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Courting the Past

Reconstructing Ireland's Lost Legal Records, circa 1300–1922

PETER CROOKS, TIMOTHY MURTAGH AND CIARÁN WALLACE, WITH JOEL HERMAN

Lex est defuncta, quia judicis est manus uncta.
Propter unguentum, jus est in carcere tentum.[1]

'The law is deceased, because the judge's hands are greased' ran a Latin maxim inscribed on page 30 of the small vellum codex known as the 'Red Book of the Exchequer'.[2] The scribe may have been poking fun at the contemporary reputation of the judiciary, whose venality was imagined to have cast 'right in chains'. If so, it was an in-joke – a reflexive piece of office

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Throughout the chapter, we use a 'PROI-ID' in parentheses to identify archival collections destroyed in the PROI in 1922. The archival descriptions associated with these PROI-IDs are accessible through VRTI (www.virtualtreasury.ie).

[1] J. F. Ferguson, 'A Calendar of the Contents of the Red Book of the Irish Exchequer', *Proceedings and Papers of the Kilkenny and South-East of Ireland Archaeological Society*, 3 (1854), 35–52. A table of contents of the Red Book was prepared by the PROI: *Twenty-Fourth Rep. DKPRI* (1892), 96–7.

[2] P. Crooks, 'The Charter Reforged: The Red Book, Materiality and Ireland's Magna Carta', in P. Crooks and T. Mohr (eds.), *Law and the Idea of Liberty in Ireland: From Magna Carta to the Present* (Dublin, 2023), 40–63.

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satire by a scribe from inside the court.[3] The 'Red Book' was, in a sense, the foundation stone of English administration and record-keeping in Ireland. From the Middle Ages onwards, the king's law officers in Ireland would kiss the codex when taking their oaths, rubbing away the manuscript over centuries of use. At the core of the Red Book were the thirteenth-century statutes of England, laws 'given' to Ireland by that great legislator, Edward I (1272–1307). Prefaced to the Edwardian statutes was a version of Magna Carta itself, improved for Irish circumstances by the substitution of 'Dublin' and 'Liffey' for 'London' and 'Thames'. How appropriate, then, that the 'Red Book' eventually found its way to a repository on the north bank of the Liffey, within the Four Courts complex, in the Public Record Office of Ireland (PROI) established in 1867. There it was destroyed, together with hundreds of thousands of legal records dating from the mid-thirteenth to the late nineteenth centuries, in the Civil War that commenced at that very location in June 1922.[4]

The Virtual Record Treasury of Ireland (VRTI) aims to reconstruct digitally, in so far as is possible, the collections destroyed in the explosion and fire which occurred at the PROI on 30 June 1922.[5] The task is daunting when one considers the scale of the losses. Although the PROI had only been in operation for fifty-five years by the time it was destroyed, it could credibly be described as one of the most impressive archives in Europe for its continuous run of seven centuries' worth of legal records. Indeed, it was the PROI's success in gathering together the country's records that was to make its eventual destruction all the more devastating. As Herbert Wood (1860–1955), the deputy keeper (that is, chief archivist) of the PROI in 1922, was to lament: 'the very centralization of the documents has proved their undoing, and at one blow the records of centuries have passed into oblivion'.[6] Furthermore, legal records predominated within the PROI's collections: understanding the nature of the accumulated records, their archival arrangement and their intended

[3] For contemporary (official) concerns about corruption, see E. Biggs and P. Dryburgh, 'The State of the Irish Exchequer, *c.* 1284', in 'Special Issue – The Fire of 1922', *Analecta Hibernica*, 53 (2023), 59–95.

[4] P. Crooks, E. Johnston and T. Murtagh, '"For Fear of Oblivion": Archival Fragility and Persistence from the Middle Ages to 1922 – and Beyond', *Analecta Hibernica*, 53 (2023), 1–14. More generally, see P. Connolly, 'The Destruction of the Public Record Office of Ireland in 1922: Disaster and Recovery', *Archivum*, 42 (1996), 135–46.

[5] P. Crooks, C. Wallace, with D. Brown and G. Munnelly, 'How to Reconstruct a Lost Archive in the Digital Age: The Virtual Record Treasury of Ireland, The Fire of 1922, and the Archival Loss and Recovery Model (ALARM)', *Archives et Bibliothèques de Belgique* (in press).

[6] H. Wood, 'The Destruction of the Public Records: The Loss to Irish History', *Studies: An Irish Quarterly Review*, 11:43 (1922), 364.

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purpose reveals a great deal about the development of the Irish legal establishment over the centuries and the nature of English rule in Ireland. The first section of this chapter describes the legal setting, character and functions of the PROI in the half-century after its foundation.

The Red Book of the Exchequer was only one part of the collection lost to the flames in 1922. Yet its loss, and the loss of the wider archive, were to cast a shadow over subsequent Irish historiography, restricting and shaping the efforts of those studying the country's past, and particularly complicating the efforts of legal historians. The Red Book is a useful entry-point into the twin themes of the later sections of the chapter, which concern the PROI's legal collections from the Anglo-Norman enrolments of the thirteenth century to the era of agrarian agitation in the late nineteenth century. First, loss and reconstruction. Although it was a single codex, and unusual for the attention that it garnered in its life as a physical artefact, the Red Book lives on through the many sources that can be aggregated to reconstruct its contents.

Law is lived, not merely enacted and enforced. This is our second concern. We look beyond the formalities of court documents to the lived experience of the law in Ireland. Surviving salvaged and substitute records reveal not only the institutional development of the courts and parliament in Ireland, but also – read against the grain – the character of Ireland as a colonial society. In a similar vein, a discussion of the Chief Secretary's Office analyses the growing executive oversight of law enforcement in the eighteenth and nineteenth centuries, illustrating the often-fractious interface between the law and the 'common people'. Finally, an account of the series of uniquely Irish legal institutions (the late nineteenth-century land courts) examines the role of law in transforming Irish rural society in the decades leading up to independence.

The General Law Record Repository

When the PROI opened at the Four Courts in 1867, it found itself nestled within a community of legal neighbours. Located inside Gandon's handsome Four Courts building were the Courts of Chancery, Exchequer, Common Pleas and King's Bench. On the streets and quays nearby, firms of solicitors and law searchers plied their trade. A short walk to the north lay the legal district around the King's Inns, the hub of the Irish legal profession and 'the single greatest influence' on the area.[7]

[7] T. Murtagh, *Spectral Mansions: The Making of a Dublin Tenement, 1800–1914* (Dublin, 2023), 42–7.

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The PROI was the outcome of decades of campaigning by lawyers and scholars anxious to rescue Ireland's archival records from their perilous conditions. Legal cases produce paper and precedent, which in turn require efficient record-keeping. In an era before professional archives were established, Irish legal and other records had ended up in an alarming variety of unsuitable repositories. Attics and cellars in decayed government offices or private homes left centuries of legal records vulnerable to vermin, weather, fire and theft. A century earlier, in 1756, the Irish House of Commons had granted £5,000 to build a record repository on the north bank of the River Liffey.[8] But the plans for a record office evolved into an ambitious wholesale redevelopment to create a combined repository and law courts.[9] However, as discussions progressed, the record repository was dropped. Ultimately, when the foundation stone was laid in 1776, Dublin newspapers described 'a Suite of Buildings containing, the public Law Offices, the Hall and Law Library, for the Use of the Society of the King's Inns'.[10] There was no mention of a repository for the legal records. Archival decay and appeals for action continued, and indeed were heightened, after the Act of Union of 1800.

In 1810, Bartholomew Thomas Duhigg, barrister and author of two histories of King's Inns, wrote to Lord Manners,[11] lord chancellor of Ireland, advocating for the better preservation of the legal records. 'The general voice of this island demands an arrangement, illustration and preservation of legal records', he wrote, 'and the liberal spirit of Great Britain echoes that call.'[12] Duhigg's concern was prompted in part by the recent visitation in 1806 of members of the English Record Commission

[8] *Journals of the House of Commons of the Kingdom of Ireland*, 21 vols. (Dublin), v, 390; E. McParland, 'The Early History of James Gandon's Four Courts', *The Burlington Magazine*, 122:932 (1980), 727–33, 728.

[9] McParland, 'Early History of James Gandon's Four Courts'.

[10] E.g. *Dublin Journal*, 24–26 October 1776.

[11] P. M. Geoghegan, 'Sutton, Thomas Manners (1756–1842), 1st Baron Manners and Lord Chancellor of Ireland', in *Dictionary of Irish Biography* (online, open access: hereafter *DIB*).

[12] B. T. Duhigg, *A Letter to the Right Hon. Lord Manners [etc.] on the Expediency of an Immediate and Separate Record Commission, to Investigate, Illustrate and Arrange the Records of Ireland* (Dublin, 1810), 5. See C. Kenny, 'Duhigg, Bartholomew (*c.* 1751–1851), Political Activist, Antiquarian and Barrister', *DIB*. Duhigg was among the first four sub-commissioners of the Irish Record Commission (1810–30). The manuscripts of that Commission were preserved in the PROI, and many are now extant as NAI, RC. See M. C. Griffith, 'The Irish Record Commission 1810–30', *Irish Historical Studies*, 7 (1950), 17–38. The Commission's MSS are listed in P. Crooks, Z. Reid, J. Baldwin, C. Fahy and B. Gurrin, 'The Salved Records of 1922', *Analecta Hibernica*, 53 (2023), 35–9.

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to survey Irish repositories. At this he 'sounded an alarm at the recorded wound, given to Ireland by having its legal muniments guided under a commission, in which this island is not named . . . and from which . . . all Irishmen were excluded'.[13] Duhigg's letter, which combined catastrophism and common sense, was to become a familiar refrain in the decades after the Union. Lawyers and historians repeatedly demanded parity of esteem for the centuries-old accumulation of Irish legal records, evidence, they thought, of the dignity of the kingdom of Ireland and its ancient association with the kingdom of England. This evidence sat in a 'ruinous state' and in imminent danger of destruction: '[s]uch an awful event would involve unoffending posterity in irredeemable barbarism, as if they were slaves crouching under an hereditary yoke'.[14] Such was the fear in 1810.

Westminster passed a public record act for England and Wales in 1838,[15] leading to the creation of a purpose-built repository at Chancery Lane, London, thirteen years later in 1851.[16] Ireland had to wait until 1867 for similar legislation. In Dublin, however, a suitable record repository was immediately available.[17] In the absence of an Irish record office, the courts had decided to build their own 'law record repository'. Construction took place between 1864 and 1867 on land especially acquired under the Four Courts (Dublin) Extension Act of 1858.[18] This extension of the courts transformed the local streetscape, clearing away many narrow alleyways with their taverns and stable yards, and reinforcing the dominance of the legal profession in the district (Figure 17.1).

