THE POTENTIAL OF ‘ADMINISTRATIVE JUSTICE’ FOR IRISH PUBLIC LAW

*Abstract*

Irish public law has a thriving body of scholarly work on judgments of the superior courts, but a focus on doctrinal and theoretical research fails to develop knowledge on how administrative law is understood and applied within public bodies. This is a missed opportunity to engage with different ways of conceptualising public law.

The vast number of decisions being made about rights and entitlements across the administrative state and the ongoing Law Reform Commission project on Non-Court Adjudicative Bodies present a timely opportunity to research ‘internal’ administrative law. This paper demonstrates how the field of administrative justice provides a useful and transposable conceptual framework to enhance the study of public law outside the courts.

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**Introduction**

Thousands of decisions are made across the administrative state every day in areas including social welfare, housing, planning, immigration, and health. As Raso observes ‘the largest set of decisions that affect individuals’ rights are made by administrative officials at and behind the front lines of executive agencies’.[[1]](#footnote-1) McKeever outlines how most of these decisions go unchallenged,[[2]](#footnote-2) thus the decision at first instance stands and is a generative point in time in the relationship between individual and state. Irish scholarship tends to focus on judgments of the superior courts in research on administrative law concepts. There are many limitations of researching administrative law through doctrinal or theoretical study centred on case law. As Thomas points out, we risk missing ‘much of the action, not least the basic nuts and bolts of how administrative systems operate in practice and develop over time.’[[3]](#footnote-3)

Daly describes how traditionally the legal academy has treated methodology with a certain degree of distain[[4]](#footnote-4), but a change is afoot. Across the literature, there is a move towards challenging a monist understanding of constitutionalism, instead relying on a pluralistic approach.[[5]](#footnote-5) For example, Barry’s study involving the views of representatives of WRC service users,[[6]](#footnote-6) Ryan’s study on application forms,[[7]](#footnote-7) and Daly on how administrative officials give effect to law.[[8]](#footnote-8) There are many reasons behind this shift in approach, ultimately much of this change has come about through interdisciplinary research and an opening out of what counts as ‘legal’ scholarship. As Samuel sets out, ‘there is no single idea of what it is to have legal knowledge’.[[9]](#footnote-9) Daly notes that a range of methodological approaches to public law can only enrich the field, but cautions that proponents of different approaches must be ‘epistemically modest enough to recognize that they probably will not be able to generate a unified field theory of public law and be sensitive to the legal system’s requirements of doctrinal rigour and coherence’.[[10]](#footnote-10)

This paper argues that in order to develop a holistic, considered body of work on administrative law, Irish public law scholars must engage with the field of administrative justice. It is part of a growing body of work that challenges the idea that law is the preserve of the courts.[[11]](#footnote-11) Individuals interact with the state in ‘small places’[[12]](#footnote-12) and ‘architectures’[[13]](#footnote-13) of everyday administration – in waiting rooms,[[14]](#footnote-14) at public counters,[[15]](#footnote-15) through application forms,[[16]](#footnote-16) or digital interfaces[[17]](#footnote-17) – what happens in these small places is important.

This paper is laid out in three sections. The first section details the epistemological problem Irish public law currently has in that there is a dearth of research that uses an ‘administrative justice’ lens. The second section details a way forward, introducing ‘administrative justice’ as a framework suitable for transposition into Irish legal scholarship, but noting the particularities of the Irish administrative state will require consideration in developing a research agenda for administrative justice research. Finally, the third section points to potential barriers to this work, as well as highlighting the administrative and societal challenges presented by technological developments.

**Section One: The problem**

**Administrative law in context**

The relationship between judicial review judgments and public administration practices is poorly understood. Yet, the relationship between judicial review and administrative decision making is an important phenomenon that speaks to the rule of law, government practices, and the protection of individual rights. The question of what happens within public bodies following a successful judicial review is a concern of the judiciary. We can find a sense of frustration from the High Court at times on how cases are handled when they are remitted for fresh determination. The observations of MacEodhaidh J in *A.A.S v Refugee Appeals Tribunal and Others*[[18]](#footnote-18) are illustrative in this regard:

