

KING'S INNS AT A CROSSROADS
1916 – 1926

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Mr Chairman, Benchers, Members of the Honorable Society of King's Inns and of the Law Students' Debating Society of Ireland, and Honored Guests,

At the outset, I would like to express my gratitude to Mr Justice Hardiman for chairing tonight's meeting, the 185th Inaugural Meeting of the Society, and to Mr Justice Hogan and Mr McDermott for agreeing to speak. I thank the King's Inns, and particularly the Under Treasurer Sean Aylward, the Dean of Law, Mary Faulkner, Librarian Renate Ni Uigin, and David Curran for their assistance in organizing and planning this meeting. Thanks to all of you too for being here.

The subject of tonight's address is 'King's Inns at a Crossroads, 1916 -1926'.

In many ways, those of us here tonight may in recent times have seen Kings Inns as being yet again at a crossroads, when the nature and future of the independent referral Irish Bar as a profession is itself at issue.

To keep our current concerns in perspective, tonight I ask you to cast your minds back to the evolution of the King's Inns in the turbulent decade that followed 1916.

In particular, I will speak about three significant and controversial episodes which took place during that decade.

The first, perhaps the least well-known, is an IRA raid on Kings Inns in June 1920; the second is the habeas corpus trial of Erskine Childers, also in this building in November 1922; and the third concerns events which resulted in the division of the King's Inns into a Northern and Southern Bar in the years following partition.

These events will demonstrate the resilience and adaptability of the King's Inns as an institution; the extent to which the King's Inns is capable of reflecting the prevailing moods and trends in Irish society; and the inextricable relationship between the King's Inns and Irish politics, which continues today.

Episode 1: IRA Raid on the King's Inns, June 1920

In 1916, when Padraig Pearse, a revolutionary and one-time junior counsel, led the Rising, the Kings Inns had been briefly used by British Army snipers in 1916 to harry and pin down the Volunteer garrison in the North Dublin Union

In 1920, during the throes of the Irish War of Independence, part of the King's Inns complex was permanently occupied by the British army, who used it as a military post in their ongoing conflict with the IRA.

In May of that year, the 1st Battalion of the Dublin Brigade of the IRA resolved to strike against this British garrison in the most ambitious and daring of circumstances.

Thanks to several first hand witness statements available at the Military History Bureau at Cathal Brugha Barracks, it is possible to piece together an accurate and vivid description of this operation.

The most complete version of events is provided by Jerry Golden of Fairview in Dublin, a young law clerk and member of the 1st Battalion, who both devised and participated in the IRA military action.

On 17th May 1920, Mr Golden was in charge of a picket of striking law clerks outside the Registry of Deeds next door.

He very quickly observed that the British soldiers stationed at the King's Inns were extremely lax in their discipline, and he could chat casually with the soldiers freely coming and going from the Guardroom, in which rifles, ammunition, grenades and a Lewis machine gun were stored.

He fed this information back to Peadar Clancy, his commanding officer, and was asked to compile a written report as well as a sketch map of the King's Inns complex and surrounding streets. He was also able to arrange a counterfeit permit to Registry of Deeds for Clancy, who the following week was able to enter and survey the guardroom and the ammunition, under the guise of a solicitor's apprentice from Ennis, Co. Clare.

The next day Mr Golden arranged for one of his fellow picketers to bring along a pocket camera to take some photographs of the complex in order to assist in the IRA's planning.

Golden began by innocuously taking photos of the picketers outside, all the while worrying about how he might sneak his camera inside the building to take photos of the Guardroom.

In his own words, he could hardly believe his senses when the British sergeant on duty came out and asked Golden whether he might bring his camera inside to the Guardroom to photograph the soldiers and their ammunition. As the sun shone through the window, Golden was able to take extensive photographs of the soldiers, their arsenal, and the internal layout of the building.

Over the following week, the IRA put together a plan. On Monday 31st May, four squads would converge on the King's Inns. Two squads would enter each of the gates at the front of the King's Inns on Constitution Hill, one squad would enter the King's Inns via Henrietta Street, and one squad would remain stationed on Henrietta Street to ensure that there would be no obstacles to a quick getaway.