As the building was nearing completion, the *Dublin Builder* described 'the general Law Record Depository', built at a cost of £40,000, as 'by far the most important in point of size and cost, of a public nature, that has been erected in Dublin for some years'.[19] A year later, however, when parliament passed the Act establishing a state archive for Ireland, it was decided that the premises would serve both the legal profession and the general public administration. The preamble to the Public Records (Ireland) Act 1867 noted the 'large and commodious building . . . erected in the neighbourhood of the Four Courts in Dublin for the purpose of

[13] Duhigg, *Letter to the Right Hon. Lord Manners*, 9.
[14] Ibid., 13.
[15] An Act for Keeping Safely the Public Records 1838, 1 & 2 Vict., c. 94.
[16] J. D. Cantwell, *The Public Record Office, 1838–1958* (London, 1991), 136–7.
[17] Public Records (Ireland) Act 1867, 30 & 31 Vict., c. 70, preamble.
[18] Four Courts (Dublin) Extension Act 1858, 21 & 22 Vict., c. 84.
[19] *Dublin Builder*, 1 July 1866, 166.

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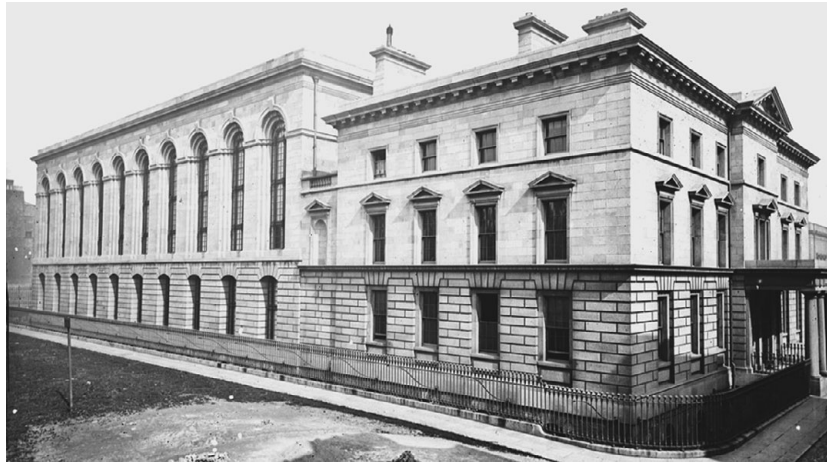


Figure 17.1 Robert French, photograph of the exterior of the Public Record Office of Ireland, taken c.1867, shortly before the archive's opening.
(National Library of Ireland, L_IMP_0008).

serving as a Public Record Office'.[20] Section 3 defined public records as: 'all Rolls, Records, Writs, Books, Proceedings, Decrees, Bills, Warrants, Accounts, Papers, and Documents whatsoever, of a public Nature, belonging to Her Majesty, or now deposited in any of the Offices or Places of Custody herein-after mentioned'.[21] Section 4 listed the courts whose records came under the Act, beginning with: 'All the Records of the Court of Chancery ... All the Records of the Courts of Queen's Bench, Common Pleas, and Exchequer, Probate and Admiralty Courts, and of the former Court of Prerogative', along with 'Records and Documents of any Courts ... which shall have ceased to exist'.[22] Thus, as most public records were actually court records, it was a simple matter to expand the new building's purpose from a 'Law Record Repository' into a more general 'Public Record Office' for Ireland.

The PROI was a modern, purpose-built archive. Occupying two buildings faced in cut granite, the sixty-metre-long archive sat at the west side of the Four Courts complex. Nearer the river was the three-storey Record

[20] Public Records (Ireland) Act, 1867, preamble.
[21] Ibid., s. 3.
[22] Ibid., s. 4.

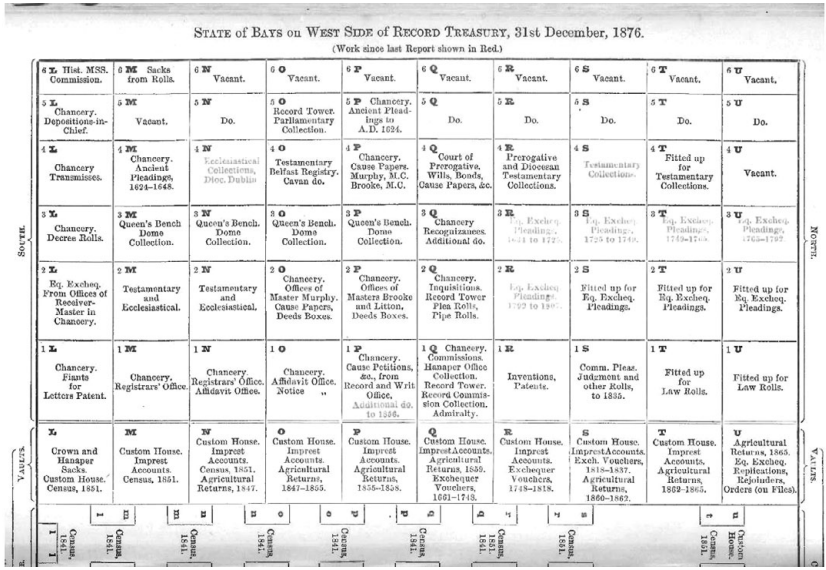
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House where the deputy keeper and his staff worked. At the heart of the Record House was the Search Room, a double-height space lit by an ornate glazed ceiling. From the Search Room, fireproof doors led across a three-metre firebreak to the record repository, which was always known as the 'Record Treasury'. The firebreak was designed to protect the vulnerable documents from the risk of fire in the administration block, with its open coal fires and gas lighting. The Record Treasury rose six storeys over a stone basement. Above the lofty atrium, a glass roof stretched the length of the building; matching arcades of tall arched windows ran along on either side. Ample natural light, and modern heating through hot-water pipes, reduced the risk of fire; to minimise the use of combustible timber fittings, cast iron walkways, stairs and shelving were used throughout. Standing in the centre of this impressive space, one was surrounded by centuries of Irish law; over 60 per cent of the Treasury's 200 storage areas held legal records.[23]

The court records were vast in scale, varied in format, confused in provenance and, not infrequently, rotten.[24] Yet the staff acted rapidly to establish order from chaos – or, rather, to establish the conditions whereby order might be incrementally imposed. The records of the Court of Common Pleas (PROI CCP), for instance, occupied 258 'presses' (that is, wall cupboards typically with doors) in the main Four Courts building, prior to their transfer to the Record Treasury. The bulk of these were in a fire-proofed 'Record Room', but others were laid on open shelves in the eastern wing of the Four Courts. A further 160 'sacks' were accumulated in the vaults of the basement, 'crowded together without any reference to their order' and in some cases rotting from 'contact with the damp stone'. In August 1870, transfer of these records began with the sacks, which were carried across the yard of the Four Courts and placed on the as-yet unshelved bays within the Record Treasury on the third floor. There the sacks were opened and 'cleansed', the bundles of records within inspected, and a rudimentary catalogue was created.[25] The records included deeds dating from the seventeenth century, judgment books from 1661 to 1760, and the court rolls, which were intact from 1663 but which also included an earlier court roll from the

[23] 'State of Bays' reports in successive annual reports culminating in *Twenty-Sixth Rep. DKPRI* (1894), 70–1.
[24] Wood, *Guide*, 62–3.
[25] *Third Rep. DKPRI*, 'Appendix No. 8. Extract from Report of James Mills, Esq., on the Records removed from the Court of Common Pleas, 1870'.

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STATE of BAYS on WEST SIDE of RECORD TREASURY, 31st December, 1876.
(Work since last Report shown in Red.)
SOUTH.
NORTH.
VAULTS.
VAULTS.
6 L Hist. MSS. Commission.
6 M Sacks from Rolls.
6 N Vacant.
6 O Vacant.
6 P Vacant.
6 Q Vacant.
6 R Vacant.
6 S Vacant.
6 T Vacant.
6 U Vacant.
5 L Chancery. Depositions-in-Chief.
5 M Vacant.
5 N Do.
5 O Record Tower. Parliamentary Collection.
5 P Chancery. Ancient Pleadings to A.D. 1624.
5 Q Do.
5 R Do.
5 S Do.
5 T Do.
5 U Do.
4 L Chancery Transmisses.
4 M Chancery. Ancient Pleadings, 1624–1648.
4 N Ecclesiastical Collections, Dioc. Dublin
4 O Testamentary Belfast Registry. Cavan do.
4 P Chancery. Cause Papers. Murphy, M.C. Brooke, M.C.
4 Q Court of Prerogative, Wills, Bonds, Cause Papers, &c.
4 R Prerogative and Diocesan Testamentary Collections.
4 S Testamentary Collections.
4 T Fitted up for Testamentary Collections.
4 U Vacant.
3 L Chancery. Decree Rolls.
3 M Queen's Bench Dome Collection.
3 N Queen's Bench. Dome Collection.
3 O Queen's Bench. Dome Collection.
3 P Queen's Bench. Dome Collection.
3 Q Chancery Recognizances. Additional do.
3 R Eq. Exchcq. Pleadings, 1721 to 1727.
3 S Eq. Exchcq. Pleadings, 1728 to 1748.
3 T Eq. Exchcq. Pleadings, 1749–1768.
3 U Eq. Exchcq. Pleadings, 1768–1797.
2 L Eq. Exchcq. From Offices of Receiver-Master in Chancery.
2 M Testamentary and Ecclesiastical.
2 N Testamentary and Ecclesiastical.
2 O Chancery. Offices of Master Murphy. Cause Papers, Deeds Boxes.
2 P Chancery. Offices of Masters Brooke and Litton. Deeds Boxes.
2 Q Chancery. Inquisitions. Record Tower Plea Rolls, Pipe Rolls.
2 R Eq. Exchcq. Pleadings 1797 to 1807.
2 S Fitted up for Eq. Exchcq. Pleadings.
2 T Fitted up for Eq. Exchcq. Pleadings.
2 U Fitted up for Eq. Exchcq. Pleadings.
1 L Chancery. Fiants for Letters Patent.
1 M Chancery. Registrars' Office.
1 N Chancery. Registrars' Office. Affidavit Offices.
1 O Chancery. Affidavit Office. Notice "
1 P Chancery. Cause Petitions, &c., from Record and Writ Office. Additional do. to 1856.
1 Q Chancery. Commissions. Hanaper Office Collection. Record Tower. Record Commission Collection. Admiralty.
1 R Inventions, Patents.
1 S Comm. Pleas. Judgment and other Rolls, to 1855.
1 T Fitted up for Law Rolls.
1 U Fitted up for Law Rolls.
L Crown and Hanaper Sacks. Custom House. Census, 1851.
M Custom House. Imprest Accounts. Census, 1851.
N Custom House. Imprest Accounts. Census, 1851. Agricultural Returns, 1847.
O Custom House. Imprest Accounts. Agricultural Returns, 1847–1855.
P Custom House. Imprest Accounts. Agricultural Returns, 1855–1858.
Q Custom House. Imprest Accounts. Agricultural Returns, 1855. Exchequer Vouchers, 1091–1748.
R Custom House. Imprest Accounts. Exchequer Vouchers, 1748–1818.
S Custom House. Imprest Accounts. Exch. Vouchers, 1818–1837. Agricultural Returns, 1860–1862.
T Custom House. Imprest Accounts. Agricultural Returns, 1862–1865.
U Agricultural Returns, 1865. Eq. Exchcq. Replications, Rejoinders, Orders (on Files).
Census, 1841.
Census, 1841.
Census, 1841.
Census, 1841.
Census, 1841.
Census, 1841.
Census, 1841.
Census, 1851.
Census, 1851.
Census, 1851

also a renowned expert on ancient Irish texts.[29] Usefully, in the fraught atmosphere surrounding government appointments, Ferguson had no strong political affiliations. A surprising expertise in construction and metalwork proved a valuable asset. His knowledgeable response to structural issues which risked the Record Treasury's sixty-metre glass roof falling in, and his detailed designs for new shelving brackets, reflected Ferguson's lifelong interest in engineering, both large and small.[30]

