however, that qualification as a surgeon would take at least five years and in light of his service during the war he was anxious to embark on a career rather more quickly. His brother had undertaken a law degree and his notes were still available. Queen's University was offering ex-servicemen a two-year law degree and he had established that he would also be able to undertake the Kings Inns Bar course at the same time.

[48] Having committed himself to pursuing a career in law he suffered the difficulty that many ex-servicemen faced returning to academic life after the demands of the army. It is clear, however, that he applied himself industriously and obtained particular benefit from a coaching class provided by William Lowry, the father of Lord Lowry. Their careers came into contact with each other again as we shall see.

[49] At the end of his two-years of study he obtained first class honours in the LLB examinations at Queen's University and second place in the Bar finals at Kings Inns behind Frances Kyle the first woman to be called to the Bars of Ireland and Northern Ireland. Both were called with the other Kings Inns students on 1 November 1921 in Dublin. There was some confusion about whether a separate call in Northern Ireland was required but eventually it was decided that both should attend to be called by Henry the following week. This was Henry's first call and when Ms Kyle and Mr MacDermott stood up in court there was considerable delay before the Lord Chief Justice spoke the words of call. Henry later admitted that when he saw the two of them standing there the only words in his mind were "Do you take this woman to be your lawful wedded wife"!

[50] His career at the Bar blossomed and he took silk in 1936. He was elected as a Unionist MP for Queen's in 1938, the route to the Bench, and was appointed Minister for Public Security in 1940. He was Attorney General between 1941 and 1944 and was then appointed to the High Court. His position as Attorney General was taken by William Lowry who had become a Unionist MP in 1939 and when Lord MacDermott was appointed to the House of Lords in 1947 Lowry replaced him in the High Court.

[51] He had a short but distinguished career in the House of Lords but for the reasons I gave earlier I do not intend to touch on that. On the death of Sir James Andrews he came back to Northern Ireland to take up the Office of Lord Chief Justice which he held from 1951 until 1971. He was invited to deliver the prestigious Hamlyn lectures in 1957 and he chose as his theme "Protection from Power under English Law". In the introduction to those lectures he commented on law's fundamental requirements. In particular he said:

"The law should enshrine the rule of law. This is the badge of a free people. The full significance of the expression is hard to catch accurately in words: but it stands for equality ... before the law, for the independence of the courts, for the absence of arbitrary government and for established sources of law. It prefers the individual to the state and suffers whenever the normal freedoms and liberties of the former are curtailed without due cause."

That is a statement which reflects the concept of the separation of powers between the judiciary and the executive which the Constitutional Reform Act 2005 is now designed to support.

[52] Lord MacDermott was an active lecturer long after his retirement. He gave the initial MacDermott lecture in December 1972 on the topic of the decline of the rule of law. The increasing level of paramilitary violence during that year inevitably made this an appropriate topic. I remember during my year as a Bar student in 1976 we attended one Friday afternoon in the Nisi Prius court for a talk by Lord MacDermott. In fact this was a two hour lecture on family law which was a topic very much dear

to his heart. He was also the subject of a terrorist attack and wounded in 1977 giving a lecture at the University of Ulster. Typically he then offered to give the lecture again even though he was 80 years old.

Lord Lowry

[53] Robert Lynd Erskine Lowry was born on 30 January 1919, only son of William. He was educated at Inst and read classics at Cambridge. He was commissioned into the Royal Irish Fusiliers in 1941 and served in Tunis and Italy. Although he would not have experienced the trench warfare of the First World War this lengthy period of service would have left its mark.

[54] Like Lord MacDermott he had a brief period of legal education at Queen's after his discharge from the army and was called to the Bar in 1947. His practice quickly developed and he was junior counsel to the Attorney General from 1948 until taking silk in 1956. He was appointed to the High Court in 1964 at the age of 45. Unlike Lord MacDermott there was never any doubt that Robert Lowry was destined for a career in law. He gave the tribute to Lord MacDermott on his passing and noted that he had admired his prosecutorial skills as an 18 year old when following his father who was appearing for the subsequently convicted accused.

[55] He became Lord Chief Justice at the beginning of the worst period of the troubles. Internment was introduced a week after he was appointed. The following year was the worst year for deaths arising from the terrorist campaign. Stormont was prorogued in March 1972 and emergency legislation was introduced in 1973 providing for non-jury courts and new rules on the admissibility of confessions. Like Lord MacDermott he was the intended victim of a terrorist shooting attack at Queen's University where he had planned to deliver a lecture. Fortunately he escaped without injury.

[56] Against this background it is a tribute to his success in maintaining the independence of the judiciary that in 1975 he was asked to become chairman of the Northern Ireland Constitutional Convention in which the representatives of the political parties engaged in an attempt to agree upon a constitutional structure. The

convention unfortunately did not achieve an agreed outcome but it is widely acknowledged that Lowry's chairmanship was skilled and he won the admiration and respect of the politicians engaged in the exercise.