However, Monday, 31st May, was a glum and drizzly day, and the IRA feared that the British soldiers would all be sitting in the guardroom that afternoon. The IRA observed that on warm

days, the soldiers used to relax on the green in front of the Inns, basking in the sun, playing cricket and chatting with their lady friends.

It was decided to postpone the operation for 24 hours in the hope that the sun would come out.

At 3.50pm on Tuesday June 1st, the operation began, and by 3.58pm it was all over. The squads entering from Constitution Hill came in and locked the front gates, while the Henrietta Street squad entered the side door of the building, with Jerry Golden, well known to the British soldiers as a striking law clerk, ostensibly playing the role of a prisoner held at gunpoint by the IRA.

They entered the guardroom, catching the occupants by surprise, and held them against the wall at gunpoint, while they made off with 25 rifles, several thousand rounds of ammunition, and some boxes of hand grenades. The main prize, however, was two large Lewis machine guns, one of which was carried out of the building by an ecstatic 18-year-old Kevin Barry, exactly 5 months before he was executed by the British government amid controversy and outcry.

Two motorcars waited on Henrietta Street and were loaded up with the spoils of the raid, before making off at high speed as the locals cheered from the tenement windows.

The raid was a propaganda triumph for the IRA and a propaganda disaster for the Crown. It was held out by the next day's Irish Times editorial as the clearest evidence that the Crown was losing the struggle in Ireland. At Westminster and in Fleet Street, the raid reverberated loudly.

The next day, Jerry Golden attended his picket at the Registry of Deeds as usual, and was interviewed by the British about what he knew about the raid. Golden, of course, pleaded ignorance, and he recalls his British interviewer muttering in frustration that "in Ireland we have law makers, law breakers and law strikers, all bloody well bunched together".

Episode 2: The Erskine Childers Habeas Corpus Proceedings

The transition from law maker to law breaker provides the backdrop to the second episode in tonight's address, which concerns the habeas corpus proceedings of Erskine Childers.

By way of background, Robert Erskine Childers was born in London in 1870 to an English father and an Irish mother from an Anglo-Irish landowning family of Glendalough House, Co. Wicklow. He served in the British army in the Boer War and in the Royal Naval Intelligence in the First World War, enlisting within days of having skippered the Asgard into Howth as part of the Irish Volunteers' gun-running.

Elected as an MP for Sinn Fein for Kildare-Wicklow in 1921, he appeared to transform from a devoted subject of the British Empire to a fanatical advocate for Irish nationalism in ten short years.

Childers was secretary to the Irish delegation that agreed the Anglo-Irish Treaty; however, he was vehemently opposed to the final draft which was agreed by Collins, Griffith and others, and he voted against its approval by the Dail in January 1922.

During the civil war which followed, Childers devoted his energies to producing Republican propaganda.

In November 1922, Childers was summoned to Dublin by Eamon De Valera, possibly to act as secretary to the Anti-Treaty Provisional Government. En route, he stopped off to spend a night in Annamoe, Co. Wicklow, at the house of his cousin, Robert Barton.

There, he was discovered by the Free State forces and arrested for illegal possession of a firearm. Ironically, the firearm in question was a small revolver gifted to him by Michael Collins himself when the pair were on the same side, before the treaty and the War of Independence.

Childers was tried by military tribunal, and sentenced to death. Coincidentally, it was in large part the assassination of Collins that prompted the Free State to establish military tribunals under the Army Emergency Powers Resolution.

On Saturday 18th November 1922, an application for *habeas corpus* was made at the home of Sir Charles O'Connor, Master of the Rolls.

That the application was made to Sir Charles specifically was no coincidence; in 1921, in the case of *Egan v. Macready*, he had granted a writ of *habeas corpus* in a judgment which was directly at variance with the decision of the King's Bench Division in *R v. Allen* earlier that year. The decision in *Egan* did not go down well in London; in his paper on this topic, Mr Justice Hogan states that Sir Charles was regarded 'as having gone off at the deep end'.

The following Monday, 20th November, the *habeas corpus* hearing was opened in this very hall. The Four Courts was, at the time, uninhabitable, following its destruction at the outbreak of the civil war.

