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The legal life of Lord MacDermott†

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ABSTRACT

Few figures have left a deeper imprint on the legal history of Northern Ireland than John Clarke MacDermott (1896–1979) and yet his career has never been the subject of a legally comprehensive study. This article offers that study, drawing on reported judgments, publicly archived papers, academic commentaries, and a small set of privately archived materials belonging to the MacDermott family. The analysis is largely chronological and selectively contextual, aiming to present a clear and accessible account of MacDermott's legal life without attempting an exhaustive social history. It traces his formation at the Bar and in wartime office, illuminates his early judicial craft in the High Court, and then assesses his distinctive independence as a post-war appellate court judge in the House of Lords. The study also covers his Privy Council work on constitutional law, which foreshadowed later encounters with emergency powers at home.

As Lord Chief Justice of Northern Ireland, MacDermott was involved in a very high number of reported cases. His court docket's emphasis on customs, charities, taxation and wills, and the then-limited scope of judicial review, contrasts sharply with the dockets of more recent times. Alongside an analysis of this work in the superior courts of Northern Ireland there is a quantitative and qualitative account of MacDermott's continuing contributions to the House of Lords on an *ad hoc* basis. The article further examines his extra-judicial voice, including through his Hamlyn Lectures on 'protection from power'; his inaugural 'MacDermott lecture', and several previously unpublished speeches. It also examines his institutional reform work (ranging from a report that shaped the Judicature (NI) Act 1978 to constitutional advice on the governance of the Isle of Man) and his publicly recorded interventions during the Troubles, including nuanced reservations

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about detention and rights proposals. The conclusion argues that 'unpredictability' best captures Lord MacDermott's career path and jurisprudence. His legal life was far from programmatic, but marked by clarity, candour and a readiness to stand apart when important principles were at stake.

Keywords: MacDermott; Lord Chief Justice; Law Lord; Northern Ireland courts; judiciary; legal history.

INTRODUCTION

Lord MacDermott was one of the most accomplished lawyers ever to emerge from Ireland or the United Kingdom (UK). He served as a High Court judge in Northern Ireland from 1944 to 1947, then as a Lord of Appeal in Ordinary in the House of Lords from 1947 to 1951 and finally as the Lord Chief Justice of Northern Ireland from 1951 to 1971. Surprisingly, no publication has previously been produced which records in some detail the extent of his contribution to the law over his long career. This article is intended to remedy that situation.

Our research methods are reflected in both the format and the focus of this biographical work. As legal scholars we have chosen to depict an understanding of Lord MacDermott's life primarily by reference to officially reported judgments and publicly archived papers. Those sources have been supplemented, occasionally, by reference to privately printed texts and reputable academic works. As a result we trust that our largely chronological narrative is a reliable one, though we openly acknowledge that it presents only a partial understanding of the man at the heart of it.

The social context to Lord MacDermott's legal life is mentioned at points where we have felt that necessary in the interests of clear exposition, just as some subsequent effects of his contributions to the law are noted here and there, but we have not attempted to place every turn of his career in its wider setting. Nor have we tried to compare his life systematically with others. Our single aim has been to produce a relatively comprehensive but readable account of a legal career which is widely regarded as one of enduring historical importance within Northern Ireland legal circles.

We hope to show that, by virtue of the voluminous paper trail he left in his wake, Lord MacDermott's legal life provides a vividly instructive window into the world that he inhabited between 1896 and 1979. A world which would not have been the same without him.

EARLY LIFE AND EDUCATION, 1896–1921

John Clarke MacDermott (known to his family as Clarke) was born on 12 April 1896 at Belmont Manse, Belfast.

The MacDermott family was politically unionist and religiously Presbyterian. In 1903 Clarke's father was elected Moderator of the General Assembly of the Presbyterian Church in Ireland. In 1912 he and his two older brothers, Willie and Robin, signed the Ulster Covenant and, in 1913, joined the Ulster Volunteer Force (UVF) – the paramilitary group promoted by Edward Carson and James Craig to oppose the British Government's idea of granting Home Rule to Ireland. Clarke regularly took part in drills and in shooting practice, presumably with rifles smuggled into the country, but in his privately published memoir, dated 1979, he is at pains to point out that he did not think he engaged in any illegal activities at that time:

> Unionists were undoubtedly entitled to protest at what was being proposed. I do not believe that they did so in breach of the laws. I was not of an age to think in terms of the statute-book, but I never knew or heard of anyone saying that we had committed or were about to commit an offence; and if, as I believe is true, no one in the whole body, whether leaders or rank and file, was ever prosecuted for his activities as a member, it seems to confirm the view expressed.[1]

Towards the end of 1916, like thousands of other UVF members, Clarke volunteered to serve in the British army and when he was demobilised in 1918 (having received a Military Cross for his bravery at the second Battle of the Marne) he returned to Belfast at the age of 23 not knowing what career he wished to pursue. In his memoir he explains that he really wanted to become a doctor (like his brother Willie) or an engineer but that the training for either of those professions would take too long. A few years earlier, towards the end of his schooling at Campbell College, he had bowed to his mother's insistence that he should explore the possibility of becoming a Presbyterian minister, but after an interview at the Assembly's College he realised he did not have a vocation for such a position. Strangely, he claimed not to understand what was involved in the role despite his own father being a prominent minister. He eventually chose the legal path primarily because the training period at that time for barristers was just two years. He may have been subconsciously pushed in that direction by the fact that

1 *An Enriching Life*, 43. The memoir also tells (at 53–58) of MacDermott's experiences during the week of the Easter Rising in 1916. He spent nearly all of it in Dublin but does not seem to have been aware of the intensity of the fighting there.

his older brother Robin, who had been killed in the war,[2] had almost qualified as a barrister. Indeed, Clarke was able to use some of Robin's old law books.

Between 1919 and 1921 Clarke undertook two simultaneous courses. While studying at Kings' Inns in Dublin for his bar exams he also undertook a law degree at Queen's University Belfast. He was given a one-year credit on account of having studied history there in the academic year 1914–1915. He came top of his year at Queen's, with first class honours in his LLB, but in Dublin he was outshone by Frances Kyle (the first woman to qualify as barrister in the UK or Ireland), who beat him to the highest prize, the John Brooke Scholarship. They were called to the Bar of Ireland on 1 November 1921 and a few days later she and Clarke MacDermott were also called to the newly created Bar of Northern Ireland. She was certainly the first woman to be called. He was the second man, the first being Herbert Macauley Sanders Brown.[3]

During his preparations for the Irish bar exams Clarke attended coaching classes given by William Lowry, who was a practising barrister in Dublin and a former Reid Professor of Law at Trinity College Dublin. He was 12 years older than Clarke but they struck up a friendship and later, after William had established a further thriving legal practice in Northern Ireland, the careers of the two families became very intertwined. As we shall see, Clarke became a unionist Member of Parliament (MP) in 1938 and William did so in 1939. When Clarke resigned from the role of Attorney General to become a judge in 1944, William succeeded him as Attorney General, and when Clarke moved to the House of Lords in 1947, William replaced him on the High Court bench. He died prematurely in 1949, at the age of 65, but meanwhile his son Robert Lowry had been called to the bar of Northern Ireland in 1947. Just two years later Robert Lowry became the pupil master to Clarke's son John, who had just been called to the bar (it was very unusual for such a recently qualified barrister to be allowed to take on a pupil). Robert himself joined the High Court bench in 1964 and in 1966, when Lord MacDermott CJ was appointed Chair of a Committee on the Supreme Court of Judicature in Northern Ireland, Lowry J was appointed as Deputy Chair. Lord MacDermott retired as Lord Chief Justice in 1971 and Lowry J succeeded him in that leading

2 He was the first officer of the 36th Ulster Division to die in the First World War. He had not quite qualified as a barrister before volunteering for the army in 1914.

3 Other accounts have suggested that Frances Kyle and John Clarke MacDermott were the first two persons called to the Bar of Northern Ireland. They are presumably based on MacDermott's own recollection of being called alongside Frances Kyle in *An Enriching Life* (n 1 above) 152–153. We base our account on the order of signatures in the Roll of Barristers maintained by the Bar Council of Northern Ireland.

role, remaining in place until his own retirement in 1988. When Lord MacDermott passed away in 1979 it was Sir Robert Lowry who delivered a tribute to him in the Nisi Prius Court in Belfast.[4] He also wrote the entry relating to Lord MacDermott in the *Oxford Dictionary of National Biography*, where he stated:

> As a judge, [MacDermott] was inspired by a deep sense of right and wrong based on Christian standards. Knowing every branch of the law, he was its master, not just its servant. His eye for the merits and his sense of justice, while not causing him to spurn the law (which he loved and respected), helped him to reach the goal by way of the law and not in spite of it.

Sir Robert was given a life peerage just a week after Lord MacDermott's death in July 1979 and he lived on until 1999. Clarke MacDermott's son, John, was called to the Bar of Northern Ireland in 1949, became a High Court judge in 1973 shortly after Robert Lowry had become Lord Chief Justice and was appointed a Lord Justice of Appeal in 1987 before retiring in 1998. He died in 2022.

One further experience shared by both Lord MacDermott and Lord Lowry was attempted assassination by republican paramilitaries: in 1977 Lord MacDermott was wounded in a bomb explosion when he went to the Jordanstown campus of what is now Ulster University to deliver a lecture[5] and in 1982 Lord Lowry escaped being shot when he was fired at while attending Queen's University Belfast to give a lecture.

THE BARRISTER AND ATTORNEY GENERAL, 1921–1944

When MacDermott first embarked on his legal career, he would have been competing with the 40 to 45 other barristers already practising in Northern Ireland. He focused initially on county court work in Belfast, especially ejectment suits under the Rent Restrictions Acts and workmen's compensation claims relating to accidents at work. Throughout his 15 years as a junior barrister he appeared on no more than six or seven occasions in a magistrates' court.[6] His first experience as a defence barrister in a criminal case led him to comment that it was

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4 This is reprinted in MacDermott, *An Enriching Life* (n 1 above) 235–239 and also at (1979) 30 Northern Ireland Legal Quarterly 281–286. It is followed there by a tribute from Lord Hailsham, the then Lord Chancellor, at 287–288. The address given at the Thanksgiving Service for Lord MacDermott by Rev Young at Belmont Presbyterian Church on 14 September 1979 is also reprinted in *An Enriching Life*, at 241–244.