Experience working with legal records was evidently viewed as a requirement for most senior staff appointments. The assistant deputy keeper was John James Digges La Touche (1838–1895), former chief clerk at the Rolls Office in the Four Courts, who would eventually succeed Ferguson in the top post. This practice of maintaining legal expertise in the senior roles persisted. In 1899, the barrister Henry F. Berry (1847–1923) was appointed assistant deputy keeper.[31] The junior staff included clerks transferred from the Courts of Common Pleas and Chancery.[32] Expertise with legal records also made a difference for Richard Tucker, the first foreman of the PROI workmen. He insisted on, and received, higher wages to reflect his eighteen years working in the Rolls Office.[33]

The new Public Record Office had to find its place in the complex legal landscape of nineteenth-century Dublin. Operating under the authority of the master of the rolls helped to defend the archive against challenges from judges and the legal profession. In 1868, the master of the rolls saw off an attempt to make the PROI responsible for amending or updating entries in court records deposited with it, which would effectively mean creating new records. The master of the rolls insisted that each court appoint an officer to make such amendments, which would be recorded in a separate ledger.[34] This blurring of the distinction between the archival and record-creating roles arose again in 1870 when a Dublin solicitor insisted that Ferguson issue a certificate of vacate from the Court of Chancery for his client. The deputy keeper refused, and the master of the rolls referred the issue to the solicitor general and attorney general for

[29] G. Doyle, 'The Foundation and First Twenty Years of the Public Record Office of Ireland' (National University of Ireland, unpublished MA thesis, 1975), 209–11.
[30] Patten, *Samuel Ferguson*, 9; NAI, PRO/2/1/1, letters to Board of Works, 18 and 21 Jan. 1868.
[31] *Freeman's Journal*, 3 July 1899, 4.
[32] Doyle, 'Foundation and First Twenty Years', 245.
[33] NAI, PRO/2/2/1, 15.
[34] Doyle, 'Foundation and First Twenty Years', 292.

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Ireland. To avoid litigation, they advised Ferguson to issue the vacate in this instance, but in future Chancery must appoint an officer to do so. This case was crucial in defining the PROI's purely archival role.[35] In 1871, Judge Robert R. Warren of the Court of Probate insisted on keeping all wills dated after 1821 indefinitely, for the convenience of the business of the court. However, a coordinated response by the master of the rolls and the crown law officers defused this threat to a core principle behind the whole archival enterprise.[36]

Because of their authenticated chain of provenance, records held in a state archive have evidentiary value. The 1867 Act required that: '[e]very copy of a record in the custody of the Master of the Rolls ... shall be received as evidence in any court'.[37] In consequence, much of the PROI's activity was producing certified transcripts of records for legal cases. The first fee for a certified copy was received on 26 February 1868, marking the start of the PROI's legal output. Fees were based on the age of the record, and consequently on the difficulty involved in deciphering and transcribing it. From February to December 1868, the clerks in the PROI transcribed almost 4,000 folios for legal clients.

A generation later, the passing of the Government of Ireland Act 1920 affected jurisdiction and raised a series of awkward questions about lines of responsibility. These were carefully itemised under the headings 'Difficulties' and 'Anomalies' by the then deputy keeper in a memorandum to the under-secretary for Ireland at Dublin Castle in February 1921.[38] Among the anomalies was the fact that the functions assigned to both the master of the rolls and the lord chancellor were stated in the Act to be assumed by the lord lieutenant. The lord lieutenant was previously the counter-signatory on orders for the removal (that is, the transfer to the PROI) of state papers from Dublin Castle. Would the lord lieutenant now both sign and countersign such orders? The new dispensation also meant the removal of the master of the rolls, an absence felt in

[35] Legal opinion of law officers of the Crown, Charles Robert Barry and Richard Dowse, 28 Oct. 1870, SPO Chief Crown Solicitor's Opinions, 1870/264, communicated by letter of the chief secretary to the master of the rolls. Doyle, 'Foundation and First Twenty Years', 295–6.

[36] Doyle, 'Foundation and First Twenty Years', 297–8.

[37] Public Records (Ireland) Act 1867, s. 10.

[38] NAI, PRO 2/1/83, M. J. McEnery to under-secretary, Dublin Castle, 28 Feb. 1921, printed with an introduction in C. Wallace, 'Queries, Difficulties, and Anomalies: A Memo on the Government of Ireland Act (1920) by Michael Joseph McEnery, Deputy Keeper of the Public Records', *Archivium Hibernicum*, 75 (2022), 143–61.

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daily operations: the deputy keeper referred to his proximity, 'coming almost daily to the Four Courts', which made the master of the rolls 'very accessible for consultation . . . on all matters connected with the records in which he took the deepest interest'.[39]

Ancient Rolls

While the bulk of the PROI's legal archives dated from 1700 onwards, the staff of the PROI were, from the first, particularly attentive to their most ancient muniments. As Herbert Wood put it in 1912, when advertising the 'unexplored treasures' of the PROI: '[w]hat a mine of information is still lying buried in these old Rolls!'[40] Wood was specifically referring to the statute rolls which ran in a sequence of over 500 parchment rolls preserved with the records of the Court of Chancery from 1427 into the modern era (PROI C 1/111). The publication of these early statute rolls became one of the PROI's prestige projects. Henry F. Berry planned and edited the four massive volumes, totalling over 2,500 pages of text, translations and apparatus. The first instalment was not, in fact, based on an archival series in the PROI, where the surviving statute rolls only commenced in the fifteenth century.[41] Determined to begin at the beginning, Berry opened the first volume in the reign of King John (1199–1216), and for the rest of the period up to 1422, he created an archivally artificial, but historically invaluable, miscellany that drew on various repositories in Ireland and Britain, and in particular reproduced the statutes that had been transcribed into the Red Book of the Irish Exchequer. He titled this first volume *Statutes and Ordinances and Acts of the Parliament of Ireland, King John to Henry V*. It included what was to become the standard critical edition of the 'Statutes of Kilkenny, 1366' until the twenty-first century.[42]

Berry went on to prepare three more volumes of 'early statutes, Ireland', now taken directly from the PROI's own collection of original Irish statute rolls. Two, spanning the years 1427 to 1472, were published

[39] NAI, PRO 2/1/83, Letter Book (Out) 21 Feb. 1921–Mar. 1922, M. J. McEnery, deputy keeper, PROI to under-secretary, Dublin Castle, 28 Feb. 1921.
[40] 'Unexplored Irish Treasures', extant in RIA, 23 M 75 (Berry–Twiss Papers).
[41] Wood, *Guide*, 17.
[42] *Statutes and Ordinances and Acts of the Parliament of Ireland, King John to Henry V*, ed. H. F. Berry (Dublin, 1907).

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before 1922.[43] The First World War delayed progress on the fourth volume, which was intended to cover the later reign of Edward IV from after the 'readeption' of Henry VI in 1470, and included statute rolls from 1473 to 1481.[44] This volume finally appeared just as the Second World War commenced in 1939. By this time, not only had the original editor, Berry, died (in 1923), but almost the entire sequence of statute rolls from the fifteenth century to the Act of Union had been consumed in the flames of 1922. The fourth volume consequently gained a new editor in James F. Morrissey (died 1952), assistant deputy keeper of the PROI. Morrissey had performed heroically after succeeding Herbert Wood to the role, though not initially to the rank, of deputy keeper of the PROI in 1923.[45] Among many other pressing duties, and with only a skeleton administrative staff, Morrissey rescued the 'early statutes' project by drawing together Berry's notes and translations made before 1922, as well as transcriptions of the statute rolls by the nineteenth-century Irish Record Commission.[46] The translations and indexing were carried out afresh under Morrissey's supervision by Dr Charles J. MacGarry, who died in January 1936 before the volume appeared in print. The project was struck by calamity for a fourth time when the printing works – Browne and Nolan's of Fenian Street, Dublin – was completely destroyed by fire on 16 August 1935.[47] The type of the text and MacGarry's translation were lost, but duplicate page proofs were intact in the PROI. These were photographed and reproduced by photo-lithography, but another five years passed before the volume appeared in print.[48]

[43] *Statute Rolls of the . . . reign of King Henry the Sixth* (Dublin, 1910); *Statute rolls of the . . . first to the twelfth years of the reign of King Edward the fourth* (Dublin, 1914).

[44] *Statute Rolls of the . . . twelfth and thirteenth to the twenty-first and twenty-second years of the reign of King Edward the fourth* (Dublin, 1939).

[45] D. Cregan, 'James F. Morrissey', *Analecta Hibernica*, 20 (1958), xv–xvi. Morrissey remained 'assistant deputy keeper', and the full role of 'deputy keeper' was left unfilled in 1938. See also G. O'Brien, *Irish Governments and the Guardianship of Historical Records, 1922–72* (Dublin, 2004), 22–40. Morrissey was also a member of the first Irish Manuscripts Commission (1928): M. Kennedy and D. McMahon, *Reconstructing Ireland's Past: A History of the Irish Manuscripts Commission* (Dublin, 2009), 15.

[46] An important recent addition to the analytical literature on the statute rolls is S. Booker, 'Widowhood and Attainder in Medieval Ireland', in T. Phipps and D. Youngs (eds.), *Litigating Women: Gender and Justice in Europe, c. 1300–c. 1800* (Abingdon, 2022), chapter 5, especially the discussion of parliamentary petitions at 83–5.

[47] '£180,000 fire damage: destruction of printing works', *Irish Times*, 17 August 1935.

[48] *Statute Rolls of the Parliament of Ireland, twelfth and thirteenth to the twenty-first and twenty-second years of the reign of King Edward the fourth*, ed. J. F. Morrissey (Dublin, 1939), lxxv–lxxvii. The progress of MacGarry's fresh translation work is reported by

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Morrissey had been active after 1922 in organising the salvage operation at the Four Courts.[49] The sole survivor of 1922 among the statutes was the roll for the 'reformation parliament' of 29 Henry VIII (1536–1537), which happened to be in use in the public Search Room. Protected in the strong room adjacent to the public reading room of the PROI, the parchment roll survived the cataclysm.[50] The entire corpus of Chancery records from the patent and close rolls, as well as tens of thousands of 'rotulets' of medieval Exchequer rolls were destroyed.[51] The early plea rolls were luckier. Several were blasted out of the Treasury building during the conflagration. The parchment withstood the weather to be retrieved from the rubble in autumn 1922, and stored for posterity.[52] These plea rolls (PROI PR) were the survivors from a series highly prized by PROI staff as being among their earliest, and so greatest, historical treasures.