A variety of legal arguments were advanced on behalf of Mr. Childers over the course of a three-day hearing. It appears that the partial purpose of this may have been to simply delay Mr Childers' execution for as long as possible so that clemency might be granted by the Free State government. Quite a large number of people, including Jack Yeats, perhaps the most distinguished former auditor of this society, petitioned the Free State government not to execute Childers.

At the end of the third day of hearing, Michael Comyn, for Mr. Childers, asked that the case be adjourned to a fourth day. Despite Mr Comyn's assertion that he was exhausted and could not do full justice to his client, the Master of the Rolls decided that the case had been argued in full. He delivered his judgment immediately, by candle light in this very dining hall.

Before turning to the judgment, it is worth pausing to consider what a dramatic and tense occasion it must have been, inside these four walls. Childers himself was in Beggar's Bush barracks awaiting the outcome of the hearing; his legal team had exhausted every legal argument available; and his allies on both sides of the Irish Sea were frantically lobbying the British and Irish governments for an official pardon.

Outside, the light was fading quickly on a November evening, and in this room, Sir Charles was losing patience.

The question addressed by Sir Charles was whether or not a “state of war” existed which ousted the jurisdiction of the courts and which justified the use of military tribunals. His answer was provided in the following, partisan terms:

I am sitting here in this temporary makeshift for a Court of Justice. Why? Because one of the noblest buildings in this country, which was erected for the accommodation of the King’s Courts and was the home of justice for more than a hundred years, is now a mass of crumbling ruins, the work of revolutionaries, who proclaim themselves soldiers of an Irish Republic.

I know also that the Public Record Office (a building that might well have been spared even by the most extreme of irreconcilables) has been reduced to ashes, with its treasures, which can never be replaced.

I know also that railways have been torn up, railway stations destroyed, the noblest mansions burned down, roadways made impassable, bridges blown up, and life and property attacked in almost every county in Southern Ireland.

If this is not a state of war, I would like to know what is.

He went onto note that this state of war was one which Childers himself, on the anti-Treaty side, had helped to produce. The application to adjourn for a fourth day was refused. Erskine Childers, an Irish nationalist who in 1914 had imported arms for the Irish Volunteers, was about to be executed on the orders of a provisional government which arose from a treaty which he had helped negotiate but ultimately repudiated.

An appeal was lodged immediately, but Childers was nevertheless executed the following morning, Thursday November 23rd 1922, at Beggar’s Bush barracks.

A request by Childers to delay the event by a few minutes so that he could watch the sun rise was granted. He shook hands with each member of the firing squad, and to them he spoke his famous and haunting last words:

‘Take a step forward lads; it’ll be easier that way’.

Childers’ legacy is somewhat confused. His rapid transformation from an Intelligence Officer of the British Navy to a fervent Republican aroused suspicion and hostility among members of both the British establishment and the Irish nationalist movement.

Michael Collins appears to have believed that the purpose of Childers’ radical and unattainable vision of an Irish Republic was to heighten British hostility towards the Irish and undermine the movement for Irish independence from within.

In 1903, Childers wrote what is widely considered to have been the first ever spy novel, ‘The Riddle of the Sands’. As Collins put it, the plot involved a spy joining an extreme faction in an enemy country, and leading that faction to excesses that would eventually bring

about a desired war. Collins observed striking similarities between the behavior of that protagonist and the behavior of Childers himself.

Prior to Childers' death, Collins observed the following:

'Of all the many men who for hundreds of years have done Ireland grievous harm, none has managed to deal the Irish people such an overwhelming blow as Erskine Childers.'

Speaking of Childers' relationship with Eamon De Valera, Collins continued:

'Then, in 1917, Childers met De Valera. It was an unhappy moment for Ireland when this illogical, incompetent, inexperienced schoolteacher came under the spell of Childers – a genius as brilliant as De Valera was guileless.'

In a similar vein, no less a figure than Winston Churchill said of Childers, following his arrest:

'I have seen with satisfaction that the mischief-making murderous renegade, Erskine Childers, has been captured. No man has done more harm or done more genuine malice or endeavored to bring a greater curse upon the common people of Ireland than this strange being, actuated by a deadly and malignant hatred for the land of his birth'.