5 'Bomb in an Ulster college injures ex-judge, 9 others' *New York Times* (New York 25 March 1977).

6 *An Enriching Life* (n 1 above) 158.

strange that when, in 1898, England and Wales allowed defendants in criminal cases to give evidence on their own behalf the law was not extended to Ireland. The Parliament of Northern Ireland introduced it in 1923[7] and the Irish Free State did so a year later.[8] He added, more generally, that:

> It is strange how often, despite changes in social conditions and living standards, we have been slow as a nation to alter our criminal law in a manner which, once adopted, has proved of benefit to the administration of justice.[9]

One of his suggestions was that if a *prima facie* case has been made out against a suspect that person should be *compelled* to give evidence.

In the wake of partition there was still ongoing violence in Northern Ireland in 1922, with some 230 people losing their lives in that year alone. Amazingly, no doubt inspired by public-spiritedness, MacDermott signed up to be a part-time Special Constable in East Belfast, patrolling one or two nights a week armed with a revolver.

He earned well from his involvement in criminal injury claims brought against local authorities for loss of life, personal injury or damage to property. And he acted as junior counsel in appeals in such claims to the Assize Court from county courts. In one such case, where a man had been kidnapped and taken to the Free State, compensation was denied: *Scarlett v Fermanagh County Council*.[10] In 1926 he was appointed as Junior Crown Counsel for County Armagh and thereafter did only occasional civil business for the Assizes there. Chapter 13 of his autobiography is an interesting account of the various county Assizes, in Armagh, Enniskillen, Omagh, Derry/Londonderry, and so on, written a month or so before they were to be abolished by the Judicature (NI) Act 1978.

Surprisingly, in the official law reports for the period during which Clarke MacDermott practised at the bar, his name does not appear as counsel, but this is more a reflection of the small number of cases that were reported than of his personal stature as a barrister. In reality, of course, he did so appear, but the reports did not always give his name (or the search engine did not find it). In his own memoir he talks about *Walsh v Wightman*[11] and *Sproule v Triumph Cycle Co Ltd*.[12] The former was about whether the trustees of the Seaford Estate in County Down were entitled to repossess the manse of the minister of Seaford Presbyterian Church from the congregational

7 Criminal Evidence Act (NI) 1923, s 1.
8 Criminal Justice (Evidence) Act 1924, s 1.
9 *An Enriching Life* (n 1 above) 164.
10 [1923] 2 IR 48.
11 [1927] NI 1.
12 [1927] NI 83.

trustees. He was eventually on the losing side in this case, when it reached the Court of Appeal, and he laments that the case illustrated all too clearly how 'feudal-bound, complicated and behind-the-times' the land law of Northern Ireland was at that time.[13] He thought it should be modernised. The *Sproule* case was about a police officer who had a bad accident when the brake of his Triumph motorbike became disconnected. He was so badly injured that he had to give up his job in the police. MacDermott and his legal colleagues succeeded in winning his case against the manufacturers of the motorbike by invoking section 14 of the Sale of Goods Act 1893. However, when the defendants indicated that they were going to appeal to the House of Lords the King's Counsel in the case, Edward Murphy, persuaded the plaintiff to settle.

The Inn of Court of Northern Ireland was established in 1926. MacDermott recites how someone had wanted to name the institution 'The Ulster Inn' until it was pointed out that there was already a public house near the new courthouse that was being built called 'The Ulster Tavern'.[14] Prior to this time students who wanted to be called to the Bar of Northern Ireland still had to pass exams at the King's Inn in Dublin, as MacDermott had done. Other functions of King's Inns relating to barristers in Northern Ireland were delegated to a Northern Committee of the Inn, comprising judges and barristers who were already Benchers of King's Inns.

It was also in 1926 that Clarke MacDermott married Louise Johnston, a Dubliner who had graduated in history and political science from Trinity College in 1924. She too was a child of the manse. Their first child, called John Clarke like his father, was born on 9 May 1927. As mentioned above, John himself became an eminent barrister and judge, serving for 14 years as a High Court judge and a further 11 as a Lord Justice of Appeal before retiring in 1998 and passing away in 2022 at the age of 95. Clarke and Louise went on to have three other children, Edith in 1930,[15] Robert (nicknamed Robin) in 1934 and Elizabeth in 1939.

In 1934 Clarke made his first appearance in a case coming before the House of Lords, *McEvoy v Belfast Banking Co*,[16] which concerned the law relating to bank deposit receipts issued in joint names (father and son in this instance). Again, although his client (the bank) won

13 *An Enriching Life* (n 1 above) 208.

14 Ibid 213.

15 Edith and her husband Sam Cunningham kindly encouraged and assisted us in the writing of this text. Edith sadly passed away just before it was finalised, though she had read an earlier draft. We are grateful for the continued support of the wider MacDermott family.

16 [1935] AC 24, [1934] NI 94. The Court of Appeal decision is at [1934] NI 67.

the case MacDermott admits that the judgments of the Law Lords were none too clear, leaving banks not much wiser as to how to handle such receipts.[17] A year later, in 1935, MacDermott made his one and only appearance as a barrister in the Judicial Committee of the Privy Council.[18] He was acting for the Belfast Corporation, which was challenging the validity of section 3 of the Finance Act (NI) 1934 in so far as it purported to require all county and borough councils to pay a sum of money to the Government to help make up the deficit in the overall budget for Northern Ireland. The rate, in the first year, was to be sixpence in the pound of the rateable value of property in the council areas and, in the second year, a shilling (ie double as much). The basis for the Corporation's claim was that it was beyond the powers of the Parliament of Northern Ireland to set such a charge since section 21(1) of the Government of Ireland Act 1920 prohibited it from imposing any tax of the same character as a tax on profits or on income. The Corporation lost the case, the only one to be taken to the Privy Council during the history of the Northern Ireland Parliament (1921–1972), but MacDermott said he nevertheless learned a lot from his senior counsel in the case, Wilfrid Greene, a future Lord Justice of Appeal and Master of the Rolls in England and Wales.

Shortly after his experience in the Lords and the Privy Council MacDermott decided to take silk, in 1936. Clearly by that time he had acquired a good reputation for himself and was earning a sufficient amount of money to allow him to make that leap. That said, MacDermott's daughter Edith has recorded how her father was particularly mindful of the risks associated with taking silk because by 1936 he had assumed 'the considerable burden' of being the only adult male in his extended family. As Edith put it, a 'senior barrister or silk could charge more for his briefs, but if the briefs did not materialise, he could not revert to being a junior, so it was a chancy business'.[19]

Just after becoming King's Counsel he made a second appearance in an appeal to the House of Lords, oddly enough in another case to do with the powers of the Northern Ireland Parliament – *Gallagher v Lynn*.[20] The appellant was a Donegal farmer who had been convicted in a petty sessions court in Derry/Londonderry for selling milk in Northern Ireland without a licence, as required by the recently enacted Milk and Milk Products Act (NI) 1934. He lost his appeals to both the

17 *An Enriching Life* (n 1 above) 226.

18 In the matter of a *Reference under Section 51 of the Government of Ireland Act 1920* [1936] AC 352. Lord Thankerton delivered the opinion of the Committee.

19 Edith Cunningham, *The MacDermott Sagas* (2018) 33 (this is a privately published account of Lord MacDermott's family history). For a scholarly article on the rank of a silk, see N M Dawson, 'The rank of Queen's Counsel: judicial perspectives' (2013) 24 King's Law Journal 38–59.

20 [1938] NI 21.

county court and the Court of Appeal,[21] but then appealed for a third time to the House of Lords, where he lost again. MacDermott acted for the state in the case, though despite being a KC himself he was actually led by the Attorney General for Northern Ireland, Anthony Babington. This was because, as it happened, Babington had to go to Buckingham Palace to receive a knighthood on the very day when the state was to make its case against the appellant in the House of Lords, so MacDermott had to rise to the challenge instead. He tells of how he was 'stopped' by Lord Atkin after a while, meaning that the House did not need to hear more from him. He knew this was a good sign: it usually means that the judges have already heard enough to know that the case being put to them is a winning one, and so it transpired. The state won the case because the Act in question did not breach the prohibition in the Government of Ireland Act 1920 on the Northern Ireland Parliament making laws in respect of 'trade with any place out of the part of Ireland within [its] jurisdiction': rather, the 'pith and substance' of the Act was that it was to protect the health of the inhabitants of Northern Ireland.[22]

Election to the Parliament of Northern Ireland

Lord MacDermott's memoir, unfortunately, does not explain his reasons for the next turn in his career – standing for election as an MP for Queen's University in the Parliament of Northern Ireland. It is clear that from a young age he was a supporter of the Union but there does not seem to have been earlier intimations that he was particularly interested in becoming a politician. But Northern Ireland had already adopted the practice prevalent at that time in other parts of Britain and Ireland whereby prominent lawyers would stand for political office. Examples include Edward Carson, Douglas Hogg (the future Lord Hailsham), Conor Maguire and, in Northern Ireland itself, Richard Best, Anthony Babington and Arthur Black. Like Carson, Best, Babington and Black, MacDermott stood for the Ulster Unionist Party, which in 1938 won 39 of the 52 seats in the Parliament's House of Commons, gaining nearly 57% of all first-preference votes cast. MacDermott took the last of the four seats allocated to Queen's University, depriving an independent unionist of his former seat. The election took place on a proportional representation basis and although MacDermott won fewer first preference votes than his independent rival, Mr Sims, he got

21 [1936] NI 131.

22 For critiques of the House's decision in *Gallagher v Lynn*, see Harry Calvert, '*Gallagher v Lynn* re-examined: a legislative fraud' [1972] Public Law 11 and Brigid Hadfield, *The Constitution of Northern Ireland* (Belfast, SLS Legal Publications 1989) 67–68 and 84–87.

over the line with the help of the transfer of second preference votes.[23] MacDermott's daughter points out that her father was an 'unusual' unionist in that he was not a landowner or a businessman and he was not a member of the Orange Order. She claims that her father admitted he would never have entered politics if he had not been able to stand for the 'pocket borough' of Queen's University. He would not have had the time for electioneering.[24]

Notwithstanding his political and legal responsibilities, MacDermott wasted no time in signing up for army service as a major with the Royal Artillery after war was declared in September 1939, but after the Battle of Dunkirk in 1940 he was released from the army in order to take up the role of Minister of Public Security in Northern Ireland as from 25 June. That was also the day on which a prominent Northern Ireland Labour Party MP, Jack (properly John) Beattie, representing the working-class constituency of Pottinger in East Belfast, unsuccessfully proposed a motion calling for an 'All-Party Government' in Northern Ireland for the duration of the War.