It is regrettable that the decision maker in this case does not appear to have had access to the decision of Birmingham J. or to an account of it. It seems to me that in any case which is remitted to a decision maker from the High Court, the decision maker ought to be concerned with the views of the High Court on how the matter was first handled. Unless this happens, the mistake or error which led to the first set of proceedings might be repeated. This appears to be what has happened in this case.[[19]](#footnote-19)

Similarly, following successful judicial review of an immigration decision, Clark J sets out in *A.H.E.H & Ors v Refugee Appeals Tribunal and Minister for Justice and Equality*[[20]](#footnote-20)that the new decision-maker ‘ought to be made aware of the Court’s reasons for quashing the case’.[[21]](#footnote-21) Yet there is no closed communication circle between the judiciary and administrative decision-makers following judicial review. The extent to which legal information is received and disseminated within public bodies is heavily dependent on managerial practices. Writing in relation to the dissemination of guidance within the Home Office, Thomas outlines how there is ‘uncoordinated and unsystematic dissemination within the department’s internal structure, and how this in turn prompts judicial correction’.[[22]](#footnote-22) In order to develop a fuller and richer understanding of administrative law (and administrative justice) we need to look more closely at wider administrative systems and processes – beyond what we can learn from the text of judicial review judgments. This in turn will lead to both a richer understanding of judicial review, and a deeper understanding of how the administrative state operates in practice.[[23]](#footnote-23)

Halliday notes that the task of measuring the ‘impact’ of judicial review on government agencies is ‘fraught with difficulty’.[[24]](#footnote-24) He notes that through a combination of sociological and doctrinal study we can build a framework ‘for hypothesising about whether and to what extent judicial review may secure compliance with administrative law. Neither the doctrinal study of administrative law, nor the sociological study of administration in isolation is sufficient to tell us enough about the relationship between the two’.[[25]](#footnote-25) Thus the need for socio-legal approaches that are open to different ways of knowing, measuring, and understanding the reality of law in context.

Martin sketches out different lines of inquiry into frontline decision-making that may be pursued by socio-legal scholars of administrative law or administrative justice. This paper closely follows the first classification he offers – as lawyers we are different to other social scientists in that we tend to foreground the law making us well place to ask and answer questions such as ‘[h]ow do administrative law standards, legislative duties, formal procedures, and informal rules actually interact on the frontline?’[[26]](#footnote-26) Donson and O’Donovan argue that public law research in Ireland has prioritised constitutional values, without sufficient consideration of administrative justice:

While there have been extensive constitutional convention debates proposing referenda to reform the state’s constitutional framework, these have largely failed to address questions of administrative justice. This emphasis on the constitutional to the detriment of the administrative is extremely disappointing, as while it may be said that we have a constitutional vocabulary of rights and values, we have not yet formed an effective administrative and inter-institutional grammar for their delivery.[[27]](#footnote-27)

To reenforce the extent of this literature gap, a search of ‘administrative justice’ on the Westlaw.ie database free text box brings up 22 results. By contrast a search for ‘administration of justice’ brings up 2227 results.[[28]](#footnote-28) While there is an absence of research that is grounded in an ‘administrative justice’ framework, a wide reading of the literature does point to rich bodies of work in closely related fields. Much of this scholarship tends to be situated within a ‘rights-based’ framework – for example, Thorton on immigration[[29]](#footnote-29); Rogan and van der Valk on prison management and prisoner rights[[30]](#footnote-30); Gallen, Enright, Ring, McGettrick, and O’Rourke on state responses to historical abuse and restorative justice[[31]](#footnote-31); and Donson and Morgan-Williams on access to justice for members of the Traveller Community.[[32]](#footnote-32) Similarly, constitutional law scholars engage with issues that arise in relation to how law is experienced outside the courts but without explicitly engaging with administrative justice frameworks – for example Casey and Kenny on the role of the executive;[[33]](#footnote-33) Cahillane on the ‘administration of justice’[[34]](#footnote-34); Cahillane and Kenny on the judiciary[[35]](#footnote-35); and Brady on administrative decision-making and human rights.[[36]](#footnote-36) The challenge this paper engages with is how we might use the framework of administrative justice to reconceptualise constitutional or rights issues as administrative issues. This is not to say a rights-based or constitutional lens are not valuable – both most certainly are – but that an administrative lens is lacking and represents a missed opportunity for an important dialogue.