However, and quite remarkably, it should be noted that later, Churchill appeared somehow to change his mind, describing Childers as 'a man of distinction, ability and courage', and 'a great patriot and a statesmen, with whom I disagreed on everything.'

It is curious that the government did not wait for the determination of an appeal before proceeding with the execution, but that turn of events may be explained as follows:

The architect of these military tribunals was Minister for Home Affairs, Kevin O'Higgins. It is clear that O'Higgins too despised Childers. Earlier that year, in the Dail, O'Higgins had remarked during the Treaty debates that Childers' one objective was the complete breakdown of Ireland's economic and social fabric. He went on to state:

'His programme is a negative programme, a purely destructive programme, and it will be a victory to him and his peculiar mind if he prevents the government coming into existence under the terms of the Treaty.'

While the government was no doubt eager to use the military tribunals as a deterrent against the IRA, there may have been an additional, personal edge to the execution of Childers. He was utterly detested by Griffith, who had recently died, by Collins, who had had been assassinated, and by O'Higgins, as well as other members of the Free State government, and his execution would have been viewed as a necessary political victory for the Provisional Government.

Episode 3: The Partition of the Irish Bar

While Kevin O’Higgins was an important actor in this dramatic chapter in the history of the King’s Inns, he also features in the cast of the final episode in this address.

Indeed, it was a dispute surrounding Kevin O’Higgins which presented a far more existential threat to the King’s Inns and resulted in a seismic shift in this island’s legal landscape.

The final section of my address deals with the split between the Northern and Southern Benchers of the King’s Inns, and it begins in 1921 with the partition of the island of Ireland. The Government of Ireland Act of 1920 established two separate legal jurisdictions in the North and South, and provided that all existing barristers would retain rights of audience in both jurisdictions.

No provision was made, however, for the ongoing education and admittance of new barristers. It is clear from contemporary sources that the preferred approach among barristers and judges was that the King’s Inns should remain the single inn of court for the island of Ireland.

In early 1921, Mr Justice John Gibson retired and was elected an honorary bencher of the King’s Inns. In a letter expressing his gratitude for this honour, Mr Justice Gibson wrote as follows:

May I add to my farewell my hope and prayer that the Bar of Ireland, whatever may befall, hitherto united as one body, inspired with fraternal loyalty to their fellows, will continue to transmit their fine traditions, and that Bench and Bar together will never fail to preserve and uphold the lofty standard of their predecessors, so honoured by us all for learning, independence and courage.

The inaugural meeting of the Law Students Debating Society of Ireland in October 1921 was attended by Sir John Ross, the last person to hold the position of Lord Chancellor of Ireland before it was abolished in 1922.

At that inaugural meeting, he is reported to have remarked that they were at a time when many things were being split, when the word partition was continually in print before their eyes, when the judiciary of the country was separated and partitioned between Northern Ireland and Southern Ireland, when the great profession of the Bar was divided and split up, and when education, primary and secondary, was split up’.

He guaranteed the students that ‘there was one thing that would never be split up, and that was the Honorable Society of the Benchers of the King’s Inns.’

It is said of Sir John that there was an unofficial understanding at the Bar during his tenure as Lord Chancellor that no cases would be listed for hearing on days where racing was being held at Punchestown, such was his fondness for the sport.

Less than a week later, the Benchers set in motion the process of creating rules to accommodate partition with a single barristers’ profession within Kings Inns.

The planned rules allowed for: a right of audience in both jurisdictions for any barrister admitted to the degree of barrister at law by the King's Inns; the creation of a Northern Committee of Benchers to deal with the education and disciplining of barristers in Northern Ireland; lectures to be held concurrently in Belfast and Dublin (though all examinations were to be held in Dublin); and special concessions for Northern students with regard to their dining obligations in Dublin.

These arrangements were to remain in place until 1926. While a small dispute over stamp duty had simmered away for a number of years leading up to the division between the Northern and Southern Bars, it was the issue of exemptions from examinations which was the decisive catalyst in the split.

Before addressing the details of the dispute over exemptions, it is important to put the matter in context. In the early 1920's, the Benchers of the King's Inns had allowed certain individuals to be called to the Bar despite not having passed some or all of the prescribed examinations, on the basis of their war service in the British Army during the First World War.