MacDermott's post meant that he was in charge of civil defence. He tried to persuade his cabinet colleagues that more money should be spent on air-raid shelters in Belfast but this did not happen and as a result more people died in the ensuing 'blitz' bombing in April and May 1941 than might otherwise have been the case. It was he who asked the Government of Ireland to provide additional fire engines to help douse the fires resulting from the blitz: they sent 13 engines and 70 firefighters. He himself was involved in an air-crash when a plane taking off from Sydenham (now Belfast City) Airport for London came down almost immediately in the Connswater River. Apparently he got back home under his own steam, spent a day in bed and was back at work the next morning.[25]

His time as a minister would have brought home to him how difficult the life of a politician can be, especially in a society which is highly conflicted along sectarian lines. In 1940, during a debate on the administration of the Royal Ulster Constabulary (RUC), he stood up for the 'efficiency' of the force, referring to its work on combating Irish Republican Army raids on banks and post offices. A motion by Mr Beattie calling for the establishment of a Select Committee to investigate the police's performance was rejected by the House of Commons by 20 votes to one.[26] In 1941 he clashed with both Thomas Henderson (MP for Shankill) and John Nixon (MP for Woodvale) over

23 The overall number of votes cast for the constituency was just 2,448, of which MacDermott received 253.

24 Cunningham (n 19 above) 35.

25 Ibid 40.

26 HC Deb (NI) 8 October 1940, vol 23, cols 2288–2339.

civil defence measures, in particular the 'stinking' shelters that were being provided in parts of Belfast,[27] and a few months later, in a debate on the Appropriation Bill, he had to listen to this jibe from Mr Beattie:

> I know how you got your job. If it had not been for your father's position in the Orange Order you would not be where you are now.

MacDermott's reaction to this was 'Say that outside' – the implication being that if Beattie repeated his words outside of privileged legislative proceedings MacDermott would sue him for defamation – to which Beattie replied 'I say it now'.[28] During that same debate MacDermott justified the use of internment during the Second World War, a practice also used in Great Britain.[29]

Years later, MacDermott was sent draft chapters of an official history of the Northern Ireland war effort that had been written by Professor John W Blake.[30] Extensive correspondence then ensued between MacDermott and Blake, driven by MacDermott's disapproving view of Blake's initial texts. In a letter dated 15 July 1955, and following a page-by-page analysis of the draft chapters which had been sent to him, MacDermott wrote:

> I do not dispute your right as an historian to criticise and no doubt there is plenty to be critical about, for we made mistakes which time and greater experience might have avoided. But I think you do less than justice to the Ministry of Public Security and in fairness to those who so devotedly and ably helped me to discharge the duties of that Ministry under most difficult circumstances, I feel I must let you know my views and reserve full liberty to challenge hereafter the suggestions and imputations to which I have taken exception.[31]

In general terms MacDermott was discontent with the initial drafts because they created an impression that the Ministry of Public Security rather than the Ministry of Home Affairs was to blame for various deficiencies during the war effort. Blake duly redrafted the text several times and MacDermott eventually conceded that his points had been 'very fairly' taken into account.[32]

Appointment as Attorney General

Just a year or so after his appointment as Minister of Public Security, MacDermott switched to the role of Attorney General for Northern

27 HC Deb (NI) 26 February 1941, vol 24, cols 76–83.
28 HC Deb (NI) 22 July 1941, vol 24, col 1308.
29 Ibid, col 1302.
30 These would eventually be published as *Northern Ireland in the Second World War* (Belfast, Blackstaff Press 1956).
31 Public Record Office of Northern Ireland, CAB/9/CD/177/10.
32 Ibid. The quotation is taken from a letter dated 26 October 1955.

Ireland (on 10 November 1941, to be exact),[33] a post previously held by Richard Best (1921–1925), Anthony Babington (1925–1937), Edward Murphy (1937–1939)[34] and Arthur Black (1939–1941).[35] The first three of those Attorneys resigned when they were offered a position as Lord Justice of Appeal, and Black, a much more modest man, resigned in order to take up the role of Recorder of Belfast (effectively the senior county court judge in Northern Ireland), later becoming a High Court judge (1943–1949) and then a Lord Justice of Appeal (1949–1964). It is conceivable that MacDermott went down the political route because he saw it as enhancing his chances of eventually gaining judicial preferment, a common phenomenon in both the UK and Ireland at the time. No doubt he was relieved to have been moved from the very difficult portfolio of public security to one which was more in tune with his personal legal skills.

One of the functions of the Attorney General is to give advice on the current state of the law when asked to do so by a court: he or she is then acting as an *amicus curiae*, a friend of the court. MacDermott fulfilled that role in a case heard by the House of Lords in 1942, *Benson v Northern Ireland Transport Board*.[36] Mr Benson had been prosecuted under the Road and Railway Transport Act (NI) 1935 for using a motor vehicle to carry merchandise for payment without first having obtained the consent of the Transport Board. In his defence he argued that the relevant provision in the Act was *ultra vires* the Parliament of Northern Ireland because it took away his property (ie the goodwill established by his business) without granting him any compensation, in breach of section 5(1) of the Government of Ireland Act 1920. The magistrate who heard the case held for Mr Benson, as did the Deputy Recorder of Belfast on appeal, but the latter then referred the case to the Court of Appeal asking for its opinion on issues of law. MacDermott KC was one of the barristers lined up to represent the Transport Board at the Court of Appeal hearing but the law report indicates that this role was actually played by William Lowry KC.[37] When the Court of Appeal proposed to invite the then Attorney General (Arthur Black) to address the court as *amicus curiae*, Mr Benson's barrister objected, arguing that there were no rules allowing such an intervention. But the Court of Appeal was satisfied that under the common law the Attorney General

33 Public Record Office of Northern Ireland, CAB/9/I/15/7.

34 Murphy's wife's sister was married to Sir Denis Henry, the first Lord Chief Justice of Northern Ireland (1921–1925).

35 MacDermott makes complimentary remarks about Babington, Murphy and Black in *An Enriching Life* (n 1 above) 167–172. He also speaks highly of James McSparran KC, who became a close friend.

36 [1942] AC 520.

37 [1940] NI 133, 141. This may well have been because MacDermott was serving with His Majesty's forces at the time.

could be called upon and, having listened to Black's arguments, both Andrews LCJ and Murphy LJ held that the 1935 Act was not *ultra vires* (because there had been no 'taking' of property, as required by the 1920 Act). Babington LJ issued a lengthy dissent.

Matters did not rest there because there was a third appeal in the case, this time brought by Mr Benson to the House of Lords. Again the court was assisted by the Attorney General, a post now occupied by MacDermott. However, having listened to the arguments from all sides on the constitutional question at issue, their Lordships realised that there was a more fundamental problem with the appeal. This was a criminal case as Mr Benson had been acquitted by the magistrate and the prosecution had no right of appeal against an acquittal. The Transport Board – and the two appeal courts in Northern Ireland – had misconstrued the relevant statutory provision,[38] which allowed appeals 'by any party against whom an order is made for payment of any penal or other sum'. The magistrate had ordered the Board to pay Mr Benson's costs and that had been assumed to be a 'penal or other sum'. Declining to hear the appeal any further, Viscount Simon LC said:

> the proposition that it is the imposition of costs on the prosecutor that creates his right to appeal would lead to the extraordinary result that in Northern Ireland, when a court of summary jurisdiction dismisses a criminal charge, the prosecution, if dissatisfied, should beg to be ordered to pay costs in order thereby to purchase a right of appeal, and the accused, if he wished to make sure of his acquittal, should be astute not to ask for costs against the prosecution.[39]

MacDermott left his post as Attorney General to take a seat in the High Court in 1944 on the death of Mr Justice Brown. He was succeeded as Attorney General by William Lowry who, as mentioned above, likewise resigned in 1947 to become a High Court judge. It will also be recalled that William was the father of Robert Lowry, who in his time was also appointed as a High Court judge, then as Lord Chief Justice (as successor to Lord MacDermott in that role) and finally as a Lord of Appeal (the second Lord of Appeal to be appointed from Northern Ireland after MacDermott).

The Parliament of Northern Ireland was not particularly active during the years when MacDermott served as Attorney General. Two Acts were passed in 1941, but none in 1942 or 1943. In 1941 the Government of Northern Ireland took a decision that it would be a good idea to introduce conscription in Northern Ireland, as had already occurred in the rest of the UK, and presumably this was supported by the Attorney General. But the UK Prime Minister, Winston Churchill, told Westminster that 'it would be more trouble than it is worth to

38 Summary Jurisdiction and Criminal Justice Act (NI), s 24(1).
39 [1942] AC 520, 525.

enforce such a policy'.[40] Sir Hugh O'Neill, then the Unionist MP for North Antrim, retorted that:

> Will it not make a rather bad impression throughout the Empire that, once again, the Government have had to burke this issue, obviously because of pressure from Southern Ireland?[41]

Naturally, MacDermott supported the unionist position throughout his time as Attorney General, speaking at length against a censure motion that challenged the then Minister of Home Affairs, Dawson Bates,[42] and justifying an amendment being made to the Civil Authorities (Special Powers) Act 1922 which allowed minor offences to be tried by just one rather than two magistrates and accepted that more serious offences could be tried by a judge sitting with a jury.[43] He made it clear that it was he who was in charge of public prosecutions in Northern Ireland and that he would not allow himself to be influenced by anyone else, including the Minister of Home Affairs (who, from May 1943, was his friend William Lowry). During 'the Belfast Strike' in 1944 he defended his decision to prosecute five workers at Short and Harland's for leading a stoppage of work that affected the supply of essential war equipment. The workers were found to have breached the law and were sentenced to three months' imprisonment with hard labour.[44]

A revealing incident dating from the early 1940s has been recounted to the authors of this piece by Rev Harold Good, a former President of the Methodist Church in Ireland and a prominent figure in peace and reconciliation circles in Northern Ireland for many years. As a young boy he suffered badly from a tubercular spine and his father used to wheel him around in a makeshift trolley. Once, while in Portstewart, his father left Harold in the trolley while he went into the Post Office. When he returned he noticed that someone had left an envelope under Harold's pillow. It contained a note saying that the writer had noticed Mr Good wheeling his son around and he hoped that the donation enclosed might help to pay for the child's care; the donation was £10, a lot of money in those days. Mr Good looked up and saw the stranger

40 HC Deb 27 May 1941, vol 371, col 1718.

41 Ibid. O'Neill's nephew, Terence O'Neill later served as Prime Minister of Northern Ireland from 1963 to 1969. The word 'burke' here means 'suppress' or 'postpone'.