In their veneration for 'ancient rolls' – 'ancient' being a loose descriptor for 'medieval' – the PROI staff shared the spirit of their age.[53] The value of the early enrolments was well understood at the time, even though the academic study of history was a fledgling profession. In 1865, Thomas Duffus Hardy (1804–1878) and J. S. Brewer (1809–1879), who inspected Ireland's public records, wrote a long encomium to their inestimable value and importance in throwing light on

Morrissey in *Fifty-Seventh Rep. DKPRI* (1936), item 101, 55. We are grateful to Damian C. MacGarry, grandson of Charles J. MacGarry, for information on his grandfather's career.

[49] Z. Reid, J. Baldwin, P. Crooks and D. Brown, 'Retrieved from the Rubble: Reconstructing Ireland's lost Archive', in P. Murray, L. Humenuck, W. Bennett and L. Moon-Schott (eds.), *Mod Cons: Modern Conservation, Modern Conveniences, Modern Constraints [ICON Book & Paper Group Third Triennial Conference, 2021]* (London, 2022), 46–53.

[50] P. Connolly (ed.), *Statute Rolls of the Irish Parliament, Richard III–Henry VIII* (Dublin, 2002). The 'substitute material' underlying this volume is drawn from NAI, RC/13 (Irish Record Commission transcriptions of statute rolls), especially RC/13/8 and RC/13/9, as well as the salved statute roll (NAI, CH/1/1).

[51] P. Crooks, 'Reconstructing the Past: The Case of the Medieval Irish Chancery Rolls', in F. M. Larkin and N. M. Dawson (eds.), *Lawyers, the Law and History: Irish Legal History Society Discourses and Other Papers, 2006–2011* (Dublin, 2013), 281–309; R. Frame, 'Rediscovering Medieval Ireland: Irish Chancery Rolls and the Historian', in R. Frame (ed.), *Plantagenet Ireland* (Dublin, 2022), chapter 9.

[52] See 'Part 1 – Salved Records Listed before 2017', P. Crooks et al., 'The Salved Records of 1922', in 'Special Issue – The Fire of 1922', *Analecta Hibernica*, 53 (2023), 15–58, 33–4.

[53] For the phrase 'ancient rolls', see Wood, *Guide*, 59; 'The Irish Justiciary Rolls', *Irish Times*, 2 Nov. 1906. For a spirit of 'medievalism' among the new archivists of this period, see P. Crooks, 'Rescue the Records, Revisited', *Irish Archives: Journal of the Irish Society for Archives* (50th Anniversary Issue), 27 (2022), 26–36.

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> the social condition of Ireland from the earliest period since its conquest by England, the mode in which it was governed, and the various efforts made at successive intervals by its English rulers to awe or entice it into submission ... such documents cannot be regarded with indifference; without them the true history of Ireland never can be written; with the aid of them it has been reserved for such future historians to give the world a narrative of events surpassed by none in tragic interest or political significance ... Now, with the fresh aids afforded by the Government, and the access given by Calendars and Catalogues to the public muniments of the country, there is reason to hope that the future efforts of Irish scholars will be as much distinguished in the successful cultivation of this as it has been in other branches of their literature. On this point, as it seems to us, public opinion is unanimous.[54]

The earliest rolls emanating from the court of the justiciar – that is, the king's chief governor in Ireland – survived from the late thirteenth century.[55] By this time, the chief governor was already calling upon the experience and expertise of professional lawyers – those who would come to constitute a court or 'bench' of the justiciar, dispensing royal justice in Ireland on the king's behalf.[56] The plea rolls, typically rolls of parchment stitched at the head, recorded the cases heard before that court. These records were stored in Bermingham's Tower in Dublin Castle, where, in the early eighteenth century, they were kept in wooden presses. This did not protect them from the rain coming in through the ruined roof, or the risk from the fires in the kitchen located in the base of the tower. The Bermingham Tower was demolished in 1775, when the ancient records were placed in sacks and stored in Battleaxe Hall.[57] They came under the remit of the Irish Record Commission in 1810, and were transferred again into the Record Tower of Dublin Castle in 1815, which was the Commission's base of operations (Figure 17.3).

[54] NLI, MS 11219.

[55] The surviving evidence is listed in G. J. Hand, *English Law in Ireland, 1294–1324* (Cambridge, 1967), 219–50.

[56] See ibid., chapter 3; P. Brand, 'The Birth and Early Development of a Colonial Judiciary: The Judges of the Lordship of Ireland, 1210–1307', in W. N. Osborough (ed.), *Explorations in Law and History: Irish Legal History Society Discourses, 1988–1994* (Dublin, 1995), 1–48; P. Connolly, 'The Medieval Irish Plea Rolls – An Introduction', *Journal of the Irish Society for Archives*, 2:1 (1995), 3–12; P. Connolly, 'Pleas Held before the Chief Governors of Ireland, 1308–76', *Irish Jurist*, 18 (1983), 101–31.

[57] Wood, *Guide*, 59; C. Manning, '"But You Are the First to Build a Tower": The Bermingham Tower, Dublin Castle', *Ulster Journal of Archaeology*, 3rd series, 74 (2017–18), 145–54.

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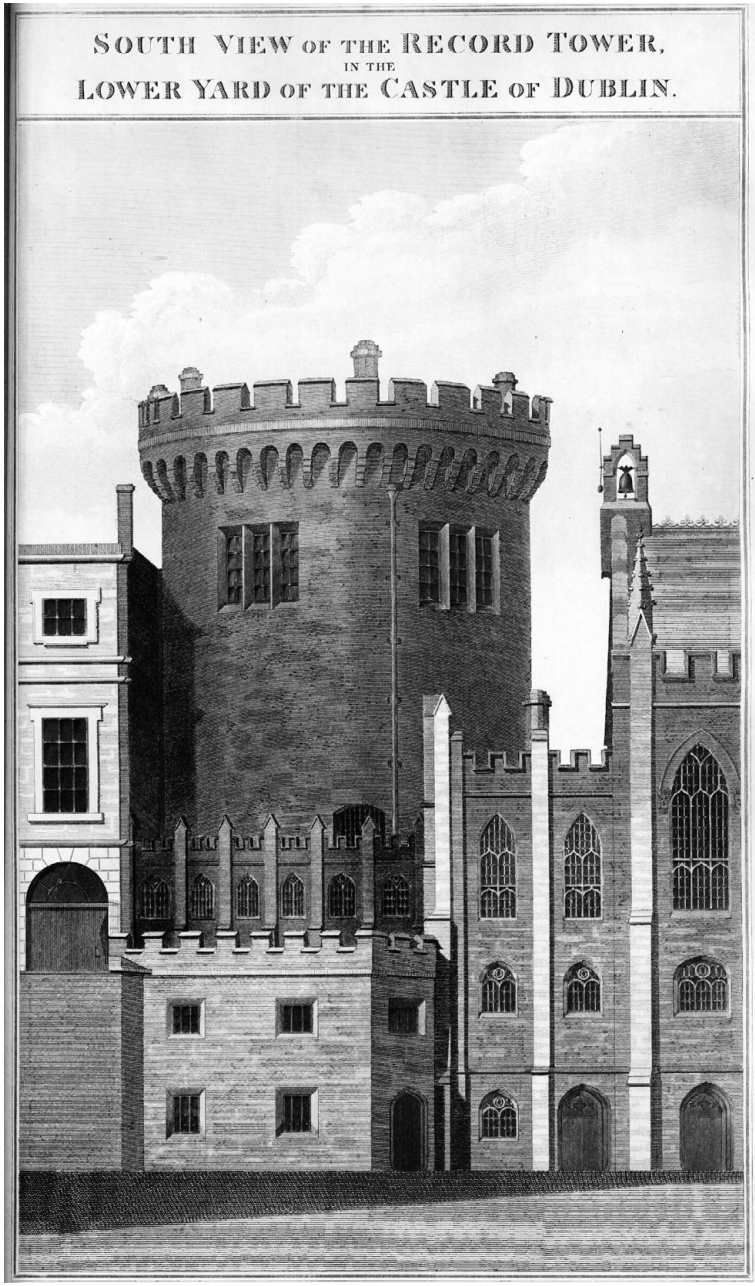


Figure 17.3 'South View of the Record Tower in the Lower Yard of Dublin Castle', *Reports from the Commissioners appointed by his Majesty to execute the measures recommended in an address of the House of Commons respecting the Public Records of Ireland,* Second Report (1819), 478.

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The plea roll collection comprising more than 600 rolls was moved into the PROI in 1869.[58]

In the 1890s, PROI staff inspected their holdings and determined that earlier inventories of the plea rolls prepared by the Irish Record Commission in 1819 were confused and, at 'closer acquaintance', their calendars were adjudged to be 'unquestionably valuable for reference, yet very incomplete and unsuitable in form for publication'.[59] Led by James Mills (later deputy keeper of the PROI), a completely new catalogue and concordance was prepared and published in the mid-1890s.[60] From 1900, work began on a new calendar, to commence in the later reign of Edward I (1295–1307), which prioritised for publication the rolls of sessions held before the justiciar over common bench rolls. Two volumes of these 'justiciary rolls' appeared under Mills' editorship in 1905 and 1914.[61] Mills retired in May 1914 and died in September the same year, just as war was breaking out in Europe. Calendaring progressed slowly under Herbert Wood, author of the famous *Guide to the Records* in the PROI, who, together with his colleague, Albert Langham, had reached the year 1318 by the time of the fire. Their work remained unpublished in 1922, when the fire destroyed almost the entire corpus of plea rolls.

Fortunately, the handwritten calendar by Wood and Langham survived, presumably because it was in the Record House, where the administrative offices were located, rather than in the Record Treasury. A first portion of their work, covering 1307–1314, was revised for publication three decades later by Margaret C. Griffith (1911–2001), deputy keeper of the records, now acting under the authority of the Irish Minister for Justice. But seventy years on, the remaining manuscript calendar pages (1314–1318) have never been prepared for publication, and even more remarkably an intact plea roll (NAI, KB/1/1) remains unedited and little known. Given the intensity with which the published justiciary rolls have been worked over by generations of historians, the absence of accessible editions of the remaining plea roll material – whether salvaged, calendared, abstracted or stolen – is clearly an urgent priority.

[58] Wood, *Guide*, 59.

[59] *Thirty-Second Rep. DKPRI*, 25. The Irish Record Commission plan for abstracting the Plea Rolls appears in NAI, RC 7/1, accessible through VRTI (https://virtualtreasury.ie/item/NAI-RC-7-1-1).