However, in 1923 and 1924, further exemptions were granted which led to conflict between the Northern and Southern Benchers. Major Michael Joseph O'Brien Twohig and Leon O'Broin were permitted to sit the final examination of the King's Inns without attending the required number of lectures.

These exemptions were granted in light of military service, albeit of a very different kind, for the pair had fought in the War of Independence and for the Free State army.

In a letter from A. Newton Anderson, representing the Northern Benchers, to the Under Treasurer, Richard Armstrong, the Northern Benchers complained. In response, the Under Treasurer set out the views of the Standing Committee of the Benchers in Dublin, advising the Northern Benchers that, in the Committee's view, 'gentlemen who were actively engaged, as Messrs. O'Brien Twohig and O'Broin were, in establishing the Government of the Irish Free State against domestic foes, were entitled to no less consideration than those who were engaged in the European War.'

Tensions were exacerbated further in October 1924 by the decision of the Benchers to exempt the Ceann Comhairle, Michael Hayes, from lectures 'in consideration of his high office' and allow him to proceed to his call upon completion of the examinations only. The Northern Benchers responded to this development by letter, which stated that they would no longer admit to the Northern Bar gentlemen admitted to the Southern Bar without further enquiry, and that until their concerns over exemptions and their threat to reciprocity with English inns of court were met, Free State barristers would not be called to the Bar in the North.

Two months later, in January 1925, the final nail in the coffin of a united Bar came in the form of exemptions granted to Minister for Justice Kevin O'Higgins. O'Higgins was exempted both from lectures and exams, in consideration of his educational attainments and his experience of legal matters acquired as Minister and elsewhere. The motion allowing O'Higgins to proceed immediately to call was passed unanimously. O'Higgins' attitude to practice at the Bar had clearly altered in the years since the Civil War, during which he

remarked in the Dail that ‘solicitors and barristers are, as a class, a nervous body unsuited to the robust times in which we live’.

Intriguingly, the letter of protest from the Northern Benchers following the exemption granted to the Ceann Comhairle was not shown to the Southern Benchers before the decision regarding O’Higgins was made. It therefore remains a matter for speculation whether the Southern Benchers would have handled the issue differently had they been aware of the letter and the concerns set out therein. While it is impossible to prove a counterfactual when discussing history, it seems likely that by then the split between North and South was a matter of time, and the O’Higgins affair merely brought tensions to a head.

When the Northern Benchers raised further protest, the Under Treasurer noted that O’Higgins:

...in addition to his training in the Incorporated Law Society and as an apprentice to the late Mr Maurice Healy, had obtained the degree of LL.B. and had acquired considerable experience in legal affairs as Minister for Home Affairs and subsequently for Justice ...

This did not assuage the Northern Benchers and, although several attempts were made at reaching an amicable compromise between the two sides in the Summer of 1925, it was announced by the Northern Benchers that from 1st August new arrangements would be put in place and that the previous agreement between North and South was now at an end.

On 11th January 1926, a separate inn of court for Northern Ireland was formally inaugurated at the law courts in Belfast, and Sir John Ross’s dream of a united Bar was over.

The events leading to the split between the Northern and Southern Bars must be considered in a wider political context. Unsurprisingly, the Southern Bar was composed of both Catholics and Protestants, nationalists and unionists, as far apart in the political spectrum as, for example, Padraig Pearse and Edward Carson, all of whom saw the political and economic imperative that the Bar would serve the independent Free State. The pendulum within the Southern Bar was moving decisively towards nationalism and separatism. Northern Benchers and Bar were mostly Protestant Unionists. This had several implications.

Firstly, while the Northern Benchers’ express concern at the regime of exemptions adopted by the King’s Inns was with regard to reciprocity with their English counterparts, the truth is that their opposition must have been at least as much a matter of politics as it was a matter of pragmatism. The idea that Republican soldiers who fought on the Pro-Treaty side of the War of Independence could be equated with the British heroes of the First World War in gaining exemptions was difficult to digest.

However, for them to see an individual such as Kevin O’Higgins – a former Irish volunteer, an MP for Sinn Fein, a person who had described Unionists as descendants of ‘a ruthless confiscation and plantation of three centuries before’ – being called to the Bar having never attended a lecture or passed an exam of the society must have been unpalatable.