42 HC Deb (NI) 15 July 1942, vol 25, cols 2102–2110. In response to the suggestion that Bates had sought to meddle in MacDermott's area of responsibility, the latter asserted (at col 2110): 'there has been no attempt to interfere with the privileges and rights and the due function of the Attorney General on the part of the Minister who is impugned'.

43 HC Deb (NI) 11 March 1943, vol 26, cols 271–282. The draft legislation in question was the Civil Authorities (Special Powers) Bill 1943.

44 HC Deb (NI) 4 April 1944, vol 27, cols 1025–1036. The strike violated the Northern Ireland Conditions of Employment and National Arbitration Order 1940, which was worded identically to an order applicable in Great Britain.

disappearing down the street. He thought he recognised him from the newspapers as Clarke MacDermott, an MP. More than 50 years later, when Harold was living in Holywood, he became acquainted with Clarke MacDermott's son, who by that time was himself a senior judge. He showed him the note left under his pillow all those years previously, which he had retained, and Clarke's son was able to confirm that the handwriting was indeed that of his father. The story surely indicates something of the measure of the man.

THE HIGH COURT JUDGE, 1944–1947

Our research has revealed no fewer than 330 *reported* cases in which MacDermott sat as a judge throughout his career.[45] While we will attempt an overall analysis and evaluation of those judgments, we obviously cannot deal with each of them separately. We agree, in any event, with a statement made by one of MacDermott's successors as Lord Chief Justice of Northern Ireland, Sir Robert Carswell: '[T]he qualities required to be a good judge go well beyond the ability to write well-constructed judgments.'[46]

As far as we can ascertain MacDermott sat as a High Court judge in nine reported High Court cases and three reported Court of Appeal cases.[47] None of these raised a particularly important point of law and none was appealed all the way to the House of Lords. But it is apparent from several of MacDermott J's judgments that he was a most accomplished legal analyst and writer. His first reported judgment in the High Court appears to be in *Pig Marketing Board (NI) Ltd v IRC*, where he held that the Board was not established for charitable purposes only.[48]

Later, he sat alongside his friend Mr Justice Black in a Divisional Court case dealing with a request for a writ of *habeas corpus*. It had been applied for in a family law case where the mother of an 11-year-old boy wanted to reclaim custody of him from his father; both judges gave a judgment in the case, holding for the mother.[49] He delivered a detailed judgment in an insurance law case, where he held that the insurance company did not have to pay damages to two plaintiffs who were injured in an accident involving a taxi driven by someone who

45 For the full list, see the Appendix to this article, which comprises four parts, each dealing with a separate phase in MacDermott's judicial career.

46 Lord Carswell, 'Founding a legal system: the early judiciary of Northern Ireland' in Felix Larkin and Norma Dawson (eds), *Lawyers, the Law and History* (Dublin, Four Courts Press 2012) 15, 16.

47 For the full list, see the Appendix, part 1.

48 [1945] NI 155.

49 *In re B, An Infant* [1946] NI 81.

had been authorised to drive it but whose name did not appear on the insurance policy.[50] In *Fitzgerald v Great Northern Railway (Ireland)* he ruled that a visitor to a workplace who was allowed to assist one of the employees with his job was owed a duty of care by the occupier.[51] Even a relatively simple case turning on whether the plaintiff should be completely denied damages because of his contributory negligence in an accident led to a lucid explanation of why substantial contributory negligence does not necessarily exonerate a defendant from all blame.[52] He again held for a plaintiff who had been injured when using a machine in a factory without having received adequate training: the fact that it was another employee of the company who caused the injury did not trigger the doctrine of common employment which, at that time, let employers off the hook for such incidents.[53]

It has been common for most of the history of the Northern Ireland legal system for High Court judges to sit on the Court of Appeal from time to time. MacDermott J's first *reported* judgment in the Court of Appeal was in *Baptist Union of Ireland (Northern) Corp Ltd v Inland Revenue Commissioners*, decided on the same day as *Pig Marketing Board (NI) Ltd v IRC* (mentioned above), where he gave lengthy reasons why, contrary to the view of the Special Commissioners of the Inland Revenue, the trust in question was a charitable one and therefore all the income from its investments qualified for an exemption from income tax.[54] He also sat alongside Porter LJ and Black J in *R v Stephenson*, where a man appealed against his conviction and sentence following a trial before Babington LJ and a jury at the Belfast City Commission (what we today would call the Crown Court).[55] The alleged crime was the manslaughter of a girl named Eileen Bowden by using an instrument to procure an abortion which resulted in her death. The main grounds for the appeal were that the dying declaration of Ms Bowden and the testimony of her boyfriend, who had taken her to the defendant's premises for the abortion, were inadmissible in the absence of corroboration, a matter on which the jury had not been properly directed. The appeal court dismissed the defendant's appeal against conviction but reduced his prison sentence from six years to

50 *Goodwin v Leckey* [1946] NI 40.

51 [1947] NI 50.

52 *Ross v McQueen* [1947] NI 81. The defence of contributory negligence was reformed shortly after this case by the Law Reform (Miscellaneous Provisions) Act (NI) 1948, s 2.

53 *Shearer v Harland and Wolff Ltd* [1947] NI 102. The defence of common employment was abolished by the Law Reform (Miscellaneous Provisions) Act (NI) 1948, s 1.

54 [1945] NI 99. At that time such cases stated were dealt with by the King's Bench Division of the High Court.

55 [1947] NI 110.

four years. The fact that MacDermott J was the judge who delivered the judgment of the court suggests that it was he who contributed most to its composition, even though he was the most junior of the three judges involved. He also sat in a case about the interpretation of a will, *Re Dunville*.[56] He wrote a judgment siding with Andrews LCJ rather than with Babington LJ.

THE LORD OF APPEAL IN ORDINARY, 1947–1951

MacDermott's expertise in legal matters was such that by April 1947 he had so impressed the then Labour Lord Chancellor, Viscount Jowitt, that he was named as the first ever Lord of Appeal in Ordinary to be appointed from Northern Ireland since its establishment in 1921 (the second such appointment would not occur until 1988). He was just 51 years of age. The choice was probably due to the fact that he was one of two Law Lords appointed so as to increase the membership of the Appellate Committee of the House of Lords from seven to nine.[57] The other was Lord Morton, a Scot who plied his trade as a lawyer in England and who had already served as a High Court judge there for three years and as a Lord Justice of Appeal for a further six. He ranked above MacDermott in the pecking order. The Lord Chancellor, Viscount Jowitt, no doubt saw it as an opportune moment to ensure that the Committee was more representative of the Kingdom as a whole.[58] That said, in a letter from Jowitt informing the then Prime Minister of Northern Ireland, Viscount Brookeborough, that MacDermott had been selected for appointment, it was emphasised that his decision to recommend MacDermott had not been a tokenistic choice:

> I should not have desired that he should be appointed merely because he came from Northern Ireland unless I had been satisfied that he was a man fully qualified to maintain and uphold the great position to which he has been called, but I may confess to you now that I am singularly happy that I was honestly able to make such a recommendation, more

56 [1947] NI 50.

57 Appellate Jurisdiction Act 1947. The prime reason for the increase in judges was the need to have enough Law Lords so that the Appellate Committee of the House of Lords and Judicial Committee of the Privy Council could sit in benches of five at the same time (Viscount Simon, a retired Lord Chancellor, was available and keen to sit as an *ad hoc* judge, as were a few other retired judges). Delay in getting appeals dealt with quickly was also cited as a problem, but the Lord Chancellor and his predecessor did not attribute that to the judges themselves but rather to the parties to the litigation. See HC Deb 7 February 1947, vol 432, cols 2099–2106; HL Deb 20 February 1947, vol 145, cols 847–851.

58 MacDermott's daughter Edith wrote that her father's appointment as a Lord of Appeal was 'a gesture … to keep Northern Ireland within the judicial system' and that 'he felt it his duty to accept the appointment': Cunningham (n 19 above) 45.

> especially because this strengthens the ties which bind our two countries together.[59]

In a letter dispatched to inform MacDermott himself on the same day, the Lord Chancellor shared his news in the following terms:

> My dear Judge,
>
> May I just write you this line to tell you how very glad I am that the [UK] Prime Minister has seen fit to accept the recommendation I made that you should come and join us in the House of Lords. You will find that we are a very happy body and I have no doubt but that you will be able to make a most valuable contribution to our deliberations.
>
> It is all too long since we had anybody from Ireland to help us and all my colleagues as well as myself are delighted to think that that is now being repaired. You are assured of a most hearty welcome.
>
> I am afraid I must tell you that we shall want your services as early as we can arrange to get them. I understand that the technicalities about the title you are adopting have been arranged with the Garter. Owing to the absence of The King in South Africa and the fact that the Counsellors of State have not power to create peers the warrant has to be flown out to The King for his signature. I understand it is being arranged that this shall be done on Wednesday next and as soon as The King has signed we shall be notified by telegram. It will be necessary to arrange for your formal introduction and this could be done either on the afternoon of Wednesday, 23rd April, or if this proves impossible on the morning of Thursday, 24th. In any event we shall hope to have your services so that you can sit with us on the latter date as we shall not be able to get five Law Lords for the case that day unless these preliminaries have been fulfilled.
>
> I do hope that this will not put you to any inconvenience, but for the time being until you have fixed up on a more permanent basis no doubt you will stay at a Club or Hotel.
>
> If there is anything else I can do to help in any way please do not hesitate to let me know.
>
> Yours sincerely,
>
> J.[60]

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59 Letter dated 14 April 1947, Jowitt to Brookeborough, National Archives, LCO 6/2711. In a letter dated 22 April 1947, Brookeborough responded to Jowitt thanking him for his letter, remarking: 'I am delighted particularly at your choice of the individual, as MacDermott is a man of the finest character and integrity who will, with his profound legal background, make his own contribution to the work and judgments of the House of Lords.'

