Editorial

Welcome to the third edition of the Irish Judicial Studies Journal for 2023.

The edition comprises a mix of articles, many on very topical issues, including our first article which arises out of the context of the eviction ban imposed in 2022 and subsequently lifted earlier this year. Conor Crummey argues that Article 40.5 of the Constitution, which protects the inviolability of the dwelling, is relevant in cases involving enforced evictions against tenants. He conducts an analysis of the case law surrounding Art 40.5, which was previously thought to have been concerned with forcible entry into a person's home by the State. However, Crummey argues that the concept of 'dwelling' referred to in the provision has an important social aspect which is relevant in the context of tenants being evicted from their homes.

Following in a similar property-related theme, James McGovern argues in the next article that the Irish courts have failed to engage with the wording of the constitutional property rights clauses. Through the application of normative theories of property, this article seeks to show that the clauses contain an unambiguously communitarian meaning and it is argued that courts have, at times, defaulted to a liberal understanding of property as exemplified by cases like *Blake-Madigan*. However, it is argued that this 'liberalism creep' has largely now abated and recent judgments in areas such as planning law show the emerging predominance of communitarianism in constitutional property rights adjudication.

Next Orla Kelleher writes about the concept of Environmental constitutionalism. Given that the Citizens' Assembly on Biodiversity Loss recommended a referendum to insert environmental and nature rights into the Constitution, the article explores fundamental questions such as whether constitutionalising express environmental rights and/or duties could provide a transformative legal discourse for tackling the twin climate and biodiversity crises in Ireland.

Customary International Law is the subject of the next article by Pearse Clancy, who considers the place of this source of law in the Irish legal context, analysing the relevant case law on the issue, and considering the consequences of customary international law entering the Irish legal system through the vehicle of Article 29.3 of the Irish Constitution. In particular, it is argued that that a prevailing sense of judicial scepticism, as well as the general lack of certainty in the case law, has contributed towards a general failure on the part of the Irish courts to properly engage with the specific methodologies involved in identifying rules of customary international law.

Given the recent attention on the judicial appointments process, James Rooney conducts a survey of the secondary and tertiary education and educational backgrounds of members of the Supreme Court since its establishment in 1924 in the next article. He considers what the predominance of former fee-paying school students on the bench may tell us about the socioeconomic and class makeup of the Court. Having examined the key trends, the article looks at why these trends exist and why the predominance of a particular socioeconomic class on the bench matters, as well as how it may have informed adjudication, particularly rights adjudication, in Ireland.

In the next Article, Brian Robinson examines planning enforcement rules. He points out that while the time limit for taking enforcement action under Part VIII of the Planning and Development Act 2000 is stated to be seven years, this limitation period appears to have been extended by case law and legislation. The article also looks at who bears the burden of proof when the seven-year rule is invoked, as well as the legal and practical consequences resulting where it is found that the statutory defence applies.

Our final article looks at the novel practice of providing facility dogs for victims in court in order to try to prevent secondary victimisation, especially of vulnerable victims such as child victims and victims of sexual and gender-based violence. The authors point out that a range of international law instruments impose obligations on States to implement measures aimed at mitigating secondary victimisation but leave discretion to States as to the form that these measures will take. This article explores the use of facility dogs as means of providing the necessary mitigation, looking in particular at the results of the FYDO project – the first European pilot project to use and assess the efficacy of facility dogs as a means of mitigating secondary victimisation among victims of crime.

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Go mbainfidh sibh taitneamh as.

Dr Laura Cahillane
Editor in Chief