There is also relevant work on how people experience or navigate administrative systems that would be useful for Irish legal scholarship to engage more deeply with because they shed light on the lived experience of different systems. From the perspective of applicants, particularly relevant here is Whelan’s work on how people engage with welfare administrators, and the ‘fear’ of negative consequences based on their interactions with administrators and experience of the welfare system.[[37]](#footnote-37) From the perspective of administrators, Ryan and Powers’ study captures evidence on the extent to which some decision-makers are happy to make discretionary social welfare decisions whereas others would prefer to work within the bounds of more rigid rules.[[38]](#footnote-38) This type of work provides insight into the wider systemic issues within bureaucracies, that might not always be apparent or made clear when an individual case is before the courts in relation to a particular claim. Insights on the reality of administrative systems can also come from sources outside the ‘traditional’ academy – for example Vuma’s memoir in Rea and Traynor’s edited anthology on direct provision.[[39]](#footnote-39) By developing a richer tradition of administrative justice research in Ireland, we can develop a robust evidence base that is instructive and useful in both judicial and administrative decision-making.

**‘Internal’ administrative law**

Mashaw was one of the first scholars of ‘internal’ administrative law. [[40]](#footnote-40) As Harlow and Rawlings note ‘[t]he bottom-up’ perspective on administrative justice began to emerge slowly from the 1970s. This new look had American origins, reflecting in particular the work of Mashaw’.[[41]](#footnote-41) Harlow and Rawlings describe his influence as creating a shift “from ‘putting things right’ to ‘getting things right’”.[[42]](#footnote-42) Writing in relation to social security claims, Mashaw argues that “[i]nstructing examiners how to build a file is thus the essence of designing the decision process”.[[43]](#footnote-43) Thomas notes that ‘[c]ase work is not just about individual decisions. It also concerns how the whole casework process is managed and organised’.[[44]](#footnote-44) Halliday argues that ‘[t]o understand the complexity of routine government behaviour, we should try as researchers to get as close to it as we can. The closer we get, the easier it is to unpack the range of influences on government decision-making and see the subtleties of discretion at work’.[[45]](#footnote-45) While an ‘internal’ understanding of administrative law might seem unorthodox in the Irish context, it holds great potential for administrative law scholarship.

We traditionally understand administrative law in terms of ‘grounds’ of judicial review, but Bell outlines that the ‘‘grounds of review’ are not the product of conscientious design, nor were they created at a single moment in history’.[[46]](#footnote-46) Bell also gives the historical context for how we conceptualise administrative law:

[T]he publication of two key textbooks, De Smith and Wade, in the late-1950s and early 1960s introduced a new way of conceptualising administrative law. Under this approach, the field was imagined as a cluster of legal standards which apply *generally* across all areas of public administration.[[47]](#footnote-47)

Harlow and Rawlings were instrumental in advancing a pluralistic understanding of administrative law. The first edition of *Law and Administration*, published in 1984, challenged the dominance of a purely doctrinal approach to legal scholarship. Reflecting on their first edition, they note: ‘[w]e saw the plural nature of administrative law as largely obscured by a long tradition of legalism, in which ‘law’ was presented as a non-permeable system of formalistic reasoning and autonomous rules and principles, which were largely the work of courts’.[[48]](#footnote-48) ‘Internal’ administrative law challenges this legalism, and the reality of law-in-action that is obscured through the study of administrative law without consideration of social, structural and institutional contexts.

Management practices and leadership in places where administrative discretion is exercised are important. Cane describes how administrative justice goes beyond a notion of accountability in performance of a normative function, it extends to:

[W]hat Mashaw calls the ‘management side of due process’ – the idea that *ex ante* recruitment practices, training programmes, management techniques and internal monitoring are at least as important as *ex post* external scrutiny of individual decisions in raising and maintaining bureaucratic decision-making[[49]](#footnote-49)

Management practices and the way in which information is received into and disseminated throughout an institution both provide contextual variances on how decision-making within public bodies operates. As Zacka has found through ethnographic study:

By stressing the importance of everyday casuistry and peer-level accountability, one of my aims is to show that street-level bureaucracies are home to a complex moral ecosystem that is largely opaque to hierarchical scrutiny and control. The proper functioning of these organizations— on a moral plane—is largely parasitic on a dense web of informal relationships and practices whose importance is not sufficiently recognized, and which often end up being the intended or unintended casualty of attempts at institutional reform.[[50]](#footnote-50)

The social context within which decision-making happens within public bodies is important. There are many factors that shape and are shaped by this social context.[[51]](#footnote-51) Law imposes a somewhat artificial test on decision-making practices through judicial review whereby a single decision in relation to an individual applicant is considered. The reality of administrative decision-making is much more complex and messier than judicial review envisages and isolates. As Halliday argues:

From the court’s perspective, the decision under scrutiny can easily be regarded as having been made by ‘the decision-maker’. The complex bureaucracy, the diverse activities of which produced a final decision-outcome, can be imagined as a single entity. The decision-outcome which is the produce of multiple pre-decision can be artificially reduced to a single discrete ‘decision’. The social reality, of course, is quite different. The decision-making process is better conceived as a network of bureaucrats exercising discretion, culminating in a final outcome which is highly contingent on the discretion of multiple actors.[[52]](#footnote-52)

Both Zacka’s ‘web’ and Halliday’s ‘network’ speak to the complex and fluid factors that arise by moving focus from case law and onto bureaucracies. *Zalewski v Workplace Relations Commission*[[53]](#footnote-53) presents a timely opportunity to reflect on how law is animated within bureaucracies.[[54]](#footnote-54) Hickey interprets O’Donnell J’s judgment in *Zalewski* as having a Janus-faced role:

But there is a related development in the O’Donnell J judgment and that is that if Article 37.1 is now going to bark for the administrative state, then it is going have to bite for the constitutional state as well. If it is now to represent the pillar supporting non-judicial bodies that administer justice of the kind having profound effects on the fundamental interests of individuals, then it must also ensure that that justice is administered in ways that do not undermine the constitutional rights of those individuals.[[55]](#footnote-55)

Donson et al. note that *Zalewski* raises many practical questions on the day-to-day practices within the administrative state, and argue that there is a need for a systematic, structured approach to research on administrative decision-making:

The *Zalewski* case illustrates the reactive, rather than proactive, nature of any change to tribunal powers and structure in the Irish administrative state. A significant limitation is the tendency towards looking at administrative problems with a constitutional spyglass, honing in on the big constitutional issues, but ignoring the interrelated and connected web of administrative justice issues.[[56]](#footnote-56)

Development of work in this area is important not only to improve first instance and tribunal level decision-making, but also to ensure members of the judiciary have visibility of the ‘connected web of administrative justice issues’ when determining cases in the superior courts. In a jurisdiction that is far more familiar with the ‘administration of justice’, it is therefore important to consider what is ‘administrative justice’ and what is its potential for Irish public law?

**Section Two: A way forward**

**Administrative justice**

There are many understandings of administrative justice. Adler describes ‘administrative justice’ ‘as the justice inherent in administrative decision making’.[[57]](#footnote-57) Administrative justice provides a framework through which we can enhance the study of first-instance decision-making and tribunal level adjudication. Hertogh et al. offer recent description of the field:

Administrative justice raises a whole host of complex issues concerning the practices of government, the position of individuals, and the relationship between them. The issues cross many disciplinary boundaries and its study is deeply enriched by this, but it needs to be recognized as a distinctive area of research that can now stand on its own.[[58]](#footnote-58)

Administrative justice has developed hugely in the last thirty years. Adler describes some of the work done in the UK to mark out and cement the field.[[59]](#footnote-59) Despite the commonalities between the organisation of the administrative state in the UK and Ireland, administrative justice as a field of research in Ireland has not benefitted from an active research community in the way it has in the UK. As outlined above, Donson and O’Donovan describe how administrative justice is a field of research largely ignored in favour of over-constitutionalisation of administrative problems in the Irish context.[[60]](#footnote-60) There is a tradition of administrative justice research in Northern Ireland,[[61]](#footnote-61) but south of the border there is a tendency to focus on judicial decision making.[[62]](#footnote-62)