60 Letter dated 14 April 1947, Jowitt to MacDermott, National Archives, LCO 6/2711. The case he started hearing on 24 April was *Winter Garden Theatre (London) Ltd v Millennium Productions Ltd* [1948] AC 173 (see n 79 below).

Before making the appointment Viscount Jowitt no doubt consulted the then Lord Chief Justice of Northern Ireland, Sir James Andrews,[61] as to who (if not himself) would be the best serving judge to take up the role. Sir James was 70 at the time. The senior of the two Lords Justices of Appeal, Sir Anthony Babington, was 69 and the junior Lord Justice, Samuel Porter, was 72. The latter had been appointed in 1946, having not previously served as a judge. MacDermott's only colleague in the High Court was Arthur Black, his senior in that post by a year (having previously served as a county court judge for two years) and still only 59. In his memoir MacDermott is very generous in his estimation of Black, but implies that, although he was not married, he may not have been the kind of person who would have wanted to uproot himself from Northern Ireland to take up a position in London. After praising his intellect as the equal of any at the bar or on the bench, he describes him as 'essentially a simple and gentle soul', someone who 'shunned publicity and was very hard to get to a party'. [62] The Lord Chancellor's estimate may have been that while MacDermott was very young and had little judicial experience his appointment was nevertheless a risk worth taking. Sir Edward Jones, who was later appointed to the High Court in 1968 and then to the Court of Appeal in 1973, offered a similar hypothesis in the following excerpt from his autobiography:

> [T]he problem was who, from among the judges, would want the appointment because it was not an appointment which would suit everyone. Well, the rest of the story really depends on speculation; but it does seem to be a reasonable and sensible speculation because the outcome was that only much the youngest of the then existing Bench indicated readiness to accept the appointment which had the great advantage that, when the Chief Justiceship here fell vacant on the death of Sir James Andrews and there was no obvious candidate to fill his vacancy, it was easy to transfer MacDermott back to assume the office of Chief Justice in Belfast. No doubt that did in fact deprive Northern Ireland of a Law Lord but that was not an inevitable loss as it turned out it was only a temporary or partial deprivation.[63]

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61 James' older brother, John, had been Prime Minister of Northern Ireland from 1940 to 1943 and a second older brother, Thomas, had built the *Titanic* and died when it sank in 1912. According to the *Dictionary of Irish Biography*, Andrews was appointed as Lord Chief Justice only because his brother John, who was still an important minister in the Government of Northern Ireland at the time, insisted upon it. Lord Craigavon, the then Prime Minister, had allegedly promised the role to the serving Attorney General, Sir Anthony Babington. Instead Babington took up the vacancy on the Court of Appeal created by Andrews' promotion.

62 MacDermott, *An Enriching Life* (n 1 above) 167.

63 Edward Jones, *Jones LJ: His Life and Times – The Autobiography of The Right Honourable Sir Edward Jones* (The Impartial Reporter 1987) 98.

At the time of his appointment MacDermott was the youngest person to be made a Lord of Appeal in Ordinary since the inception of the role in 1876. He was created a Lord of Appeal in Ordinary under the Appellate Jurisdiction Act 1876, as amended, 'with the dignity of a Baron for life by the style and title of Baron MacDermott of Belmont in the City of Belfast'.[64] It was on Wednesday 23 April 1947, almost immediately after confirmation was received by telegram that his warrant had been signed by the King, that Baron MacDermott was introduced to the House of Lords.[65] His wife and son, who was studying in Cambridge at the time, joined Baron MacDermott to mark the occasion.[66]

In the years since his appointment only one appointee to the House of Lords or to its successor, the Supreme Court, has been younger – Lord Radcliffe, who was elevated to the role directly from the bar in 1949 at the age of 50. Louis Blom-Cooper and Gavin Drewry point out that in the period from 1876 to 1968 MacDermott was also the only Law Lord to have been educated at a so-called 'redbrick' university.[67] To this day he remains one of only two Law Lords or Supreme Court Justices to have graduated from Queen's University Belfast, the other being Lord Kerr, who served for just three months in the House of Lords and then in the Supreme Court from 2009 to 2020. A further anomaly is that, because in 1944 it was not yet the custom and practice to confer a knighthood on every High Court judge in Northern Ireland, MacDermott was made a life peer without having first attained the lower honour. He became a Privy Counsellor in Northern Ireland when he was made a Minister in 1940, entitling him to be referred to as the 'Right Honourable' John Clarke MacDermott. When appointed as a Lord of Appeal in 1947 he became a member of the UK Privy Council. While serving as a Law Lord MacDermott lived in a flat in London during the week but frequently returned to Belfast at weekends.

The seven Law Lords already *in situ* when Lord MacDermott and Lord Morton joined them on 24 April 1947, apart from Viscount Jowitt as Lord Chancellor, were, in order of seniority, Lords Thankerton, Wright, Porter, Simonds, du Parcq, Uthwatt and Normand. In 1947 Lord Wright retired and was replaced by Lord Oaksey, in 1948 Lord Thankerton was replaced by Lord Reid (who remained in post until 1975), and in 1949 Lord du Parcq gave way to Lord Radcliffe and Lord Uthwatt to Lord Greene. In 1950 Lord Greene (who had been appointed Master of the Rolls) was replaced by Lord Tucker and in 1951, when Lord Simonds was appointed Lord Chancellor, his seat as

64 National Archives, LCO 6/2711.

65 Ibid. See too *Hansard*, 'Lord MacDermott' 23 April 1947, vol 147.

66 Ibid.

67 Louis Blom-Cooper and Gavin Drewry, *Final Appeal: A Study of the House of Lords in its Judicial Capacity* (Oxford, Clarendon Press 1972) 167.

a Lord of Appeal went to Lord Cohen. So in that short post-War period of 1947 to 1951 Lord MacDermott had an opportunity to work closely with a substantial number of the leading judges of his day. He is bound to have learned a great deal not just about legal appellate work but also about what is expected from the nation's topmost judges in terms of leadership, industriousness and example-setting. By the time he stepped down as a Lord of Appeal he was the fourth most senior of the nine then in post.

His decisions as a Lord of Appeal in the House of Lords

Lord MacDermott seems to have borne his fair share of the workload of Law Lords. Like his colleagues he would have had little choice over which appeals he heard. He had quickly to become expert on a range of legal topics with which he would have been relatively unfamiliar until then. As far as we can determine, during his four years as a full-time Lord of Appeal he sat in 55 cases in the House of Lords and 28 cases in the Privy Council.[68] In the House of Lords he delivered a judgment in 40 of his cases and in the remaining 15 he simply concurred with one of the other judgments. In no fewer than 14 of his 55 cases (25%) he expressed his dissent, either in full or in part. This is a remarkably high percentage of dissents. It demonstrates Lord MacDermott's independence of mind: he was not easily captured by group-think.

As many as 19 of his 55 cases (34%) concerned tax law. This is largely because in 1948 there was a whole series of mainly Scottish appeals relating to a provision in the Finance Act 1943 designed to retrospectively invalidate a scheme aimed at avoiding excess profits tax, which at that time was levied at the rate of 100%.[69] The scheme mainly benefited whisky distilleries and bonded warehouse companies. The appeals were heard over a period of 22 days in November and December 1948 by a panel of five Law Lords led by Lord Thankerton and of whom Lord MacDermott was the most junior member.[70] On 12 March 1949 judgments were delivered in 12 separate cases, some of which involved more than one appellant. In the lead case, *Inland Revenue Commissioners v Ross and Coulter (Bladnoch Distillery Co Ltd)*, Lord MacDermott was the lone dissenter on a crucial issue: he did not think that the retrospective legislation should apply to companies which had been unaware of the tax avoidance scheme in question because it had been organised by third parties.[71] After a meticulous

68 For the full list, see the Appendix, part 2.

69 Finance Act 1943, s 24.

70 The three other Law Lords were Lord Porter, Lord Simonds and Lord Morton.

71 [1948] 1 All ER 616. The majority in the Lords endorsed the view taken by the Court of Appeal in England and Wales and reversed a contrary position adopted by the Court of Session in Scotland.

examination of the wording of the relevant legislation – an example of the brilliance of his analytical powers – Lord MacDermott concluded:

> I would hold in favour of the knowledge construction as that which accords best with the language the legislature has seen fit to use. While I do not suggest that this interpretation leads to an ideal distribution of the burden of the full tax, I find it less generally inequitable in this respect than the alternatives which have been discussed.[72]

Having set out his position in *Bladnoch Distillery* Lord MacDermott then dutifully applied the majority's precedent in subsequent appeals on the same section, although in three of them he again dissented on the application of the majority's viewpoint to the facts of the case.[73]

The next largest category of case dealt with by the Baron during his time as a Lord of Appeal (9 out of 55, or 16%) concerned employment matters, including employers' liability for accidents at work. Amongst these was *Paris v Stepney Borough Council*,[74] where his final judgment swung the outcome in favour of the injured party. Mr Paris had sight in only one eye and had been injured in his other eye while working in a garage. Goggles were supplied to some workers in the garage but not to his category of worker. The Lords held that he too ought to have been provided with goggles as the employers knew about his having only one good eye. In two other cases Lord MacDermott joined with Lord Reid in disagreeing with the majority's view that the claim for workmen's compensation should fail. One was *Hogan v Bentinck West Hartley Collieries (Owners) Ltd*, where the majority found that an 'ill-advised' operation on the plaintiff's thumb meant that the injury in question could no longer be said to have been caused by the accident at work;[75] the other was *London Graving Dock Co Ltd v Horton*, where an experienced welder was denied compensation because he 'voluntarily' took a risk in using certain inadequate staging at his place of work.[76] However, Lord MacDermott was not invariably predisposed to hold in favour of injured workers: in *Hales v Bolton Leathers Ltd* he joined the majority in finding that Mr Hales fell within a statutory exception to the right to workmen's compensation, though one of his fellow judges, Lord Oaksey, found to the contrary.[77] Likewise he did not join in Lord Reid's dissent in *Harrison v National Coal Board*, where the majority ruled that the doctrine of common employment meant that the Coal

72 Ibid 651.

73 *Inland Revenue Commissioners v Barr* [1948] 1 All ER 682; *Inland Revenue Commissioners v Lord Saltoun* [1948] 1 All ER 654; *Tootal Broadhurst Lee Co Ltd v Inland Revenue Commissioners* [1949] 1 All ER 261.