[57] I want to mention three decisions in particular which in my view demonstrate Lowry's independence as a judge. The first was the decision in December 1973 in R v Corey in which he held that the emergency legislation did not displace the common law power to exclude an otherwise admissible statement in the interests of justice. He then later followed that up in O'Halloran holding that it was difficult to envisage any case in which there had been any form of physical violence relevant to the interrogation of a suspect in custody which could leave the court satisfied beyond reasonable doubt about the admissibility of an alleged confession.

[58] The third decision concerned his treatment of the supergrass appeals in 1986. In these cases large numbers of defendants were accused of a wide range of offences on the evidence of an admitted terrorist. In many cases there was no corroboration. The previous convictions of the prosecution witness inevitably called into question his credibility. The quality of the prosecution evidence was giving considerable scope for concern. Such trials were effectively ended by the decision of the Court of Appeal given by Lowry in R v Donnelly and others in 1986.

[59] Unlike his predecessor Lord MacDermott, who could occasionally be difficult in court, Lowry was a joy to appear before, particularly if you were a young barrister, where he would reformulate the rather rough and ready submission made by counsel into a succinct legal principle in your favour. I confessed my gratitude to him on a number of occasions. He was also a skilled golfer and invariably attended all Bar Golfing Society outings. He was not unaccustomed to a late night!

Lord Hutton

[60] On Lord Lowry's appointment to the House of Lords in 1988 Lord Hutton was appointed as Lord Chief Justice. He was born in June 1931 and obtained a scholarship to Shrewsbury School. Thereafter he was a scholar at Balliol College Oxford and awarded a first-class degree in jurisprudence. He was called to the Bar in

1954 and was appointed junior counsel to the Attorney General. He took silk in 1970 and after the prorogation of Stormont he acted as senior Crown counsel in Northern Ireland

[61] I had an early opportunity in my career at the Bar to appreciate Lord Hutton's skills. I was only called about two months when I found myself junior counsel in a contested civil case in front of a jury arising from an army shooting in Newry. As junior counsel it was my responsibility to close the case to the jury. Whether for that reason or because of Brian's excellent advocacy our action was dismissed! Undaunted an appeal was lodged and we succeeded on a negligence issue. Brian clearly did not think much of this because a petition to appeal to the House of Lords was lodged. By the time it was listed in 1979 Lord Hutton had just taken up his position on the Bench as High Court judge. Regrettably it turned out that his advice on appeal proved accurate. The case was, however, later settled as a result of a referral to the European Court of Human Rights on an Article 2 point.

[62] Although his background might have suggested a disposition towards support for the executive his judicial record indicates otherwise. He dismissed conspiracy to murder charges against a former republican prisoner because of police conduct, ordered police officers to appear in controversial inquest cases and dismissed Private Lee Clegg's appeal against his murder conviction. In other words he applied the law to each case on the basis of its own facts without partiality

[63] During the course of his service as Lord Chief Justice it was discovered that he was being targeted by the Provisional IRA and his family had to move to Scotland. Although he could appear quite formal he was an easy and entertaining conversationalist. He had an impish sense of humour but my distinct recollection is that he had a tendency to start laughing about the joke shortly before finishing it!

Lord Carswell

[64] On the appointment of Lord Hutton to the House of Lords in 1997, Lord Carswell was appointed Lord Chief Justice. He was educated at Inst and obtained an MA in classics and law at Pembroke College, Oxford. He was subsequently awarded

a JD by Chicago Law School after 2 years study. He was called to the Bar in 1957 and had a flourishing practice. He was junior counsel to the Attorney General between 1969 and 1971 when he took silk. He was much sought after and heavy Chancery in commercial cases and between 1979 and 1984 he was senior Crown counsel. Shortly before his appointment to the Bench he was the subject of an undercar IED. He took his place on the bench in 1984 and became a Lord Justice of Appeal in 1993. He was always courteous in court but dominated by his powerful intellect.

[65] He thoroughly enjoyed the administrative side of the work as Lord Chief Justice. There was regular contact with the Lord Chancellor's office and also engagement with his counterpart in the Republic of Ireland implementing an arrangement to ensure that those called in either jurisdiction should be able to achieve advocacy rights in the other jurisdiction. His period in office coincided with the making of the Good Friday/Belfast Agreement, the passing of the Northern Ireland Act 1998 and the Human Rights Act 1998.

