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Law and the Irish language: history lessons.

Tony Crowley

My topic tonight is law and the Irish language, and I propose to divide my talk into two sections. The first will be a brief historical overview of the ways in which law has been used to discipline Irish; the second will be an even briefer consideration on the potential of law to sustain the language and its speakers. I'll talk then about law past and law present, and about law as the violent instrument of proscription and law as the creative medium of prescription.

Let me start with the history, which means addressing colonialism and its complex cultural legacy. It's important to recall that when the colonists first arrived in Ireland, they didn't bring the English language with them; they brought their own Norman language, and the languages of their soldiery - Flemish, Welsh, Anglo-Norman and varieties of late Old English. As a matter of historical fact, English only became the language of the law courts and the opening of parliament in England in 1362 (after the introduction of the Act for Pleading in English). That's significant because just a few years later, The Statutes of Kilkenny (1366) became in effect the first language legislation enacted by the English State in Ireland. It's worth thinking about the coincidence of those Acts since what it points to is an often unnoticed link between attempts to centralise and reinforce the status of the English language in Ireland and efforts to do the same for the English language in England. A simpler way of making the same point is to say that in a process that happens repeatedly, precisely because of its role as the vehicle of colonial rule in Ireland, the English language had to be legitimised and standardised in England. In other words, and I suppose you might call it history's revenge, the English language was in many ways shaped and indeed determined by its use in Ireland.

The purpose of The Statutes of Kilkenny, written in Norman French since that was the language of law in England in 1366, was to address a specific problem: the Gaelicisation of the colonisers (this was a perennial issue, though it was particularly acute during the Gaelic Revival

of the fourteenth century). The Statutes were based on the simple fact that the colonists, ‘forsaking the English language, manners, mode of riding, laws and usages, live and govern themselves according to the manners, fashion, and language of the Irish enemies’.¹ As a consequence, ‘the said land, and the liege people thereof, the English language, the allegiance due our lord the king, and the English laws there, are put in subjection and decayed, and the Irish enemies exalted and raised up, contrary to reason’. Therefore, as part of the colonial response, the Statutes ordained that ‘every Englishman do use the English language, and be named by an English name, leaving off entirely the manner of naming used by the Irish’, and threatened that ‘if any English, or Irish living amongst the English, use the Irish language amongst themselves, contrary to this ordinance, and thereof be attainted, his lands and tenements, if he have any, shall be seized into the hands of his immediate lord’.² Yet despite their effective status as the first piece of colonial language legislation in Ireland, the Statutes were highly restricted in scope. Their focus was on the behaviour of those who lived in relatively narrow area of English rule (what later became known as The Pale) - hence the stipulation about the ‘English, or Irish living among the English’. In fact, rather than an attempt to ban Irish and impose English as the language of Ireland, the Statutes actually constituted a legal effort to prevent the colonisers from going native.

Much of the early colonial language legislation was similarly limited in its aims. In 1465, for example, the Irish Parliament passed ‘An act that the Irishmen dwelling in the counties of Dublin, Myeth, Vriel, and Kildare, shall go apparelled like Englishmen, and wear their Beards after the English Maner, swear Allegiance, and take English surname’. As is clear from the title, the goal was to force the Irish living under English rule to conform to English culture and with regard to the crucial issue of naming, the heads of families were ordered to adopt ‘an English surname of one town, as Sutton, Chester, Trim, Skryne, Cork, Kinsale: or colour, as white blacke, browne: or arte or science, as smith or carpenter: or office, as cooke,

butler' on pain of 'forfeiting of his good yearly.'³

What is notable about such efforts, however, is their singular lack of success in the face of linguistic reality, as evinced by the repeated appearance of such legislation and the constant pattern of exemption recorded in court proceedings. For example, the municipal archives of Waterford in 1492-3 cite an edict establishing that no one 'shall plead or defend in the Irish tongue' in local courts, and that if necessary an English speaker had to be employed for the purpose. Importantly, however, an exception was made 'if one party be of the country [which probably means outside the city], and then all such shall be at liberty to speak Irish'.⁴ A more significant signal of the failure of early colonial language policy was given a couple of years later in 1495 when one of Poyning's Laws re-affirmed the Statutes of Kilkenny, except 'those that speaketh of the Irish language'.⁵

A decisive shift occurred, however, in the early to mid sixteenth century under the rule of Henry the Eighth, whose political strategy both in Ireland and indeed England was based on the centralization of monarchical power. Henry's important intervention was the 'Act for the English Order, Habit and Language' (1537), which was based on a significant premise:

there is again nothing which doth more contain and keep many of his subjects of this his said land, in a certain savage and wild kind and manner of living, than the diversity that is betwixt them in tongue, language, order and habit, which by the eye deceiveth the multitude, and persuadeth unto them, that they should be as it were of sundry sorts, or rather of sundry countries, where indeed they be wholly together one body, whereof his highness is the only head under God.⁶

What is remarkable here is the implicit articulation of the very modern idea that cultural difference, to which linguistic difference was considered central, created political difference and thus division. It was an idea articulated more directly not long afterwards by that well known colonial servant (and poet), Edmund Spenser in his *View of the State of Ireland* (1596);

he declared the need to eradicate the Irish language on the basis that ‘the speech being Irish, the heart must needs be Irish.’⁷ Actually, if read carefully, Henry’s Act presents a conception of the relation between language and a very particular form of identity that was later to shape both the development of Europe, and, as it happened, the revolt against colonialism itself both in Ireland and elsewhere. This was the notion that there was a necessary link between linguistic and national identity, an idea that was made explicit by Fynes Moryson, an English colonial adventurer, in his *Itinerary* (1617): ‘communion or difference of language, hath always been observed, a spetial motive to unite or alienate the myndes of all nations’.⁸ This concatenation of linguistic and thus cultural identity with a form of political identity wasn’t theorized and popularized until the late eighteenth century. But this is another example of the way in which the struggle over language in Ireland served as a crucible for cultural and political issues and ideas that were to have profound significance elsewhere later.