74 [1951] AC 367.

75 [1949] 1 All ER 588. The operation was said to be a *novus actus interveniens*.

76 [1951] AC 737.

77 [1951] AC 531.

Board was not liable to a workman injured by a fellow shot-firer in a mine.[78] It would have been in the midst of hearing this case that Lord MacDermott learned of the death of the then Lord Chief Justice of Northern Ireland, Sir James Andrews, on 18 February 1951. It must have immediately prompted him to wonder whether he might be offered the opportunity to become Sir James's replacement.

The remaining 27 cases dealt with by Lord MacDermott as a full-time Lord of Appeal ranged across 11 different areas of law: land law (7 cases), contract law (4 cases), family law, intellectual property law and private international law (3 cases each), administrative law (2 cases) and charity law, company law, maritime law, tort law and restitution law (1 case each). In this publication we can itemise only a handful of these.

Amongst his land law cases was the first he ever heard as a Lord of Appeal – *Winter Garden Theatre (London) Ltd v Millennium Productions Ltd* – and the hearing continued on and off for a total of seven days.[79] When he delivered his judgment (the case concerned the termination of a licence) Viscount Simon, who was the presiding judge, paid handsome tribute to his new colleague:

> He has so precisely and clearly expressed the view which I had formed in the case before us that it becomes unnecessary to deal independently with the application of the principles I have endeavoured to formulate to the matter in hand.[80]

Lord MacDermott's first dissenting judgment was issued in only the second case he heard as a Lord of Appeal, *Boy Andrew v St Rognvald*, a dispute over which of two ships had caused a collision between them, leading to the death of 11 seamen. While his four colleagues attributed blame to both ships, Lord MacDermott thought it should be pinned solely on the crew of the *Boy Andrew*. In *Hill v William Hill (Park Lane) Ltd* he was involved in a seven-judge case where the Law Lords split four to three.[81] He sided with the majority in holding that the company could not recover alleged betting debts owed by Mr Hill because, under the Gaming Act 1948, they were 'a sum of money alleged to be won upon a wager'. In *Kahler v Midland Bank Ltd* he and Lord Reid dissented: they would have allowed Mr Kahler's

78 [1951] AC 639. The doctrine was abolished in Great Britain by the Law Reform (Personal Injuries) Act 1948, but Mr Harrison's accident occurred before that Act came into force. See too *Winter v Cardiff Rural District Council* [1950] 1 All ER 819, where the Lords, including Lord MacDermott, unanimously rejected the plaintiff's claim because of the doctrine of common employment.

79 [1948] AC 173. See too n 60 above.

80 Ibid 191.

81 [1949] AC 530.

appeal because in their view the law governing the contract was the law of England, not the law of Czechoslovakia.[82] He also dissented in an important case on what constitutes 'public benefit' for the purposes of the law on charities: *Oppenheim v Tobacco Securities Trust Co Ltd*.[83] His four colleagues held that, even though the trust in question could potentially benefit more than 110,000 employees, that did not make the benefit a 'public' one. Referring to the Charitable Uses Act 1601, Lord MacDermott said that the current law was unsatisfactory: '[w]hat is needed is a fresh start from a new statute'.[84] The last case heard by Lord MacDermott as a Lord of Appeal, on 27 and 28 February 1951, seems to have been *Crowther v Crowther*, which was about whether a period spent in a mental home interrupted what counted as 'desertion' for the purposes of the then law on divorce.[85]

His decisions as a Lord of Appeal in the Privy Council

The Judicial Committee of the Privy Council is the court which handles appeals from a variety of Crown dependencies, former Commonwealth countries and one or two other bodies. The Lords of Appeal (and, today, the Supreme Court Justices) were called upon to deal with those appeals, and it has long been customary for a single judgment to be delivered in the name of only one judge. Our research indicates that Lord MacDermott sat in 36 Privy Council cases, 28 while he was a full-time Lord of Appeal and eight while he was later the Lord Chief Justice of Northern Ireland.[86] He delivered the Court's judgment in five of these cases[87] and in a sixth case he concurred with a dissenting judgment of Lord Pearson on a taxation issue.[88] Occasionally, he had to consider sensitive constitutional questions. Thus, in his judgment in *Ningkan v Government of Malaysia* he dismissed a challenge by a former Chief Minister of Sarawak to the proclamation of a state of emergency in the territory[89] and in *Liyanage v R* he concurred in the ruling that Acts of the Ceylon Parliament could not be struck down on

82 [1950] AC 24.
83 [1951] AC 297.
84 Ibid 319.
85 [1951] AC 723. Judgments were issued on 9 May 1951. Lord MacDermott simply concurred with Lord Reid.
86 Those eight cases are included in the Appendix, part 4.
87 *Pointe Gourde Quarrying and Transport Co Ltd v Sub-Intendent of Crown Lands* [1947] AC 565; *Tumahole Bereng v The King* [1949] AC 253; *Sambasivam v Public Prosecutor, Federation of Malaya* [1950] AC 458; *Wong Pooh Yin v Public Prosecutor* [1955] AC 93; *Ningkan v Government of Malaysia* [1970] AC 379.
88 *McClelland v Taxation Commissioner of the Commonwealth of Australia* [1971] 1 WLR 191.
89 See n 87 above.

the vague and unspecified basis that they were contrary to fundamental principles of justice or the laws of natural justice.[90] These cases may well have come to his mind just two or three years later when Northern Ireland was facing the kind of civil unrest which had already provoked emergency measures in both Sarawak and Ceylon.

Lord MacDermott also dealt with three Canadian cases where the question was whether a provincial Parliament had the legislative competence to make certain laws. In *Attorney General for Alberta v Attorney General for Canada* part of Alberta's Bill of Rights Act 1946 was declared to be *ultra vires*,[91] in *Attorney General for Saskatchewan v Attorney General for Canada* a similar conclusion was reached in relation to a provision in the Farm Security Act 1944[92] and in *Canadian Federation of Agriculture v Attorney General for Quebec* a provision in the Dairy Industry Act 1926 was likewise declared invalid. He also sat in *Commonwealth of Australia v Bank of New South Wales*, where the Privy Council affirmed the High Court of Australia's view that legislation prohibiting private banking was constitutionally invalid; the appeal in this case was heard over the course of 36 days ('a record').[93] In *Sambasivam v Public Prosecutor, Federation of Malaysia* MacDermott was a member of the Privy Council which set aside a conviction for carrying a weapon because the jury had not been informed that the accused had earlier been acquitted of possessing ammunition. The Baron would later cite this precedent in two cases which came before him in the Court of Criminal Appeal in Northern Ireland.[94]

In his Privy Council work Lord MacDermott was certainly exposed to a wide range of foreign courts from which appeals were brought. They included the Supreme Court of Canada, the Court of Appeal of Saskatchewan, the High Court of Australia, the Supreme Court of New South Wales, the Supreme Court of Ceylon, the High Court of Calcutta, the Supreme Court of the Federation of Malay, the Federal Court of Malaysia, the Supreme Court of Palestine, the Western African Court of Appeal, the High Court of Basutoland and the Court of Appeal of Malta. He also heard an appeal from the President of the Probate, Divorce and Admiralty Division of the High Court of England and Wales sitting in exercise of its Prize jurisdiction.

90 [1967] 1 AC 259.
91 [1947] AC 503.
92 [1949] AC 110.
93 [1950] AC 235, 240.
94 See n 87 above and the text at n 128 below.

THE LORD CHIEF JUSTICE OF NORTHERN IRELAND, 1951–1971

Following the death of Sir James Andrews on 18 February 1951, Lord MacDermott returned to Northern Ireland to be sworn in as Lord Chief Justice on 9 April. He continued in that role for the next 20 years of his life. Back in 1951 the process for choosing a successor to a senior judicial post was rather murky. The era of application forms and competence-based interviews was still far ahead. But it seems that by this time Lord MacDermott had acquired what Lord Carswell later called a 'redoubtable' stature, one that indicated that 'the Ulster judiciary had finally come of age'.[95] His chief rivals for the role would have been the two serving Lords Justices of Appeal, Arthur Black and Samuel Porter. The former, however, was probably no more inclined to take on the role than he had been four years earlier when MacDermott was appointed to the House of Lords. The latter was already 75 years of age, although he continued to serve as a Lord Justice until his death in 1956 at the age of 81. The two High Court judges in office at the time were Lancelot Curran and Charles Sheil, but each of them had been appointed only two years earlier and would probably have been deemed to have insufficient judicial experience to serve as the Lord Chief Justice.

Lord MacDermott's own willingness to leave the House of Lords and return to Northern Ireland was not without reservations. His daughter Edith has recalled:

> This was a major decision and he did not decide overnight. On the one hand he revelled in the stimulation and variety of work in the House of Lords but his domestic arrangements were far from satisfactory, and even when the children had left home, it was doubtful if Mum would consider moving from her beloved fortress of Glenburn. Above all, a nagging sense of duty probably told him that he owed it to his province to return. He did not do this with his eyes closed. Of all people, he would have been aware that firm leadership was needed in the Northern Ireland courts at this time, and that the administrative load would be heavy. True as ever to his principles he returned and took up office as Lord Chief Justice of Northern Ireland.[96]

Likewise, in a contemporaneous letter to Sir Basil Brooke, the then Prime Minister of Northern Ireland, Lord MacDermott admitted that he had felt conflicted about his decision:

> ... though I am glad to come home on many grounds, I have found the choice a difficult one.[97]

95 See Carswell (n 46 above) 16.

96 Cunningham (n 19 above) 47.

97 Letter dated 13 March 1951, Public Record Office of Northern Ireland, CAB/9/I/15/14.

Lord MacDermott seems to have warmed very quickly to his new role just the same. In Northern Ireland he had the opportunity not only to deal with knotty legal problems in the High Court and Court of Appeal, but also to oversee the running of a whole judicial system. Early in his tenure he delivered a lecture in Oxford to members of the Society of Public Teachers of Law (now the Society of Legal Scholars) in which he displayed his interest in two particular features of Northern Ireland's judicial system – the ability of the higher courts to determine the constitutionality of legislation passed by the Stormont Parliament and the continuing use of the simple 'civil bill' procedure for handling relatively small civil claims in the county court, a jurisdiction with roots in English law but which had fallen out of favour there.[98] In fact he suggested in that lecture that the civil bill procedure should be extended to some claims made in the High Court, where he thought that the system of writs and pleadings had already become a contributing factor to delay and complexity. Alas, his proposal fell on deaf ears.