[60] *Twenty-Sixth Rep. DKPRI*, appendix III, 'Early Rolls', 53–68; *Twenty-Eighth Rep. DKPRI*, appendix 1, 'Early Rolls of Judicial Proceedings', 39–56.

[61] *Calendar of the Justiciary Rolls of Ireland*, ed. James Mills et al., 3 vols. (Dublin, 1905–56).

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What is the historical significance of this surviving evidence? The value lies not merely in the detail furnished on the legal and institutional transformation of Ireland a century after the conquest begun under Henry II (1154–1189). The plea rolls have proved to be sources for social history of the first importance, especially in the complex multi-ethnic society of conquered Ireland. In the view of Jocelyn Otway-Ruthven (died 1989), who was not an historian given to flights of fancy, 'they are more fascinating than any historical novel, giving us a most vivid picture of a society in which every man went armed, so that a pleasant evening in a tavern only too often ended in homicide'.[62] An example presents itself from one of the few intact, unpublished, plea rolls pulled from the rubble at the Four Courts (NAI, KB/1/1). The case, heard in County Kildare in 1313, arose from a quarrel over impounded livestock, which escalated into a brutal conflict between the family of Simon Clement and Robert Levetrot, the servant of William Donheved.[63] Following a dispute over a pledge for the beasts' release, Simon and his kin accosted Levetrot. William tried to mediate by inviting Simon for a drink. This was rebuffed, escalating tensions. The scuffle led to bloodshed and culminated in the killing of an unnamed Irishman associated with William, whose death required compensation:

> Simon gave him the lie and they began using abusive language to each other and came up close to each other so that their faces were almost touching and William pushed Simon away and hit him with his fist above the eyebrow; and one of those who had come with Simon hit William with an axe; and one of those who was with William hit Simon on the head, so that William and Simon both fell down; and in the fight an Irishman belonging to William, who had come to rescue his master, was killed, for whom William recovered compensation in the king's court. Adam de la Bere, being maimed, fled to William's house, pursued by Robert Clement with an axe and, when Adam tried to get in, a boy passed him out a lance; he turned back and struck Robert on the head, so that he fell to the ground. Robert at once got up and struck Adam and broke his arm.

Detail of this kind sheds light on the dynamics of a medieval community where ingrained cultures of honour and retribution – rancour and reconciliation – characterised interpersonal relations, albeit within the overarching structures of the common law.[64]

[62] A. J. Otway-Ruthven, 'Review of *Calendar of the Justiciary Rolls, Ireland, 1308–1314*', *Irish Historical Studies*, 11:41 (1958), 50–2.
[63] NAI, KB/1/1, m. 67d (pleas at Castledermot, Co. Kildare, 21 May 1313).
[64] Cf. P. R. Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca, NY, 2003).

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Another case from the same roll, heard at Cashel in October 1312, concerns a woman named Alice Prout.[65] Alice brought a possessory assize of *mort d'ancestor* (concerning her right to inheritance) before the chief governor, Edmund Butler, then hearing pleas at Cashel, County Tipperary. She claimed as heiress of her brother Adam that she should be permitted to inherit his lands. The weakness in her case was, however, that Adam was unavailable to present evidence in court, either in person or from beyond the grave. He was no longer on the island of Ireland. In his absence, his lands had been occupied by another man named Edmund Umfrey. In court, Edmund countered Alice's claim to the land by pointing to the fact that Alice could not prove that her brother was dead. Adam had left Ireland to go on pilgrimage. He intended to travel to Santiago de Compostela, and thence perhaps to Rome. He never returned alive, but nor was there proof that he was dead. Alice could not deny this. The court decided against Alice. Not only did she lose her case, she also suffered a financial penalty for making a false claim. Only her poverty exempted her from paying the fine.

The case of Alice Prout is important in its own right, and as a window into a lost world shaped by 'pragmatic literacy' and the growth of legal consciousness among wider segments of society.[66] It reveals an Ireland transformed across the previous century, since the English conquest introduced in its wake the common law.[67] Tipperary had become a shire, one of thirteen counties created in Ireland after the invasion as a means of exerting English royal government at local level.[68] We see an Ireland interconnected with Christendom and its well-trodden pilgrimage routes to Spain and Italy.[69] And we see a legal culture in which female inheritance is possible and access to the court system is permitted, albeit with constraints and within a decidedly patriarchal social context.[70] As Joanna

[65] NAI, KB/1/1, m. 4, pleas at Cashel, Co. Tipperary, 30 Sept. 1312.

[66] For these concepts, see R. Britnell (ed.), *Pragmatic Literacy, East and West, 1200–1330* (Woodbridge, 1997); A. Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants' Revolt* (Manchester, 2001).

[67] See, most recently, R. Frame, 'Ireland within the Plantagenet Orbit', in R. Frame (ed.), *Plantagenet Ireland* (Dublin, 2022), chapter 1.

[68] A. Empey, 'Conquest and Common Law', chapter 2 in P. Crooks and T. Mohr (eds.), *Law and the Idea of Liberty in Ireland: From Magna Carta to the Present* (Dublin, 2023); C. Veach, 'Conquest and Conquerors', in B. Smith (ed.), *Cambridge History of Ireland I: 600–1550* (Cambridge, 2018), especially 179–81.

[69] See B. Cunningham, *Medieval Irish Pilgrims to Santiago de Compostela* (Dublin, 2019).

[70] S. Booker, 'The Challenge of Writing Histories of "Women": The Case of Women and the Law in Late Medieval Ireland', *Irish Historical Studies*, 46 (2022), 224–43.

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MacGugan's illuminating recent study of social memory and reputation has demonstrated, legal records are invaluable for reconstructing mentalities within elements of society normally beyond the scope of medieval evidence.[71]

The 'Nerve Centre' of Government

Writing in the aftermath of the fire, the Irish legal historian F. Elrington Ball (son of a lord chancellor of Ireland) wistfully recalled the great resources he had found in the PROI: 'of its contents use was especially made of, besides the plea rolls, the prerogative and consistorial wills and grants, the memoranda and summonister rolls, the exchequer inquisitions, the assize warrants'. However, he also highlighted the legal significance of records produced by the Chief Secretary's Office (CSO), listing 'the departmental, civil, and country correspondence' that stemmed from that office.[72] While the CSO records were comparatively recent in origin (the earliest dated from the late seventeenth century), they nonetheless represented a significant portion of the PROI's holdings. Wood's *Guide* lists 202 separate CSO archival series, several of impressive size and complexity, comprising many sub-series. In scale, this rivalled even some of the older categories of records held by the archive, such as courts with origins in the medieval period.[73] The scale should not be surprising. The CSO has been described as 'the nerve centre' of the Irish government, and as such it played a pivotal role in overseeing government operations, influencing legislation and shaping the country's legal framework until its dissolution in 1924.[74] Prior to this, the chief secretary acted as the head of the lord lieutenant's secretariat, but from the mid-eighteenth century the CSO emerged as a distinct entity charged with supervising the various departments of the executive government in Ireland.

The CSO was a non-judicial entity, yet it was one of crucial legal importance. The legal dimensions to its operational work ran along a number of lines. It played a significant role in the shaping of Irish legislation, with 'parliamentary management' forming a major part of

[71] J. MacGugan, *Social Memory, Reputation and the Politics of Death in the Medieval Irish Lordship* (Dublin, 2023).
[72] F. E. Ball, *The Judges in Ireland, 1221–1921* (London, 1926), xxi.
[73] Wood, *Guide*, 204–5.
[74] R. B. McDowell, 'The Irish Executive in the Nineteenth Century', *Irish Historical Studies*, 9 (1955), 265; T. Bartlett (ed.), *Macartney in Ireland, 1768–72* (Belfast, 1979), xiii–xiv.

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the responsibilities of incumbent chief secretaries. During the eighteenth century, members of the executive in Dublin Castle (including the lord lieutenant and chief secretary) were not appointed by the Irish parliament, but instead reported to, and received their instructions from, the British Cabinet. Yet at the same time, the lord lieutenant was tasked with ensuring the passage of desired legislation through the Irish parliament in Dublin. This task became more hands-on during the tenure of Lord Lieutenant George Townshend, viceroy from 1767 to 1772 and the first viceroy to take up a permanent residence in Ireland.[75] Townshend's viceroyalty transformed the role of the chief secretary, becoming the primary manager of government business within the parliament, directing affairs from a seat within the Irish House of Commons.[76] Instead of relying on local powerbrokers to manage the business on behalf of the administration (an arrangement that had always had mixed results), the chief secretary now ensured that the government's legislative programme would be followed more closely.[77]

The fraught constitutional relationship between Ireland and Britain in the eighteenth century made this a complicated job, and the passage of legislation into law a confusing process. This resulted in the production of a wide array of legal documents alongside other local records such as parliamentary returns, appeals, precedents, law papers and proclamations.[78] After the Act of Union transformed this relationship by abolishing the Irish parliament, these and other records were carried by cart to a dilapidated private house on nearby Anglesea Street, before finding a dedicated space in the Dublin Castle complex. It was from this Parliamentary Record Office that they were moved to their final destination in the Four Courts (PROI PARL), where many of them would be destroyed in 1922.[79]

[75] M. J. Powell, 'Reassessing Townshend's Irish Viceroyalty, 1767–1772: The Caldwell–Shelburne Correspondence in the John Rylands Library, Manchester', *Bulletin of the John Rylands Library*, 89 (2013), 155–76.

[76] For the Irish parliament, see D. W. Hayton, *The Irish Parliament in the Eighteenth Century: The Long Apprenticeship* (Edinburgh, 2001); E. M. Johnston-Liik, *History of the Irish Parliament, 1692–1800*, 6 vols. (Belfast, 2002). For Townshend's reform project, see M. J. Powell, 'The Reform of the Undertaker System: Anglo-Irish Politics, 1750–67', *Irish Historical Studies*, 31 (1998), 19–36.

[77] Powell, 'Reassessing Townshend's Irish Viceroyalty', 157.

[78] J. Kelly, *Poynings' Law and the Making of Law in Ireland, 1660–1800* (Dublin, 2007).

[79] *Reports of the Commissioners Appointed by His Majesty to Execute the Measures Recommended in an Address of the House of Commons Respecting the Public Records of Ireland*, Second Annual Report, HC 1819 (545) xx, 551.