The above introduces administrative justice as a ‘field’ of study, but what does the field concern? What does it do? What are its aims? Thomas and Tomlinson offer the following description:

‘Administrative justice’ may not be as familiar as ‘criminal justice’ or ‘civil justice’, but it is just as important. It concerns both the making of administrative decisions and the systems for challenging such decisions. The ‘system’ is complex and fragmented and comprised of various specific systems that divide along ‘vertical’ policy/functions lines, such as: immigration, social security, tax, criminal injuries compensation, and many more. There are also ‘horizontal’ cross-cutting different redress mechanisms, including: complaint and ombuds procedures; internal administrative review processes; tribunal appeals; and judicial review.[[63]](#footnote-63)

The Law Commission outlines four broad pillars of administrative justice:

1. Internal mechanisms for redress (e.g. formal complaint procedures);
2. External non-court redress (e.g. public inquiries and tribunals);
3. Public sector ombuds;
4. Redress by way of court action.[[64]](#footnote-64)

As most administrative decisions go unchallenged, considerable public power rests with the first instance decision makers who exercise discretion on a daily basis. Judicial review cases represent a tiny proportion of the individuals with grievances against public bodies. Halliday and Scott identify that there is research demonstrating that among those that do pursue redress, there is significant drop-out at each stage of the review process.[[65]](#footnote-65) Thus, the potential for research impact and improvement in decision-making is significant across the different pillars of administrative justice – but requires research on and intersecting different redress mechanisms.

**Developing a research agenda for administrative justice in Ireland**

While international administrative justice scholarship presents a useful conceptual framework to use as a starting point, there are features of the Irish administrative state that will require specific attention including the interaction between Article 34.1 and Article 37.1 post-*Zalewski*, and the culture and nature of the Irish state. The separation of powers has an important bearing on how the Irish administrative state has developed and is developing. As students of constitutional law we learn about the separation of powers, learning that each arm of the state is separate and distinct in the classic tradition that traces back to Montesquieu, yet the reality is much more porous. Writing extra-judicially, Mr Justice Fennelly notes that the Irish Constitution does not establish a ‘rigid system of exclusive powers’.[[66]](#footnote-66) Similarly, Donson and O’Donovan note:

It is our belief that judges must recognize the need for a diverse conception of separation of powers, one which acknowledges that the tripartite model does not, and cannot exist in pure form, and that its borders must be attended to. A constitution is fundamentally about the positive exercise of public power, not its placement within non-interacting silos.61

While accepting that there are blurred lines in relation to the separation of powers, the role of the judiciary is weighed down by a doctrine of deference. Writing in the context of administrative tribunals, Cane provides analysis on ‘quasi-’ decision making and the ‘legacy of Montesquieu’:

The concepts of legislative, executive and judicial functions are extremely abstract. Their abstraction partly explains why it has been found very difficult to provide robust accounts of the distinctive nature of various functions and of the differences between them. It also explains why the prefix ‘quasi’ is sometimes added particularly to the terms ‘legislative’ and ‘judicial’: the prefix typically indicates that the speaker senses a distinction between the real thing and the imitation, but cannot pinpoint it with confidence.[[67]](#footnote-67)

Elliot and Thomas opine, pinpointing the circumstances in which the judiciary will intervene with discretionary decision making is a ‘great complexity’ of administrative law across the common law world:

One of the great complexities of administrative law concerns the degree to which the courts should review decisions of other decision-makers. This complexity arises because, through the application of administrative law, the role of the courts is to determine the lawfulness of the acts of other branches of the state, yet the legitimate extent of judicial involvement is itself a sensitive matter that raises questions about the courts’ role under the separation of powers.[[68]](#footnote-68)

A strong adherence to a weak judicial branch under the separation of powers can be found in the Irish jurisprudence.[[69]](#footnote-69) Brady points out that ‘[t]he Executive has just as much potential (if not more potential) than the Oireachtas to intrude upon constitutionally protected rights.[[70]](#footnote-70) In commenting on *C v Galway County Council*,[[71]](#footnote-71) Casey sets out that ‘the highly deferential rationality standard of review is alive and well, even when the interests and rights of vulnerable persons are prima facie engaged’.[[72]](#footnote-72) The corollary of this deferential approach is that considerable power rests with the executive, which delegates some of this power to decision makers on the frontlines of public administration