As Lord Chief Justice Lord MacDermott would have been very influential in the filling of all the judicial vacancies arising in Northern Ireland during his tenure, although at the High Court level and above it would have been the Lord Chancellor who had the final say over who should be elevated. Those who did get appointed at that level were, in chronological order, Lancelot Curran (1956, to the Court of Appeal), Herbert McVeigh (1956, to the High Court; 1964, to the Court of Appeal), Edward (Ted) Jones (1968, to the High Court), Robert Lowry (1964, to the High Court), Maurice Gibson (1968, to the High Court) and Ambrose McGonigal (1968, to the High Court). Jones, Gibson and McGonigal would all be promoted to the Court of Appeal in the years after MacDermott retired from the top job. He himself was succeeded as Chief by Sir Robert Lowry in 1971, the year in which Lord MacDermott turned 75. As we shall see, he continued to sit in the House of Lords as an *ad hoc* Law Lord for a further two years, and indeed in the High Court of Northern Ireland for seven years.[99]

In a recent book,[100] we recounted Lord MacDermott's efforts to avoid disadvantaging a Catholic candidate for one judicial post in 1956:

> ... the then Lord Chief Justice, Lord MacDermott, listed a range of candidates whom he considered eligible for consideration by the Lord Chancellor, Lord Kilmuir, in respect of a vacancy created by the death

98 'The Supreme Court of Northern Ireland – two unusual jurisdictions' (1954) 2 Journal of the SPTL (new series) 201.

99 See too n 136 below.

100 Conor McCormick and Brice Dickson, *The Court of Appeal in Northern Ireland* (Bristol, Bristol University Press 2025) ch 2.

of Porter LJ.[101] Cyril Nicholson QC was among those suggested by Lord MacDermott to Lord Kilmuir,[102] but 'secret' minutes of a meeting between these two reveal that Nicholson was apparently ruled out because 'it would be too difficult to appoint another Catholic to the Bench at present'.[103] This view was reinforced by a subsequent letter sent to Lord Kilmuir from the Prime Minister of Northern Ireland, Sir Basil Brooke, in which the latter stated that 'politically I couldn't support Cyril Nicholson as in my opinion it would unbalance the Judgeship and I would be open to very severe criticism'.[104] Shortly thereafter, in a 'confidential' letter from Lord MacDermott to Lord Kilmuir, the following admission was committed to page:

> I went to the P.M. at Stormont last week to see if there was any possibility of him having second thoughts about C.A. Nicholson, Q.C. who on his own merits would rank high. Personally, the P.M. would have no objection to Nicholson but he felt that a second Roman Catholic in a Judiciary of five would be politically embarrassing, and on that account he could not acquiesce in his appointment.[105]

Following these exchanges, Nicholson was not appointed.[106] Curran J was elevated to the Court of Appeal seat made vacant upon the death of Porter LJ and Herbert Andrew McVeigh QC was appointed to the High Court seat vacated by Curran J.

Two tragic events

Before we undertake a brief survey of the judgments issued by Lord MacDermott between 1951 and 1971 it is worth stressing that in his first two years in the role he had to deal with the fall-out from two dramatic events. The first was the shocking murder of one of his own colleague's family members – Patricia Curran, the daughter of Mr Justice Curran. Curran, like MacDermott, had been a unionist MP and the Attorney General for Northern Ireland. At the time his daughter, aged 19, was a first-year student at Queen's University Belfast. Her body, riddled with stab wounds, was found in the grounds of the family home in Whiteabbey, just north of Belfast, on 12 November 1952. In March 1953, a 20-year-old Scottish man named Iain Hay Gordon, who was a technician within the RAF working at an airbase in Edenmore near

101 Correspondence and minutes relating to this episode are accessible from the National Archives at LCO/2/8153 and from the Public Record Office of Northern Ireland at CAB/9/I/10/4.

102 Ibid LCO/2/8153, letter dated 21 July 1956, wherein Lord MacDermott stated, *inter alia*, that 'Mr. Nicholson is a Roman Catholic of good standing'.

103 Ibid LCO/2/8153, minutes dated 7 August 1956.

104 Ibid CAB/9/I/10/4, letter dated 5 September 1956.

105 Ibid LCO/2/8153, letter dated 11 September 1956.

106 His son, Sir Michael Nicholson, was appointed to the High Court in 1986 and then to the Court of Appeal in 1995.

Whiteabbey, was tried for the murder before Lord MacDermott CJ and a jury. He had allegedly voluntarily confessed to the killing and his lawyers advised him to plead guilty but insane, partly to ensure that if convicted he could not be sentenced to death. The jury believed his confession and confirmed that he was guilty but insane, a verdict which, at the time, could not be appealed.[107] He was sentenced to indefinite detention in a mental hospital in Antrim, where he languished for the next seven-and-a-half years. There would have been a sense of relief that the case was closed. It had revealed some personal details about members of the Curran family which they would not have wanted to be known. A close-knit judicial fraternity such as then existed did not welcome a public focus on aspects of their private lives.

After his release from detention in 1960 Mr Gordon led a quiet life in Glasgow but he always maintained his innocence. It was only in the 1990s that prominent lawyers, including Sir Louis Blom-Cooper QC, took up his case. Their work eventually led to a referral of the case by the Criminal Cases Review Commission to the Court of Appeal in Northern Ireland in 1998. The Court held that it had no jurisdiction to hear an appeal because of the particular verdict in question, whereupon campaigners went about securing a change to the Criminal Appeal Act 1995 in order to extend it to such verdicts.[108] When the case was referred again to the Court of Appeal in 2000 it quickly held that the confession in question should have been ruled inadmissible because of undue pressure placed upon Hay Gordon at the time. With no other evidence to corroborate the confession the appeal was allowed.[109] The judgment of Carswell LCJ explains that if Lord MacDermott had been shown the evidence which was now available about the psychological vulnerability of Mr Gordon, and the consequent risk that his 'confession' was not freely given but was based on his answers to a series of questions put to him by a police officer, there is little doubt that he would have rejected the confession as inadmissible. The miscarriage of justice reflects badly on the police at the time, not on the trial judge. At the time it was not the custom to take much account of the 'vulnerability' of a defendant and the rules governing the admissibility of confessions were not as detailed as they are today.[110]

The second traumatic event of MacDermott's early years as Chief Justice was the sinking of a ferry, *The Princess Victoria*, as it sailed from Stranraer in Scotland to Larne in Northern Ireland on Saturday

107 There is no law report of this trial because it did not involve new or interesting points of law.

108 See the Criminal Cases Review (Insanity) Act 1999.

109 *R v Gordon* [2000] NICA 28.

110 For a book-length analysis of this case, see Kieran Fagan, *Who Killed Patricia Curran?* (2022). A heavily fictionalised account of the murder and trial was later written by Eoin McNamee: *The Blue Tango* (London, Faber 2022).

31 January 1953. The ferry was caught in a terrible gale and took on water when the doors to the car deck were forced open by strong waves.[111] Of the 177 people on board, 133 died, including the captain. There was a formal investigation into the disaster, conducted by a resident magistrate in Belfast sitting with three assessors appointed in accordance with section 466 of the Merchant Shipping Act 1894. Amongst the findings of the investigation were that the disaster was caused or contributed to by wrongful acts or defaults on the part of the ferry's registered owners (the British Transport Commission) and the registered manager (John Reed). Those two parties appealed against the findings to the High Court, where Lord MacDermott sat, again with three specialist 'assessors'.[112] The only question for the High Court was whether the investigators were entitled in law to reach those findings. Lord MacDermott began his judgment by affirming that *The Princess Victoria* was unseaworthy when she embarked on the crossing: her stern doors were not sufficiently strong to withstand the onslaught of the heavy seas which could be reasonably expected to occur from time to time in the North Channel and there were inadequate 'freeing arrangements' for seas which might enter the car space from any source. He then held that the legislation in question did not confine the investigators to using the phrase 'wrongful act or default' only in situations where acts or omissions were of such a serious nature as to justify the description of 'criminal' or 'quasi-criminal' and to merit, in the case of certificated officers, the suspension or cancellation of their certificates. Applying that principle to the facts he ruled that the Commission had committed a wrongful act or default but that Mr Reed had not. He based his reasoning on the policy underlying the relevant legislation:

> I am clear it was never the intention of the legislature that the court investigating a shipping casualty should have to wander about inside the organisation of a public authority, such as the Commission, in order to find whether a breach of duty personal to it was default on its part. My conclusion, therefore, is that default, in the sense of a breach of personal duty, is within the scope of the expression 'wrongful act or default' and may be found against the owners once the personal nature of the duty and its breach are established.

There is a common law duty on owners of ships to ensure that they are seaworthy and the British Transport Commission's breach of that duty meant that it could be found to have committed a 'wrongful act or default'.

111 For a detailed account of the tragedy see the post by Miriam Bibby, 'The loss of the Princess Victoria' (*Historic UK* nd).

112 *The Princess Victoria* [1954] NI 172.

The Statutes Revised, Northern Ireland

One of Lord MacDermott's more pleasant duties as Lord Chief Justice was to write the Foreword to a selection of volumes called 'Statutes Revised, Northern Ireland', published by Her Majesty's Stationery Office in 1956. The series was compiled by the Department of Finance in accordance with legislation and was of huge assistance to lawyers and judges working in Northern Ireland.[113] As the Baron wrote:

> The object of the Edition, to put it shortly, is to present the text of the statutes in force in Northern Ireland in as authoritative, up-to-date and convenient a form as possible, with nothing included which does not affect this part of the United Kingdom and nothing omitted which does ... Its sixteen volumes contain the enactments of the legislatures of five jurisdictions and span a period of over seven centuries. In their number alone they manifest not only the need but how much has been done in order to meet it; as late as 1950 a person seeking the full text of the statute law in force in Northern Ireland would have had to consult no less than ninety-one volumes.