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One of the most fruitful sources for reconstructing the legislative activity of the Irish parliament – namely, the bills that would ultimately become law – are the records of the English Privy Council.[80] Earlier legal precedent, including Poynings' Law and a later declaratory act, required that drafts of these bills be sent to the Privy Council in England for approval or amendment before being returned to be accepted or rejected by the Irish parliament.[81] As a result, these records reveal when bills arrived, if and how they were amended, and when they were approved by the English Privy Council before being returned to Ireland.[82] Some parliamentary returns were salvaged in 1922, but many more were lost, including most relating to the religious census of 1766.[83] The *Journal of the House of Commons*, which fortunately was printed, serves as a useful substitute for destroyed parliamentary materials, providing a formal account of the proceedings of parliament.[84] However, the *Journal* leaves out the debates through which laws were crafted and approved. Sources such as the 'Cavendish Transcripts' in the Library of Congress, the *Parliamentary Register* and reports carried by contemporary newspapers can be used to rebuild these debates.[85] The 'Cavendish Transcripts', which run through the years of the American War of Independence and to the outset of the French Revolution, are especially valuable in this regard. These transcriptions of shorthand notes, taken from the floor of the Irish House of Commons, represent the sole surviving 'record' of the speeches of 'Grattan's Parliament', giving us a window into the law-making process itself.[86]

[80] For example, see the 'Irish Legislation Project' (www.qub.ac.uk/ild/), which reconstructed and digitised the legislation of the Irish parliament under the direction of David Hayton and James Kelly.

[81] J. L. McCracken, *The Irish Parliament in the Eighteenth Century* (Dundalk, 1971), 13–23.

[82] TNA, PC 2 (Privy Council: Register).

[83] For a painstaking reconstruction of House of Lords returns for the religious census of 1766 (PROI PARL 88/30/5), see VRTI Gold Seam, '1766 Religious Census' (https://virtualtreasury.ie/gold-seams/1766-religious-census).

[84] *Journals of the House of Commons of the Kingdom of Ireland*, 19 vols. (Dublin, 1796–1800). See also *Journals of the House of Lords*, 8 vols. (1779–1800).

[85] Ireland: Parliament, House of Commons Debates, MSS 27292, Library of Congress; *Parliamentary Register, or History of the Proceedings and Debates of the House of Commons of Ireland*, 17 vols. (Dublin, 1784–1801). For an example of how this can be done, see J. Kelly (ed.), *Proceedings of the Irish House of Lords, 1771–1800*, 3 vols. (Dublin, 2008), accessible on VRTI (https://virtualtreasury.ie/item/IMC-2008-Lords).

[86] J. Kelly, 'Review Article: Recording the Irish Parliament', *Eighteenth-Century Ireland*, 15 (2000), 164. Several volumes of the Cavendish debates are accessible on VRTI (https://virtualtreasury.ie/item/LOC-MS-27292).

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While the archives of the Parliamentary Record Office were among the collections destroyed in 1922, it is clear that several of the larger CSO series also contained an abundance of material relating to parliamentary matters. For instance, 'Departmental Correspondence (British), 1683–1759' (PROI CSO 1/30), included letters received from lords lieutenant and their secretaries when in England, and from other departments in England, about civil and military business.[87] At the time of their transfer to the PROI, Sir John Bernard Burke (1814–1892), keeper of the state papers in Dublin Castle, made note of the significance of the CSO archives. Burke described how 'many of these letters, though written on public affairs, have the character of private correspondence, for they deal fully as much with the ordinary circumstances of the day as with public business'.[88] A later guide to the PROI would similarly describe how, 'in order to possess the clue to the government of the country', this series 'possesses high value', containing letters from all of the major British parliamentary figures of the day which, although they 'discuss public matters, still there are in them human touches'.[89]

After the Act of Union (1800), while all major decisions on Irish legislation were now taken in London, the administrative machine in Dublin Castle nonetheless remained in place. During the nineteenth century, the chief secretary, increasingly a cabinet-level appointment, spent the majority of his time in London, defending the government's Irish policies in Westminster. However, when parliament was not in session, the chief secretary was kept busy in Ireland, assembling information that would allow the drafting of new legislation, or answering queries from London. Once again, the records destroyed in 1922 included a crucial series that would have illuminated the mechanics of government between Dublin and London in the early nineteenth century. The vast series of *Official Papers, 1760–1830* (PROI CSO 1/31) included 'letters to the Irish Government from Public Departments or officials in England and Ireland, and papers connected therewith'.[90] This series was classified into sub-headings arranged by subject, including a number of sub-series

[87] Wood, *Guide*, 209.
[88] PROI, DKPRI 3/3, 'Appendix 1. To the Right Honorable the Master of the Rolls – The Third Report of Sir John Bernard Burke, C.B., Ulster, Keeper of the State Papers in the Record Tower, Dublin Castle, dated 1st February, 1871', accessed on VRTI.
[89] H. Murray, *A Short Guide to the Principal Classes of Documents Preserved in the Public Record Office, Dublin* (London, 1919), 29–30.
[90] Wood, *Guide*, 209.

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with obvious interest to legal scholars, such as 'Courts of Law & Equity'[91] and 'Crown Solicitors'.[92] However, other series undoubtedly held material which shed light on the nature of Irish legal matters, such as the voluminous correspondence between the CSO and the Home Office.[93]

The lord lieutenant, and by extension the CSO, had the determining role in appointments to, and promotion within, the Irish bench. At the time of the Union in 1801, there were sixteen judges on the bench of the six superior courts in Ireland. With few exceptions, all were appointed by the crown and held office during good behaviour; they could only be removed by the crown or by an address of both houses of parliament.[94] As a result, judicial appointments and promotions were a subject of considerable discussion within Dublin Castle. While much of the internal correspondence of the CSO has been destroyed, the letters it sent to London, preserved in the archives of the Home Office, reveal a careful consideration of the make-up of the Irish judiciary.[95] Legal experience (particularly Irish legal experience) was obviously a criterion for appointment to the bench, but there was a clear link between political activity and legal promotion. In the years between 1801 and 1877, over half of those appointed to the bench in the Four Courts had sat in the British (or, before 1800, Irish) House of Commons. Even more remarkable is that nearly three-quarters of these appointees had been law officers of the crown.[96]

The lord lieutenant and chief secretary were regularly advised by – and, indeed, had a role in appointing – the crown law officers for Ireland. The Irish attorney general and solicitor general, just like their English counterparts, had the core function of advising the administration of the day on legal matters, making sure the lord lieutenant and the chief

[91] PROI, CSO 1/31/94, 'Official Papers, 1760–1831; Courts of Law & Equity; 1821–1831; Carton 302', accessed on VRTI.

[92] PROI, CSO 1/31/95, 'Official Papers, 1760–1831; Crown Solicitors; 1799–1831; Carton 307', accessed on VRTI.

[93] PROI, CSO 1/31/130–51.

[94] The exceptions were the judge of the prerogative court who was appointed by the Archbishop of Armagh, and the lord chancellor of Ireland who could be removed by different means. By the 1840s, the lord chancellor was usually selected by the Irish Bar. R. B. McDowell, 'The Irish Courts of Law, 1801–1914', *Irish Historical Studies*, 10:40 (1957), 366.

[95] Examples of Dublin Castle's recommendations concerning appointment of judges can be found in TNA, HO 100/37/79, 'Westmoreland to Dundas' (1792); TNA, HO 100/107/209, 'Hardwicke to Pelham' (1801), all accessed on VRTI.

[96] R. B. McDowell, *The Irish Administration, 1801–1914* (London, 1964), 107.

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secretary acted legally. The CSO frequently received requests for legal advice from local magistrates, which they in turn referred to the solicitor or attorney general. The office of king's serjeant, almost always filled by members of the Irish Privy Council, was another key office in the extension and maintenance of royal authority in Ireland. By the beginning of the nineteenth century, there was a 'prime serjeant', as well as a second and third serjeant, although the importance of these roles had declined relative to those of attorney and solicitor general.[97] Together, these officials formed the cornerstone of Ireland's legal administration: their opinions on legislative matters were valued, and they often participated in discussions surrounding bills and committee work. The advice of the attorney and solicitor general can frequently be found in surviving private papers of chief secretaries, as well as in the regular exchanges between Dublin Castle and the government in London.[98] The Irish law officers were also critical to one of the key developments of the CSO in the nineteenth century: its growing supervision of the local administration of justice.

Given the significance of the CSO for Irish legal history, how might the devastating loss of records that occurred in 1922 be mitigated? Many CSO records destroyed in 1922 were actually copies of original correspondence. During the early modern period, it was common practice for a lord lieutenant or chief secretary to retain his papers when his period in office came to an end. This practice was so common that in 1702 a state paper office was created, tasked with keeping duplicates of the records created by the Dublin Castle administration.[99] Thus, duplicates of many records destroyed in the Four Courts can be found in the private papers of the men who filled these key roles. These proxy CSO archives can be found in repositories such as the British Library or the various English county record offices.[100] An especially rich concentration of such records

[97] For the medieval origins of these offices, see H. G. Richardson and G. O. Sayles, *The Administration of Ireland, 1172–1377* (Dublin, 1963); J. P. Casey, *The Irish Law Officers* (Dublin, 1996); A. R. Hart, *A History of the King's Serjeants at Law in Ireland* (Dublin, 2000).

[98] A good example can be found in the career of John Fitzgibbon, Earl of Clare, who served as Irish attorney general from 1783 to 1789, and then as lord chancellor of Ireland from 1789 to 1802. For Fitzgibbon's role as advisor to the CSO, see D. A. Fleming and A. P. W. Malcomson (eds.), *'A Volley of Execrations': The Letters and Papers of John Fitzgibbon: Earl of Clare, 1772–1802* (Dublin, 2005), *passim.*

[99] H. Wood, 'The Destruction of the Public Records: The Loss to Irish History', *Studies: An Irish Quarterly Review*, 11:43 (1922), 371–2.

[100] Examples include the papers of Thomas Pelham (chief secretary, 1782–83, 1795–98), BL, Add. MS 33100–03; papers of Sir Robert Peel (chief secretary, 1812–18) BL, Add. MS

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may be found at the Public Record Office of Northern Ireland (PRONI). For instance, PRONI holds the papers of Sir George Macartney (1737–1806), who served as chief secretary during the viceroyalty of George Townshend in the years 1768–1772.[101] This was a pivotal moment in the evolution of the CSO, as Townshend and Macartney oversaw the reorganisation of the office as well as increasing the influence of the chief secretary within the Irish parliament. Macartney's Irish papers effectively provide a substitute CSO archive for this key period.[102] A similar resource can be found in the papers of Robert Stewart, Viscount Castlereagh (1769–1822), who served as chief secretary at the time of the 1798 Rebellion, as well as during the negotiations and passage of the Act of Union in 1800.[103] PRONI also holds the papers of another influential lord lieutenant, Henry Paget, first marquis of Anglesey (1768–1854), who held the office between 1828 and 1833.[104] A liberal who supported reform and was sympathetic to the pro-Catholic campaigns of Daniel O'Connell, Anglesey's correspondence with his several chief secretaries are a key source for historians.[105]

However, the single largest source of replacement materials for the CSO are the collections of state papers held by The National Archives (UK). During the eighteenth century, the lord lieutenant regularly sent public dispatches, such as formal acknowledgements or requests, to the Secretary of State for the Southern Department, who was responsible for Irish affairs. After 1782, Irish affairs became the responsibility of the British Home Office. The bulk of correspondence between the CSO and the Home Office is located in a series in The National Archives (UK), known as the Home Office 100 series.[106] This 264-volume series, dating

40181–40613. See also papers of William Wickham (chief secretary, 1802–4), Hampshire Archives & Local Studies, MS 38M49/C; papers of Henry Goulburn (chief secretary, 1821–27), Surrey History Centre, SHC 304/1.