[66] There were a number of challenges that arose in relation to the outworkings of the 1998 Agreement including in particular a challenge by Peter Robinson to the appointment of the First and deputy First Minister. The appointment was upheld by a majority in the Court of Appeal with Lord Carswell dissenting. In the House of Lords it was upheld by 3 - 2 majority with Lord Hutton dissenting along with Lord Hobhouse. In each case it was a close run thing.

[67] Lord Carswell was also committed to Inst and during his period as Lord Chief Justice served as chairman of the Board of Governors. I am aware that he and the then principal of the school had an excellent relationship speaking almost daily and Lord Carswell thoroughly enjoyed his period in that office also. I gather he gave good voice to the school song!

[68] He participated actively in the Bar Golfing Society which at that stage was the principal organisation by which social occasions were provided where young members of the Bar could mix with judges and more senior colleagues. He was always a competitive golfer and on occasions rather unforgiving of his own errors!

In 2004 he was appointed to the House of Lords and the appointment of Lord Kerr as his successor created a space in the High Court which I was fortunate enough to fill.

Lord Kerr

[69] I do not think that I have the words to describe the sense of shock and loss experienced by the legal community on hearing of the death of Brian Kerr one year ago almost to the day. He came to see me in September last year and was full of ideas about interesting things was going to take up and mischief that he was likely to generate. Oddly enough for a skilled and dedicated lawyer he was always suspicious of established practices and customs and had the independence of mind to rigorously challenge them.

[70] The grieving process was not helped of course by the circumstances of the pandemic at the time of his death. It felt like there was something undone that we needed to correct. To some extent that has been corrected by the excellent memorial event at Queen's University last month at which his sons spoke so well and David Pannick gave a well-deserved and generous tribute.

[71] Brian was educated at St. Colman's College Newry and Queen's University. He was called to the Bar in 1970 and the combination of powerful intellect and prodigious industry ensured that he quickly developed a leading junior practice. He served as junior Crown counsel from 1978 to 1983 when he took silk. The success of his senior practice matched that of his junior practice and he was appointed senior Crown counsel from 1988 to 1993. That was the route to the bench taken by Lord Hutton and Carswell.

[72] He did his fair share of controversial criminal work but his principle interest was in judicial review. He led the development of judicial review in this jurisdiction from being a rather esoteric speciality to the busy division of the High Court that it is today. An indication of his industry is that while leading on judicial review he also for a while also led the commercial list.

[73] He was Lord Chief Justice between 2004 and 2009 when he was appointed to the House of Lords and at 1 October 2009 took up his place in the Supreme Court where he sat for 11 years. Some may be surprised that I have not chosen to spend some time examining his career in this lecture; the truth is that the scope of the lecture simply would not do him justice.

[74] Brian spent just over five years as Lord Chief Justice but spent double that time in the Supreme Court. He was, of course, a distinguished Lord Chief Justice and in court rigorously tested counsel's propositions to see if the law could be developed in light of the existing jurisprudence. I think, however, that the constraint of precedent inhibited him when sitting in the appeal court and the contribution of which he was always most proud was that which he made in the Supreme Court where he concluded that precedent was not really a problem. I consider, therefore, that any adequate evaluation of Brian's enormous contribution to jurisprudence could not be achieved within the context this lecture but there will be many occasions when there will be opportunities to properly recognise the honoured place that he deserves.

Conclusion

[75] My own period of office ran from 2009 until the end of August this year. It coincided broadly with the devolution of policing and justice in April 2010. That was a positive step in the implementation of the 1998 Agreement and I think it has also been positive for those involved in the system of the administration of justice in Northern Ireland. What, I think, has become apparent to all of us is that the administration of justice depends upon the various actors working in step with each other. Each element of the system needs to take into account the consequences for the other parts of the system. It is only by collaboration and cooperation and an understanding of the limitations and constraints which others face that we can find the best solution.

[76] The devolution of policing and justice has been a driver for that collaboration and cooperation but it is necessary for us to build on that both administratively and legislatively. Perhaps the biggest disappointment of my period in office was the

three year period during which the Northern Ireland Executive did not function. I should make it clear, however, that I enjoyed facing the challenges both in court and outside and I am grateful for the enormous support that I got from my colleagues and staff.

[77] My final thoughts are about the future. She is, of course, sitting beside me. Lady Chief Justice Keegan is the first woman to hold this office. She is the youngest person to be appointed to this office. She did not seek nomination as a Unionist MP nor did she apply to become senior Crown counsel. She is the first person to be appointed to this post who came from a specialist family background at the Bar. These are just some of the ways in which she has broken the mould. I think that sometimes mould breaking can get addictive and after 100 years that is not be such a bad thing. I look forward to seeing the new shape of a 21st-century judiciary. I wish the Lady Chief Justice well and am confident that our justice system will respond to whatever challenges it faces in order to provide a fair, impartial and independent system for everybody in this jurisdiction.

Declan Morgan

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