When thinking about the history of law, it’s important to distinguish between the policy goals of legislation and the practical realities of implementation. For examples, Henry’s Act threatened that anyone not using the English language in Ireland would be considered ‘persons of another sort and inclination than becometh true and faithful subjects’ (in other words traitors).⁹ But just four years later, Henry declared himself King of Ireland (the first English monarch to do so), and had his ‘Act for Kingly Title’ proclaimed in English to the Irish Lords and Commons. Whereupon the Earl of Ormond translated it into Irish so that it could be understood by the audience, most of whom were the Gaelicised descendants of the Anglo-Norman colonists (the Old English as they became known). What the law says and desires then, and what happens in reality, are often two different things. Nonetheless, it’s clear that language legislation, like other forms of law, both reflects political priorities and necessarily embodies a conception of community. The *Act to Restrain Foreign Education* (1695) illustrates the point. The Act ostensibly sought to punish those guilty of ‘neglecting to conform themselves to the

laws and statutes of this realm, and of not using the English habit and language'.¹⁰ In actuality it was part of the Penal Code whose aim was to produce a very specific political order in which one section of the community (the vast majority in fact), would be debarred from participation in public life.

Now, it's important to say that language legislation didn't bring about the demise of the Irish language in Ireland. The stunning decline in the use of Irish from the end of the eighteenth century was engendered by a very precise combination of economic, political and cultural factors. But on the other hand, as I've just observed, language legislation always implicitly invokes a vision of political community that is often being achieved by other means. That envisioning of community is clear from the brief review of colonial language law that I've just presented, but the point also applies to the protection that was afforded to the Irish language in both the 1922 Constitution of the Saorstát and in the 1937 Constitution of the Republic. For as is well known, the problem with the Constitutional protection for Irish in post-Independence Ireland was that although it guaranteed the status of Irish as the first official language, what that entailed in terms of the legal right to use the language was largely unspecified. In this case, it might be said, the legislation invoked a form of community – the nation – it just didn't articulate what it meant to be an Irish-speaking member of that community in practical terms.

Let me recap what I've argued before offering some reflections on the question of the proposed 'Acht na Gaeilge'. I've tried to show that most colonial language legislation in Ireland was effectively proscriptive (though there was always some element of prescription – Irish was proscribed or banned and English was prescribed or stipulated). In independent Ireland, by contrast, there was a shift away from proscription (after all, both the 1922 and 1937 constitutions recognize Irish and English as official languages). But there was also a significant lack of prescription – of explicit guidance – in terms of what it meant, as a matter of practical rights, to be a user of either of the official languages of Ireland. You might say that the recent

passing of *Acht na dTeangacha Oifigiúla* was a rather late attempt to address that failure of prescriptivism. Now, the question is, does the history I've presented, and the terms in which I've couched it, have anything to teach us today?

My argument, very briefly, would be that it does and that one of the lessons that history teaches us about language legislation in particular is that both proscriptivism and inadequate prescriptivism can have damaging social effects (proscriptivism because it excludes a section of the community, faulty prescriptivism because it produces confusion or even inequality). It follows, I think, that language law, like other forms of law, is best conceived of as a creative and productive form of prescriptivism which is necessarily based on and indeed requires a specific vision of community. Now it seems to me that in the context of Northern Ireland, the proposed '*Acht na Gaeilge*' would be a good example of such prescriptivism for two reasons. First, by stipulating very precisely the language rights that accrue to the bearers of rights, and by defining the obligations of the State and non-State actors towards those bearers of rights, the legislation would not pander to vague notions such as 'tolerance' or 'parity of esteem', but would facilitate practical action resulting in the realization of specific rights. And second, precisely through the practical realization of those rights, the Act would contribute to the achievement of a community structured by principles of equality, pluralism and cultural diversity. In other words, the Act would be a social good that would benefit the community as a whole, not simply, as opponents often argue, one section of it.

So let me conclude: the bad news is that the history of language legislation in Ireland has been a sorry tale of exclusion, hierarchy, privilege, inadequacy, half-measures and no-measures. The good news is that the past doesn't determine the present or future.

¹ Irish Archaeological Society (1843), 'The Statute of Kilkenny' (1366) in *Tracts Relating to Ireland*, Dublin, pp. 3, 5.

² *Ibid.* 11, 13.

³ *The Statutes at Large Passed in the Parliaments Held in Ireland (1786-1801) 1310-1800*, 20 vols., Dublin, 1786, 5 E 4. c. 3.

⁴ Historical Manuscripts Commission (1885) 'Archives of the Municipal Corporation of Waterford' in *Historical Manuscripts Commission Report*, 10, appendix v, Dublin, 323.

⁵ Stat. Ire. 1786: 10 H7. c. 8

⁶ Stat. Ire. 1786: 28 H 8. c.xv.

⁷ Spenser, Edmund (1633) *A View of the State of Ireland (1596)* in Ware, Sir James (1633) *The Historie of Ireland Collected by Three Learned Authors*, Dublin, 48.

⁸ Moryson, Fynes (1907-8) *An Itinerary Containing his Ten Yeeres Travell through the Twelve Dominions of Germany, Bohmeland, Sweitzerland, Netherland, Denmarke, Poland, Italy, Turky, France, England, Scotland and Ireland (1617)* Glasgow: Maclehose.

⁹ Stat. Ire. 1786: 28 H 8. c.xv.

¹⁰ Stat. Ire. 1786: 7 W 3. c.4.