[101] T. Bartlett, 'Macartney, George (1737–1806), Earl Macartney, Diplomat, Chief Secretary and Colonial Governor', *DIB*.

[102] PRONI, D572, 'Macartney Papers', accessed on VRTI.

[103] P. M. Geoghegan, 'Stewart, Robert (1769–1822), Viscount Castlereagh and 2nd Marquess of Londonderry, Chief Secretary for Ireland, Politician', *DIB*. For his papers: PRONI, D3030, 'Castlereagh Papers', accessed on VRTI.

[104] V. Crossman, 'Paget, Henry William (1768–1844), 1st Marquis of Anglesey, Lord Lieutenant of Ireland', *DIB*.

[105] PRONI, D619/31, 'Correspondence of Anglesey with His Successive Chief Secretaries', accessed on VRTI.

[106] To browse the HO 100 series, see TNA Discovery catalogue (https://discovery.nationalarchives.gov.uk/browse/r/h/C8964).

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from 1782 to 1851, contains a multitude of direct replacement and substitute materials for CSO series, both civil and military, destroyed in 1922. HO 100 contains additional papers on special subjects, such as Catholic emancipation, poor law reform, policing and 'outrages', and various special commissions.[107] For the period after 1852, equivalent materials can be found within a sub-division of the Colonial Office papers, also held in The National Archives (UK).[108]

In addition to collections in the above repositories, a considerable number of CSO records now in the National Archives of Ireland (NAI) avoided destruction in 1922 because they had not been transferred to the PROI from the Castle by the time of the fire. During the eighteenth and nineteenth centuries, the records produced by the CSO were stored in the Record Tower at the Castle, under the superintendence of the master of the rolls. Under sections 10–11 of the Public Records (Ireland) Act 1867, the State Paper Office remained as a discrete entity. The 1867 Act required the CSO to transfer records to the State Paper Office (SPO) on a regular basis, usually ten years after creation. These remained in the SPO until they were fifty years old, at which point they would be transferred to the PROI. However, this transfer to the PROI was dependent on the documents being properly arranged and indexed by the SPO: there were often lapses in this transfer schedule. Indeed, some of the most significant surviving CSO collections currently held in NAI arise from these very delays in calendaring and indexing. The most significant collection is the 'Chief Secretary Office Registered Papers' (CSORP), which consist of two main archival series covering the years 1818–1924, together with a number of sub-series within this date span.[109] In addition to CSORP, NAI also holds the 'Rebellion Papers', a collection dating from 1790 to 1808, being mainly letters to the government concerning the activities of the United Irishmen and the Rebellion of 1798.[110] There are also two other smaller collections of letters to Dublin Castle from this same period, listed separately as the 'State of the Country Papers', first and second series, dating from 1790 to 1831. In addition to

[107] A select calendar of seventy-eight volumes from HO 100 collection (HO 100/37-114), covering the years 1792–1803, is now accessible through VRTI (http://virtualtreasury.ie/curated-collections/home-office-and-ireland).

[108] TNA Discovery catalogue (https://discovery.nationalarchives.gov.uk/details/r/C5093).

[109] T. Quinlan, 'The Registered Papers of the Chief Secretary's Office', *Irish Archives* (Autumn 1994).

[110] D. Lindsay, 'The Rebellion Papers: An Introduction to the Rebellion Papers in the National Archives, Bishop Street, Dublin', *Ulster Local Studies*, 18:2 (1997), 28–36.

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these survivals, NAI also holds a number of calendars of CSO materials. Even so, a considerable portion of the CSO papers had been transferred to the Public Record Office by 1919 and were lost in 1922.

The majority of Irish people did not encounter the legal system through the centralised courts in Dublin, but through the assizes and quarter or petty sessions. These were institutions for which the CSO had a duty of oversight, and it is in the records of the CSO that we most clearly see their functioning and shortcomings. The majority of the country's justices of the peace being untrained amateurs, accusations of bias and partiality were rife in the eighteenth century. This was aggravated by the fact that, for most of the century, there was only one state solicitor for the whole of Ireland. After 1787, however, the lord lieutenant was able to appoint 'assistant barristers' to assist magistrates at the quarter sessions.[111] While it was not customary for the crown to prosecute at assize, after 1801 crown solicitors responsible for crown prosecutions at the assize were appointed for each of the then six assize circuits. As the circuits were divided from 1846 onwards, crown solicitors proliferated, with twenty appointed by 1880. The CSO was responsible for transmitting the orders of the attorney general to crown solicitors, while also corresponding with justices of the peace on numerous matters.[112]

In certain circumstances, the CSO could exercise direct control in matters of justice. The lord lieutenant possessed power of pardon, sometimes using it to amend harsh sentences handed down by the courts. Under the Irish Convention Act 1793, extended by later insurrection acts, the lord lieutenant could assume direct jurisdiction over disturbed regions of the country. While this was rare, the lord lieutenant was also enabled by an 1814 Act to appoint stipendiary magistrates (known as 'resident magistrates' or 'RMs') in 'disturbed' districts, extended in 1822 to include any area where local magistrates requested a stipendiary magistrate. The use of stipendiary magistrates, paid by central government and professionally trained, expanded in the 1830s; they were more often appointed as a substitute for, than as a complement to, unpaid local magistrates. The central supervision of justice was further enhanced in the second half of the 1830s, when proceedings of petty sessions, quarter sessions and assizes came under increased surveillance by the CSO, as the

[111] The title of 'assistant barrister' changed to county court judge in 1877.

[112] For a guide to surviving papers of the chief crown solicitor held in NAI, see B. Griffin, *Sources for the Study of Crime in Ireland, 1801–1921* (Dublin, 2005), 20, 38.

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compilation of jury lists and protection of witnesses fell under new regulations imposed by Dublin Castle. Additionally, stipendiary magistrates kept the Castle informed about conditions in the districts they visited, providing a vital source of intelligence. The CSO, in turn, relayed this information to London, serving as the 'window through which the Home Secretary and the cabinet viewed the Irish landscape'.[113]

A parallel development occurred in the realm of policing, an area which quickly became one of the core responsibilities of the CSO after 1800. While historians debate the extent to which Ireland was 'a laboratory for empire', there is little question that innovations in British policing first took place in Ireland. One might start with the innovative 'Peace Preservation Force' created by Chief Secretary Robert Peel in 1814. Soon known as 'the Peelers' (the same nickname was later bestowed on the London Metropolitan Police), this force was replaced in 1822 by the Irish Constabulary (after 1867, the Royal Irish Constabulary). From the outset, these new agencies of law enforcement had unique characteristics in a United Kingdom context. They were centralised forces, responsive to the will of the CSO which kept in close contact through an inspector general. The Irish Constabulary was an armed force responsible for the peace of the whole country except for Dublin, where a concurrent evolution in local law enforcement led in 1836 to the creation of an unarmed Dublin Metropolitan Police, a force similarly under the direct supervision of the CSO.[114]

While these innovations do not necessarily justify any idea of Irish legal exceptionalism, they do reflect a larger divergence in English and Irish legal process, especially criminal process. As one recent study of the subject has pointed out: '*habeas corpus* was suspended or a coercion act of some form or another in place in Ireland for all but 16 years of the nineteenth century'.[115] In contrast, *habeas corpus* was only suspended in England on very few occasions during the nineteenth century: for eleven months in 1817, and briefly during 1866 in reaction to unrest produced by the Irish Fenian movement. The notion that Ireland could not be ruled under English common law was a persistent idea among administrators in both London and Dublin. The recurrent outbreaks of 'outrages', usually the

[113] G. Ó Tuathaigh, *Ireland before the Famine, 1798–1848* (Dublin, 1972), 80.

[114] Dublin Police Act 1836, 6 & 7 Will. IV, c. 29. See S. H. Palmer, *Police and Protest in England and Ireland, 1780–1850* (Cambridge, 1988), 184–5, 224–5, 267.

[115] K. Hughes and D. MacRaild, 'Introduction', in K. Hughes and D. MacRaild (eds.), *Crime, Violence, and the Irish in the Nineteenth Century* (Liverpool, 2017), 6.

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work of the agrarian redresser groups which seemed to be an endemic part of Irish society, were used to justify exemplary policing measures, as well as prompting a seemingly endless sequence of select committees and royal commission on Irish 'disturbances'.[116]

This growing responsibility for 'law and order' was reflected in the CSO's involvement in Victorian Ireland's carceral state, as a result of reforms of the prison system. At the beginning of the nineteenth century, central government had only tangential authority over the country's network of 41 gaols and county prisons, along with another 112 bridewells, which for the most part were under the control of the county grand juries. The CSO only had direct control over Dublin's Four Courts Marshalsea, as well as responsibility for convicts awaiting transportation. The lord lieutenant had statutory power to appoint one, later two inspectors general of prisons, who regularly reported to parliament. The wide-ranging Prisons (Ireland) Act 1826 further enhanced oversight, providing for the establishment of new, and the improvement of existing, prisons.[117] This legislation generated a tidal wave of correspondence to the CSO, which had long been the recipient of petitions from prisoners or convicted individuals claiming mercy, leniency or a miscarriage of justice. Since the eighteenth century, it also had special responsibility for transportation of convicts, including the regulation of the prison ships or 'hulks' in which they were held before their journey to a penal colony. While the last transportation of convicts to Australia from Ireland occurred in 1853, the CSO nonetheless remained the main supervisory agency for Irish prisons until the end of British rule in Dublin.

The Land Question and the Law

The CSO was often caught up in debates over how Ireland was to be governed. As a recent survey of nineteenth-century Ireland has argued, the debates could often be reduced to a single question: would Ireland be governed like any other part of the United Kingdom, or did it require special treatment?[118] Even those who wished to assimilate Ireland to

[116] J. F. McEldowney, 'Some Aspects of Law and Policy in the Administration of Criminal Justice in Nineteenth-Century Ireland', in J. F. McEldowney and P. O'Higgins (eds.), *The Common Law Tradition: Essays in Irish Legal History* (Dublin, 1990), 117–56.

[117] Prisons (Ireland) Act 1826, 7 Geo. IV, c. 74.

[118] K. T. Hoppen, *Governing Hibernia: British Politicians and Ireland, 1800–1822* (Oxford, 2016), *passim*.

