The Irish Jurist


"The discussion of constitutional questions throws a lustre round the bar, and gives a dignity to its functions... Lawyers are here emphatically placed as sentinels upon the outposts of the constitution, and no nobler end can be proposed for their ambition or patriotism than to stand as faithful guardians of the constitution, ready to defend its legitimate powers, and to stay the arm of the legislative, executive, or popular oppression."

Justice Joseph Story, Associate Justice of the US Supreme Court, 1811 - 1845, in an address to the Suffolk Bar, Boston, September 4, 1821.

I never had the privilege of meeting or speaking with John Kelly. He was a remarkable man who combined successfully the role of scholar, teacher, writer, linguist, practising politician, government minister and wit, in his relatively short live-span. He enjoyed the society of books and his fellow man. Those who never met John Kelly may enjoy his companionship through his writings. He was a great commentator who has permanently influenced legal thought in Ireland. He was a master of legal literature and it is appropriate that The Irish Jurist, 1990 - 1992, edited by Professor W. N. Osbornough should be dedicated to the memory of John Kelly, the originator and founding editor of its current series.

Professor R. F. V. Heuston, Fellow Emeritus, Trinity College, Dublin in his touching tribute to John Kelly poses the question whether any other professor of jurisprudence held the office of Chief Whip of a parliamentary party? Professor Heuston notes that the mere fact that he held a position "calling for such knowledge and tolerance of human frailties rebuts the old jibe about academics and ivory towers". Mr. Justice Ronan Keane in his tribute describes John Kelly as the greatest legal scholar of his generation and considers his legacy in the context of the constitution.

Constitutional issues are to the fore in this edition of The Irish Jurist. Mr. Sebastian Poulter, Reader in Law at the University of Southampton writes on equality and ethnic minorities. Professor James Cusack considers the Spanish Constitutional Court, a modern institution that began its work in July 1980. Mr. Gerard F. Whyte, Senior Lecturer in Law, Trinity College, Dublin, analyses education in the context of constitutional rights. Mr. Gerard Hogan, Lecturer in Law at Trinity College, Dublin reevaluates Ryan v. Attorney General [1965] IR 294 in the context of unenumerated rights. Professor David G. Morgan considers Section 31, the broadcasting ban. Mr. Justice Ronan Keane writes on Martial Law in Ireland 1535 - 1924. Professor Osbornough's theme is Roman Law in Ireland. Other contributors deal with aspects of jurisprudence.

This is a brief notice to readers informing them of the essence of the contents of The Irish Jurist. But some thoughts came to the fore on reading the work of the scholars. The time was when law and religion provided many unambiguous answers. We are now in a period of transition and great change. The sentiments expressed by an Archbishop of the Christian faith last week ring in my ears. He noted that there was a longing for the homogeneous and an allergy against the different. In law, stare decisis - the doctrine of precedent although revered by many, is falling into disuse. Should we adopt the Archbishop's motto when he urged his listeners "to celebrate life (substitute "law") that can't be lived by rote. Let's luxuriate in its complexities, in its bewildering ambiguities, excited by the thrill of working out things for ourselves. Let us celebrate our diversity..."

Dr Eamonn G Hall