Here was a man who had fought against the Empire less than a decade earlier, being called to the Bar owing to an office held under a new political regime to which the Northern Benchers had been vehemently opposed in the first place.

Secondly, the Northern Benchers perceived a substantial threat to the system of reciprocity between King's Inns and the inns of court in England, whereby each recognized the qualifications of the other as satisfying the requirements for the call. The system of reciprocity not only enhanced the usefulness of qualifying in Ireland, but also retained close links with the English legal system. These links would, of course, have been particularly attractive from the perspective of a Northern Bencher.

This threat was manifested not only in the liberal approach of the benchers towards exemptions (which itself may have undermined the relationship between the King's Inns and the inns of court in London), but also in their distinctly Republican approach to shaping their new legal system.

The new Chief Justice of the Irish Free State, Hugh Kennedy, presided *ex officio* at benchers' meetings, and he was considered to be a constitutional nationalist who wished to develop a distinctly Irish, as opposed to English, legal system. For example, in October 1925, he raised the idea of a compulsory Irish language requirement for call to the Bar (which was subsequently legislated for in the Legal Practitioners (Qualifications) Act 1929).

At the ceremony to mark the inauguration of the new inns of court in Northern Ireland, the Lord Chief Justice, Sir William Moore, specifically cited the growing support for the Irish language requirement as necessitating the establishment of a separate Northern Bar.

Conclusion:

As I conclude, I believe it is worthwhile to reflect for a moment on what these snapshots from its history say about the King's Inns as an institution today.

Firstly, I believe that they show how versatile and flexible an institution the King's Inns is.

Much is often mistakenly made of the motto of the King's Inns, *Nolumus Mutari* (often wrongly translated as 'We shall not be changed' when its true meaning was "We will not agree to changes in fundamental legal rights") as an indicator of conservatism, traditionalism and rigidity.

However, it is instructive to remember that between June 1920 and November 1922, the Inns transformed from a British barracks and a military target of the IRA, to a makeshift courtroom for a new war-torn Irish Free State, in which a leading light of the IRA was put to death. Furthermore, the subsequent unfortunate but inevitable split between the Northern and Southern Bar points to an institution and a profession which is capable of adapting to match the political backdrop of the day.

Secondly, it is clear that the King's Inns is an institution which is reflective of Irish society in many ways, and must be to survive. In the ten years examined in this address, the Inns transitioned from an institution of the British establishment to an institution of the new Irish order, from a Society which aspired to transcend partition to one divided along the North-South border.

Thirdly, I believe that the events described this evening demonstrate the strong link that exists between Irish politics and the King's Inns. Each of the three episodes shows the extent

to which the prevailing political mood and issues were borne out within the walls of this very building, from the fight for independence, to the civil war, to the sensitive issue of partition.

However, even beyond the decade following 1916, the relationship between the Inns and politics is a recurring theme.

On the 1st of November 1951, Uachtaran na hEireann Sean T O'Ceallaigh was made an honorary bencher here and delivered a speech unveiling the John Lavery painting of Roger Casement, now hanging in the Bar Room.

In the last couple of years, the Inns was transformed temporarily into Leinster House for the filming of Charlie, and for a few weeks, the law lords that adorn the walls of this building were replaced by portraits of the architects of the Irish Republic, such as Eamon De Valera and Michael Collins.

In January of this year, former Taoiseach Liam Cosgrave, aged 94, dined in this hall and was warmly welcomed, ninety two years after his father's government refused clemency to Erskine Childers.

Tomorrow night, the link between politics and the King's Inns will again be evidenced, as this hall will host a debate organized by Bryan Lucey on the forthcoming gay marriage referendum.

I believe it is true that the Kings Inns is more at ease with its history and its place in modern Ireland than it has ever been, and is well placed to play a leading role in the evolution and modernization of the independent referral Bar as a central part of Ireland's legal system

I would like to conclude my address by again extending my gratitude to Mr Justice Hardiman, Mr Justice Hogan, and Mr McDermott for attending tonight, to the staff of the King's Inns for facilitating this meeting, and to all of you for attending.