Barrington outlines that when Irish citizens feel aggrieved about administrative decisions, they make representations to members of the legislature, on a scale ‘remarkably high per head of population as compared with most other democracies’.[[73]](#footnote-73) He further notes that ‘[a] good part of the public standing of Irish public representatives comes from their success in acting as ‘brokers’ between their constituents and public bodies’.[[74]](#footnote-74) Anecdotally, people will use such channels to secure nursing home spaces, planning permission, medical cards, school places, and community investment. This ‘who you know’ approach leads to a perception of cronyism and unfairness in how systems operate, and in my view, needs to be challenged in favour of transparent, accessible and fair administrative justice systems. Note of warning here that Barrington was writing over four decades ago and before the Ombuds system in Ireland came into effect in 1984 making the reference somewhat dated.[[75]](#footnote-75) Nevertheless, the culture of clientelism persists, with Donson and O’Donovan more recently noting ‘the institutionalised clientelism within which many Irish politicians are habituated or strictured’.[[76]](#footnote-76) The potential of the Ombud to investigate systemic maladministration and deliver collective justice is an important part of developing a research agenda for administrative justice research.[[77]](#footnote-77) The recent investigation by the Ombudsman into the administration of HSE schemes to fund necessary medical treatment in the EU/EEA or UK, where people faced a ‘fight’ with the HSE for reimbursement, demonstrates (i) the scale of the maladministration problem in the state, (ii) the worry and anxiety being caused by administrative issues, and (iii) the potential of Ombud reports to improve systems of administration through constructive dialogue.[[78]](#footnote-78)

In developing a research agenda for administrative justice in Ireland, it will be important to include a range of voices and perspectives on different administrative justice systems. Attention and care must be paid to the way in which different forms of knowledge are treated to ensure there is no repeat of the injustice and bureaucratic oppression caused by the way in which survivor testimony was handled by Final Report of the Commission of Investigation into Mother and Baby Homes.[[79]](#footnote-79) There is a wealth of knowledge on first instance decision making and appeals within the administrative state already.[[80]](#footnote-80) The challenge is to begin to think across different administrative justice pillars in developing a body of work that can improve first instance decision making, and improve public perceptions of administrative processes across public administration.

This is not the first time there has been a call for administrative justice research in the state. The Report of the Public Services Organisation Review Group 1966-1969, or the Devlin Report, included a proposal that there should be a ‘Commissioner for Administrative Justice’, tasked with looking at problems of administrative justice as a whole.[[81]](#footnote-81) In the years since the Devlin Report was published, Government has become increasingly complex and fractured, yet there has been limited administrative justice research carried out. Deeper engagement with administrative justice as a field of study has the potential to assist the Law Reform Commission’s ongoing work on Non-Court Adjudicative Bodies. A consultation paper on Non-Court Adjudicative Bodies was expected to be published by the Commission in 2024 ,[[82]](#footnote-82) but as of March 2025 has yet to be made publicly available. Any reform proposals considered by the Law Reform Commission should take account of the need for a centralised body akin the Administrative Justice Council, but adequately funded and staffed, to act as a research hub and steer the development of administrative justice research in Ireland. This would identify and structure the field.

**Section Three: Barriers and future developments**

**Barriers to developing a body of administrative justice work**

Four significant barriers to this type of work must be mentioned before any conclusions are drawn – access, competence, funding, and measurement. Exploring the ‘internal’ requires empirical research. Carrying out this research with public bodies involves negotiations with gatekeepers to secure access to research participants. ‘Gatekeeping’ can be a significant barrier to successfully conducting empirical legal research. Lund et al. describe how ‘[a] gatekeeper is generally understood to be someone who has the power and control over access to communities and key respondents in a particular location selected for research’. They describe how gatekeepers can influence research by limiting access to participants.[[83]](#footnote-83) Reeves describes ‘gatekeepers’ as people who ‘can help or hinder research depending upon their personal thoughts on the validity of the research and its value, as well as their approach to the welfare of the people under their charge’.[[84]](#footnote-84) Access as a potential barrier includes access to data, raising a whole host of interrelated issues.[[85]](#footnote-85) Administrative justice research is heavily dependent on the availability of empirical data. Public body data gaps is an issue facing many governments at present, and raises the possibility of judicial review proceedings.[[86]](#footnote-86) A lack of systematic data collection in relation to ethnicity and gender was identified in a recent Joint Submission to the Department of Children, Equality, Disability, Integration and Youth.[[87]](#footnote-87)