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British norms had to recognise differences in the two countries' social conditions, not least in regard to the ownership and occupation of land. If the Act of Union was to transform Ireland into 'West Britain', then the island's agrarian economy and rural social structure had to be transformed, to make way for a modern, capitalist society along English lines. In the second half of the nineteenth century, a series of special courts were created to deal with Irish land ownership.[119] Given the central and emotive role that land ownership has played in Irish public life, this is another instance where legal records serve to illuminate a deeper social history.[120]

Even before the Great Famine of 1845–1850, many Irish landlords were heavily in debt, with mortgages on their properties frequently accumulating far beyond the value of the land used as collateral. Claims by creditors on the indebted landlord's estate were known as 'encumbrances' (sometimes 'incumbrances'). As estates were often the subject of multiple 'encumbrances' from several creditors, multiple parties had a claim to the property. This resulted in the land having a 'defective title', so that it could not be legally transferred to a buyer until all the encumbrances were discharged. However, in the majority of cases the cost of legal proceedings against a landlord would exceed the amount owed. By the 1840s, the Irish courts were overwhelmed with land cases involving title issues. In 1843, a Royal Commission – the 'Devon Commission', named for its chair – was established to examine the state of law relating to Irish land.[121] The inquiry identified serious delays in the Courts of Chancery and Exchequer as a major problem. The idea was floated that an independent tribunal should be established to handle these problematic cases, expediting the sale of insolvent estates. As a result, two Incumbered Estates Acts were passed in 1848 and 1849, designed to facilitate the sale of such lands through the creation of a new court, the Incumbered Estates Court (IEC). The IEC was a mechanism by which the state took ownership of heavily mortgaged properties to which title was disputed. Avoiding lengthy legal proceedings, these estates could then be sold on with an unassailable 'parliamentary' title.[122]

[119] The most notable example is the collection entitled 'Incumbered and Landed Estates and Land Judges' Courts' (PRO ILE).

[120] The classic study remains P. Bew, *Land and the National Question in Ireland, 1858–82* (Dublin, 1978).

[121] *Report from Her Majesty's Commissioners of Inquiry into the State of Law and Practice in Respect to the Occupation of Land in Ireland*, pt. II. 685: HC 1845 [C. 616] xx 1.

[122] The most extensive account to date is J. A. Crowley, '"The Five-Year Experiment": The Incumbered Estates Court, 1849–54' (unpublished PhD thesis, NUI Maynooth, 2017).

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In 1858, the IEC was replaced by the Landed Estates Court (LEC), like its predecessor, a court of record with power to grant parliamentary titles but with broader jurisdiction to resolve all disputes under the provisions of the Settled Estates Act 1856, and not just those relating to title to incumbered estates. Nevertheless, the LEC's primary business remained the sale and transfer of incumbered estates. Under the Supreme Court of Judicature Act 1877, the LEC was replaced by the Land Judges Court (LJC), which was part of the Chancery Division of the newly established High Court. However, the rules and practice of the Landed Estates Court continued.[123] The LJC was soon joined by another entity: the Irish Land Commission (ILC). Not to be confused with the Devon Commission, which is colloquially referred to as 'the Irish Land Commission' in Wood's *Guide* and elsewhere, the Irish Land Commission established in 1881 was a departure from preceding land courts.[124] Although its primary focus was not on title issues but the adjudication of 'fair rent' under the Land Law (Ireland) Act 1881, nevertheless, from the outset, the Commission had a role in facilitating tenant purchase of the freehold estate, a role which developed under subsequent 'land purchase' legislation. Unlike the IEC, LEC and LJC, the ILC's records were never transferred to the PROI and thus escaped destruction in 1922.[125]

The volume of records produced by these special land courts was immense. One barrister, familiar with the workings of the Incumbered Estates Commissioners, estimated that they had transferred upwards of 250,000 documents and muniments of title to the PROI.[126] While this estimate seems high, the scale of land records lost in 1922 was undoubtedly considerable. Among the documents destroyed were petitions presented to the land courts, deeds of sale, notices, objections, schedules of incumbrances, commissioners' books, as well as minutes and

[123] J. A. Dowling 'The Landed Estates Court, Ireland', *Journal of Legal History*, 26 (2005), 143–76; F. Fitzsimmons, 'Records of the Irish Land Commission', *History Ireland*, 22:1 (2014), 49.

[124] See note 123 above, and Wood, *Guide*, 275.

[125] Following the partition of Ireland, the Irish Land Commission continued to function in the Irish Free State, and was part of the legal machinery of land ownership in Ireland until its formal abolition in 1999.

[126] A. M. Sullivan, *New Ireland*, 2 vols. (London, 1877), vol. 1, 296. Sullivan provided a number of 2,395 boxes of documents transferred to the Record Office. The figure of 250,000 documents was simply his best estimate.

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correspondence of the court.[127] While such losses are disheartening, some strong replacement and substitute sources are available, for example, British Parliamentary Papers associated with the workings of the land courts described above. The IEC, for example, reported to parliament on the business of the court, providing general statistics and information on its internal workings.[128]

Many of the records of the IEC were printed and can be reconstructed from contemporary publications. One of the destroyed series was the official set of IEC rentals. These were published as part of estate sales supervised by the court. Several sets of rentals survive in private collections as well as in reference sets held by lesser courts. The most complete set are the 75,000 rentals collected as the 'O'Brien Rentals', held by NAI. This set had been preserved by Sir Peter O'Brien (1842–1914), who served as lord chief justice of Ireland from 1889 to 1913. It was probably a duplicate set created by the IEC and the successor bodies until 1881.[129] The O'Brien Rentals are complemented by two other sets held by the National Library of Ireland (NLI). While not as complete as the O'Brien Rentals, the NLI sets nonetheless contain a number of rentals not found elsewhere.[130] *Allnutt's Irish Land Schedule and Incumbered Estates Advertiser*, which appeared between 1850 and 1871, published the particulars of each sale that came before the court, providing the names of the owner, the location (both parish and townland), the annual rental, the conditions of tenure and date of sale. However, elements of the sale such as the petitioner's name and degree of incumbrance were not typically published. A complete set of *Allnutt's Irish Land Schedule* is not held in any Irish repository, although a complete set is available in the Bodleian Library, Oxford.[131]

[127] A number of boxes of LEC deeds and instruments of title survived the 1922 fire, due to their location in the basement of the PROI. A guide to these surviving materials is available in the reading room of NAI.

[128] E.g. *Report of Her Majesty's Commissioners Appointed to Inquire into the Incumbered Estates Court*, HC 1854–55 (1938), xix, 527.

[129] For an overview of the different sets of rentals, see T. Dooley, *The Big Houses and Landed Estates: A Research Guide* (Dublin, 2007), 99–101. The archival history of the O'Brien Rentals remains obscure, and the exact sequence of events that led to their deposit with the PROI after 1922 is unclear.

[130] NLI – 2M 1 and 2. The first set was maintained by the Irish Land Commission as a reference tool, while the second set is in the private collection of Joseph Burke. Yet another set of rentals, numbering 178 bound volumes, is also held by the King's Inns.

[131] It is also accessible in the British Newspaper Archive. For a full discussion of these potential replacement sources, see Crowley, 'The Five-Year Experiment', 15–18.

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By the end of the nineteenth century, successive British governments had sought to counter Irish nationalist separatism by setting up agencies responsible for the development of Ireland's economy.[132] The IEC, LEC and ILC must be counted among these, having few parallels in other jurisdictions within the United Kingdom. The records of these courts do more than illustrate Irish legal exceptionalism; they chart the breaking up of the large landed estates and the creation of a new class of independent freehold-owning farmers in the process. While the events of the years 1916–1923 constituted Ireland's political revolution, the country's *social* revolution had occurred in the preceding decades, under the oversight and influence of these courts. What can be found in their various records is no less than an account of the remaking of the country's social structure. In reconstructing such records, the historian is presented with a clear view of how legal bodies touched the lives of everyday people, from the large estate owner to the poorest tenant farmer.

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'Masses of records from all parts of the country, and of very various kinds, have been accumulated there during the last fifty years, and have been extensively used by historians, lawyers, genealogists and the general public.' Such was the warning given to the Provisional Government of Ireland on 29 May 1922, a mere month before the disaster that was to befall the PROI on 30 June: 'the loss of any of these records would be irreparable'.[133] The conjunction here of the PROI's principal classes of researchers – beginning with 'historians' and 'lawyers' – is striking. This chapter has explored the PROI both as a repository of legal records and as a store-house for legal history. We have emphasised the interaction of society and the law over many centuries. The PROI's archival collections documented the law through Irish history and, equally, enabled history to emerge from the study of legal records. While lawyers on legal business may have formed the largest group consulting the PROI's

[132] L. P. Curtis, *Coercion and Conciliation in Ireland, 1880–1892* (Princeton, NJ, 1963); A. Gailey, 'Unionist Rhetoric and Irish Local Government Reform, 1895–9', *Irish Historical Studies*, 24 (1984), 52–68.

[133] NLI, McEnery Papers, MS 22,433: M. J. McEnery, President of the Royal Society of Antiquaries of Ireland, to Mr De Valera, political leader of the anti-Treaty republicans, and to the Commandant Four Courts, 29 May 1922, and their replies of 30 May and 6 June 1922; in C. Wallace (ed.), '"Their Loss Would Be Irreparable": The RSAI's Campaign to Protect the Public Record Office of Ireland, April to June 1922', *Journal of the Royal Society of Antiquaries of Ireland* (in press).

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records – looking to inspect court records or order certified copies – they were by no means the sole category of readers, even in the nineteenth century. The PROI also welcomed a wider public of 'Literary Searchers' pursuing interests in Irish history and genealogy. Literary searchers were permitted to access the records free of charge, once the deputy keeper was satisfied that their investigations were for 'an exclusively literary purpose', that is, not part of a legal case. This was, in a sense, the birth not merely of the historical profession, but of legal history as an applied discipline.

The chapter has sought to demonstrate the benefit of understanding the archival provenance and arrangement of the PROI's destroyed collections, as well as the latent potential of so much material that either survived the fire or can be used to mitigate losses. The historian James C. Scott coined the phrase 'seeing like a state', imploring scholars to be aware of the ways in which their view of the past is moderated and shaped by the attitudes of those in power, whose documents historians frequently analyse.[134] We might modify Scott's dictum and implore researchers of the need to 'see like a state archive'. Historians from a variety of fields are increasingly concerned with what is dubbed 'the archival turn', with a fresh emphasis on how archives reflect the development of institutions, in all their messy changes, compromises and rationalisations, as well as how these documents must be read 'against the grain' to reveal wider social histories.[135] Court archives allow us to undertake an 'archaeology' of legal institutions and practices, but we should never forget that these archives are themselves institutions of social memory. In this way, the reconstruction of PROI's legal archives proves to be a powerful method of historical reappraisal in its own right. A key part of VRTI's work has been to construct an 'inventory of loss', the better to understand the extent and nature of what was destroyed in the flames in 1922. The investigation of the lost archive reveals the story of how courts were created, evolved and disappeared over several centuries of legal development and change. It has shown how Ireland's legal institutions both conformed with and departed from British precedents, and the ways in which this was reflected in broader political and constitutional debates. But more than all this, we see how the law, in all its various manifestations, touched the everyday lives of ordinary men and women.

[134] J. C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, CT, 1998).

[135] A. Walsham, 'The Social History of the Archive: Record-Keeping in Early Modern Europe', *Past & Present*, 230, *Supplement Issue* 11 (November 2016), 9–48; A. L. Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, NJ, 2009).

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