Second, to expand the methodological toolkit of public law scholars, attention will need to be paid to the training of legal researchers. The Nuffield Inquiry on Empirical Legal Research identified ‘the problem of self-replication’ due to law schools being dominated by theoretical and doctrinal methods leading to a knowledge gap on non-text based methods.[[88]](#footnote-88) People interested in carrying out empirical work must be trained in empirical methods, understand the different ethical issues arising when carrying out research with human participants, and understand the limitations of different research methods. Senior public law academics and members of the judiciary are less likely to have been trained in different research methods, changes in the prevailing approaches to research will take time and capacity-building work.

This relates to the third potential barrier – funding. Carrying out fieldwork takes time and raises different complexities to desk-based research. Designing surveys, arranging focus groups or scheduling interviews takes a lot of planning time and requires funding for participant compensation, contracting for surveying services, transcription of interviews or focus groups, and travel expenses. Additionally, in a ‘publish or perish’ culture, slow scholarship can be less desirable to researchers trying to maintain a steady stream of outputs. Gathering data can be a slow and expensive process requiring funding.

Finally, measurement and how we might simultaneously deal with different perspectives and experiences is a concern for legal scholars – particularly whereby doctrinal research typically focuses on finding coherence in the law.[[89]](#footnote-89) When we use multiple methods in legal research we come up against the problem of commensurability of outputs and the extent to which the newly generated data sets contribute to answering a research question. Epstein and Martin explain that ‘measurement is a critical step in designing research’.[[90]](#footnote-90) It is our role, as researchers, to be curious about different methods of measurement to assess the reliability and validity of our research.[[91]](#footnote-91) By incorporating empirical and socio-legal understandings, administrative justice research necessarily takes an epistemologically constructivist approach that recognises multiple experiences.[[92]](#footnote-92) This is both a strength and limitation of administrative justice research. We risk losing coherence or neatness, but we gain complex and dynamic understandings.

**The evolving nature of the state, technological advances, and inclusive futures**

An important question for further research is how the places of administrative justice have changed and are changing due to rise of remote hearings and digital delivery of administrative functions. The lack of research at the intersection of administrative law and administrative processes is even more of a concern as we see a growing number of *ad hoc* reforms to certain administrative systems, particularly due to technological advances.[[93]](#footnote-93) The judiciary will increasingly be asked to engage with legal issues pertaining to digital processes or automated administrative decision-making. As Tomlinson outlines, thinking about the issues caused by digitalisation will require institutionally and contextually specific responses:

It is essential that the ongoing incursion of digital technology into administrative justice is not seen as some distinct field of interest and activity, but as part of the core business of those concerned with public law and administrative justice. There will be no satisfying overall answer or theory that can be developed in response to this incursion. In administrative justice, generalisations are often unhelpful and rarely true. Different instances of digitalisation – whether they are imposed as part of public service provision or arise organically from technological innovation – need to be considered in their particular institutional and political contexts.[[94]](#footnote-94)

Ranchordás emphasises the importance of considering what is lost through digital developments, noting that the automation of decision-making contributes towards the erasure of empathy: ‘vulnerable citizens who are the most prone to erring, and also those who, before the automation of government, benefited from the occasional empathy of street level bureaucrats toward first-time mistakes and oversights’.[[95]](#footnote-95) Research from healthcare administration shows that administrative processes that are blind to the varied needs of service users create barriers to services and can exacerbate pre-existing inequalities.[[96]](#footnote-96) The burgeoning body of work from the field of public administration on ‘administrative burden’ illustrates how the burdens or costs of engaging with public bodies are not spread equally across society.[[97]](#footnote-97) Thus the need to proceed mindfully and using intersectional frameworks.

Meers et al. describe how we live in an age of ‘interface-first’ bureaucracy[[98]](#footnote-98), with Raso arguing that ‘interface governance’ is ‘paradigmatic within many front-line agencies that make decisions about crucial entitlements and penalties’.[[99]](#footnote-99) The places of administrative justice increasingly hidden from view, with the rise of online hearings, remote working, and closure of public counters. Where law takes place is an evolving phenomenon that administrative justice research can provide a framework to investigate – now instead of accessing public services via a public counter or a face-to-face encounter with an official, we are increasingly directed to access services including MyWelfare, Revenue, the Housing Assistance Payment and the National Childcare Scheme using the MyGovID login from our phones or personal devices. Yet there are many barriers to accessing online public services including digital exclusion, and the requirement to have a particular form of technology or to pass a validation test.[[100]](#footnote-100)

The introduction of an online application process at the International Protection Office from 31 July 2024 or pivot to online hearings by the Residential Tenancies Board could make for interesting studies on the impact of digitalisation.[[101]](#footnote-101) So too would the implementation and interpretation of the AI Act by different public bodies[[102]](#footnote-102) or the use of machine learning in public body decision making.[[103]](#footnote-103) Social welfare appeals is an area of administrative justice in Ireland that FLAC has long highlighted as in need of reform.[[104]](#footnote-104) There is currently an ‘Appeals Modernisation Project’ underway ‘the goal of which is to streamline and enhance the end-to-end appeals process for the customer’.[[105]](#footnote-105) An empirical evaluation of the project would be a welcome additional to the literature.

The Administrative Justice Council of His Majesty’s Courts and Tribunals Service has two active working groups looking at issues that are also highly relevant to the Irish legal system: ‘Addressing disadvantaged people in the administrative justice system’; and ‘Digitisation and the tribunal user experience in the modernised tribunal service.’[[106]](#footnote-106) The Ada Lovelace Institute and Alan Turing Institute have recently published results of a nationally demographic survey in the UK on public attitudes to AI – a hugely useful dataset in considering the legal and societal implications of AI.[[107]](#footnote-107) Similar research investments and evidence reviews would be helpful in the Irish context.

Hertogh’s work on legal alienation shows how people move away from law and the absence of law in everyday life, demonstrating the need for deeper investigation into how people perceive law or what leads people to abandon law.[[108]](#footnote-108) Further empirical research is needed to gain deeper understanding of the problems both officials and system users encounter in administrative justice systems in Ireland, particularly system users from communities who experience exclusion such as the Traveller Community.[[109]](#footnote-109) Doyle and O’Brien argue that there is much to be gained from a shift in perspective from the court-focused work that dominates the literature at present, to a more holistic, complex understanding of rights in the small places of everyday life.[[110]](#footnote-110)

To achieve this shift in perspective, there is a related case to be made about further expanding the toolkit of research methods in public law research and much to be gleaned from collaboration and participation – e.g. doing research *with* communities rather than *about* communities,[[111]](#footnote-111) walking methods that seek to understand positionalities more fully,[[112]](#footnote-112) experimental methods that seek to understand perceptions on ‘trade-offs’ between different features of administrative processes,[[113]](#footnote-113) or the application of legal design in response to access to justice crises.[[114]](#footnote-114)

**Conclusion**

The field of administrative justice provides a scaffold and language for the development and expansion of public law scholarship, and provide insights on how to improve first instance and tribunal level decision making in public bodies. Crucial to the success of the field will be the extent to which different parties are willing to get involved in research projects and are open to new ways of knowing about administrative law. This can be productively understood as a shared dialogue. As Sunkin and Marsons note in marking out future research trajectories for administrative justice:

Benefits can accrue from dialogue. Not least, dialogue should better enable government and funders to work with independent researchers to identify priority research needs, to better understand what can be investigated and by what methods, and to address obstacles including availability of data.[[115]](#footnote-115)

The development of administrative justice research ought to be seen as collaborative endeavour, one that involves rich and diverse range of voices including a representative sample of the public, judges, officials, administrators, researchers, and legislators. This work is crucial in shifting public law mindsets from ‘putting it right’ to ‘getting it right’ first time around.[[116]](#footnote-116)

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