A second edition of the Statutes Revised was issued in 1982. The need for such a publication has been superseded in this digital age, but there is no doubt that the initiative taken by the Northern Ireland Parliament in the 1950s was a seminal one.

His judgments as Lord Chief Justice

For most of the 1950s and 1960s Lord MacDermott continued as Lord Chief Justice without having to face any significant crises. While he would have sat in a large number of cases, both at first instance and on appeal, we can only refer briefly to a few of his *reported* cases. We have uncovered and examined 189 of these, plus five that he decided after having retired.[114] Given the discretion afforded to editors of series of law reports regarding the cases they choose to report, it is impossible to say how representative these 190 cases are of Lord MacDermott's overall caseload during his 20 years as Chief Justice, either in terms of the split between High Court cases (of which 51 were reported) and Court of Appeal cases (of which 138 were reported) or in terms of how many were criminal cases (of which 52 were reported) and how many were civil (of which 137 were reported).[115] His High Court cases included many where the King's or Queen's Bench Division or the Divisional Court of the High Court sat to hear appeals from courts of summary jurisdiction, but he also sat from time to time to hear Chancery cases, matrimonial cases and bankruptcy cases. There were several cases on

113 The Statute Law Revision Act (NI) 1952.

114 For the full list, see the Appendix, part 3.

115 The criminal cases include cases on issues of criminal procedure and claims for criminal injuries compensation.

the interpretation of wills too. Occasionally, we know from a reported Court of Appeal decision that an unreported first instance judgment of the Chief Justice was affirmed[116] or overruled.[117]

When one compares the types of cases coming before the Court of Appeal between 1951 and 1971 with those coming before that Court in a more recent 20-year period (2004 to 2023), it is remarkable how much more time is spent by today's Court (and therefore by its President – the Lord or Lady Chief Justice) on appeals against convictions for serious offences and on challenges to sentences. A number of the criminal cases dealt with by Lord MacDermott had to do with breaches of customs laws applying to trade between Northern Ireland and the Republic of Ireland, especially trade in livestock. No such cases occur today and there are also fewer civil cases dealing with charities, taxes and wills. Of course, Lord MacDermott's era was also relatively unfamiliar with the concept of judicial review of administrative action, although he did deal occasionally with applications for writs of *certiorari* and, more generally, with the powers and duties of local authorities.

Interestingly, it seems that Lord MacDermott's son John, who was called to the Bar of Northern Ireland in 1949, sometimes argued cases before him.[118] Common law rules on apparent bias, as an aspect of procedural fairness, would probably not permit this to happen today.

Lord MacDermott retired as Lord Chief Justice of Northern Ireland in the summer of 1971. By that time the 'Troubles' were about to reach their height and he had already had to deal with some cases related to the civil unrest. One of the most prominent was the case involving Bernadette Devlin, the civil rights leader who in 1969 was elected as the MP for Mid-Ulster in the Westminster Parliament when she was still only 21. Later that year she was convicted by a magistrates' court of riotous behaviour in Derry/Londonderry and was handed a sentence of six months' imprisonment. Lord MacDermott CJ presided in her hearing before the Court of Appeal.[119] Her defence to the charge was 'justification' in that she believed that the police were about to enter the Bogside area of Derry/

116 Eg *McGuigan v Pollock* [1955] NI 74.

117 Eg *Re Sergie* [1954] NI 1.

118 Eg *Porter v Boomer* [1957] NI 122, where his son appears to have acted as junior counsel for the successful appellant.

119 *Devlin v Armstrong* [1971] NI 13. The lawyers prosecuting on behalf of the state were Brian Hutton QC and Robert Carswell BL, each of whom would later become the Lord Chief Justice of Northern Ireland and subsequently a Lord of Appeal. Bernadette Devlin was defended by Sir Dingle Foot QC, who served as a Labour MP at Westminster from 1957 to 1970 and as Solicitor General for England and Wales from 1964 to 1967 in Harold Wilson's Government. He lost his seat in Parliament in the general election held just two months before the appeal hearing took place in this case. See too *Cyril Lord Carpets Ltd v IRC* [1966] NI 178 and *McCullough v Glass* [1971] NI 238, two cases in which John MacDermott appeared before his father as senior counsel, winning on both occasions.

Londonderry in order to assault the people there and to damage their property. Unsurprisingly, her appeal was dismissed. In the course of yet another meticulously reasoned judgment Lord MacDermott said this:

> At any rate one common purpose of the rioters and the appellant was, beyond any question, to keep the police from entering or establishing themselves in the Bogside and to achieve this by force. The appellant's contention that the honesty and reasonableness of her apprehension (as I have assumed them to be for the sake of the argument) robbed her actions of the mens rea necessary to constitute the offences charged must, to my mind, fail once the nature of this common purpose has been demonstrated. If it were conceded that her apprehensions supplied a motive for her actions and incitements, that in itself would fall well short of neutralising her intentions as manifested by the manner of her participation.[120]

In another early Troubles-related case, *R v Corr*, Lord MacDermott revealed his concern to ensure that criminal processes are fair.[121] The case revolved around whether the way in which police had questioned a suspect while he was in custody made his answers involuntary, even though there had been no threats issued, or promises made or any 'oppressive cross-examination'. Lord MacDermott went out of his way to say that other circumstances could make a suspect's answers involuntary:

> The effect of a vigorous cross-examination ... on one who is not free to get away from his questioner may, in certain circumstances, be to arouse hope of release or fear of further detention or other prejudicial result in the mind of the suspect ... But it may also act more directly by subjecting the person questioned to a degree of pressure which saps his will and makes him talk.[122]

On the facts of the case Lord MacDermott CJ decided that the answers given by the suspect were admissible, but his *dictum* was approved by two prominent academic commentators[123] and was later endorsed by legislation.[124] This ruling by Lord MacDermott makes one confident that if, in the Iain Hay Gordon case mentioned earlier, he had been made aware of the circumstances in which the alleged confession had been made, he would indeed have declared it inadmissible.

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120 Ibid 32. Curran and McVeigh LJJ concurred with Lord MacDermott's judgment.

121 [1968] NI 193.

122 Ibid 210–211. He made the same point in his Bentham Club Address later the same year: see 255–256 below. See too *R v Flynn and Leonard* (unreported, 24 May 1972).

123 F W Newark, '*R v Corr*' (1971) 22 Northern Legal Quarterly 336; D S Greer, 'Admissibility of confessions and the common law in times of emergency' (1973) 24 Northern Ireland Legal Quarterly 199, 200–201.

124 Northern Ireland (Emergency Provisions) Act 1973, s 6 and its replacement, Northern Ireland (Emergency Provisions) Act 1978, s 8.

In his last few months as Lord Chief Justice the Baron heard three appeal cases relating to convictions for possession of explosive substances, including firearms. Here again he reveals how alive he was to the need for the law to be applied with rigorous fairness. In *R v Downey* he set aside two convictions because the prosecution had not shown that the defendant had knowledge of the guns and ammunition found in the premises.[125] In *R v Murphy, Lillis and Burns* he held that the appellants' convictions for possession were inconsistent with their acquittal on two other counts.[126] And in *R v Fagan* he ruled that for there to be a conviction under section 4 of the Explosive Substances Act 1883 it had to be shown that the defendant was knowingly in possession of the substances in such circumstances as to give rise to a reasonable suspicion that the possession was not for a lawful object;[127] here the trial judge had not made it clear that it was open to the jury to find on a balance of probabilities that the appellant's possession was for a lawful purpose, so the conviction was set aside. In the first two of these cases the Lord Chief Justice cited a Privy Council case he had dealt with 20 years earlier, *Sambasivam v Public Prosecutor, Federation of Malaya*.[128]

In an unpublished article penned by Lord MacDermott which we unearthed in papers preserved by his son John, and kindly made available to us by John's family, the Baron examined the concept of non-jury trial of indictable offences. The piece is undated but from its content it seems to have been written in 1977. In it Lord MacDermott looked back at how Troubles-related cases were tried by a judge and jury after 1922:

> It is only fair to say that my experience in Belfast was that fair and reasonable verdicts were pronounced. I could, but do not propose to, go into instances which would justify that assertion. Suffice it to say that I, in my various capacities as counsel, law officer and judge know of only two cases in which a Belfast jury brought in a wholly unjustified verdict and those two cases were really trivial ones which certainly did no violence to the administration of justice generally – and incidentally they were not wholly out of step with common sense.[129]

He then went on to examine the position after the commencement of the Northern Ireland (Emergency Provisions) Act 1973, section 2 of which introduced non-jury trials for 'scheduled offences' relating to the Troubles in Northern Ireland. He prophetically noted that, although the idea of introducing such trials could be backdated to the 1880s,

125 [1971] NI 224.

126 [1971] NI 193. Jones J dissented, a most unusual step in a criminal appeal.

127 [1972] NI 80.

128 [1950] AC 458. See the text referred to in n 94 above.

129 'The non-jury trial of indictable offences', unpublished paper, 9. Sadly, Lord MacDermott did not give any further details of the two cases he had in mind.

and in particular to the Prevention of Crime (Ireland) Act 1882, the relevant provisions of which were never brought into force:

> the change [in 1973] only applied to certain, namely scheduled cases, and it purported to be a change to meet an emergency which makes it reasonable to call it a temporary change. But one cannot but feel that it might be one of these so called temporary changes which it might be difficult to reverse.[130]

He was right: such trials continue to this day in Northern Ireland, albeit under more recent legislation.[131] Trials without a jury are also possible in Northern Ireland in cases of jury tampering, as they are in England and Wales.[132] In the Republic of Ireland the Special Criminal Court, sitting with three judges and no jury, continues to hear not just terrorist cases but also those involving serious organised crime.[133] Lord MacDermott outlined some of the arguments for and against trials without a jury but he studiously refused to come down on one side or the other, save to say that 'I join every right thinking person in hoping that in the context of terrorism temporary will mean what it says, namely temporary.'[134]

A feature which stands out in Lord MacDermott's judgments is his scrupulous interpretation of legislation in light of comprehensive examination of precedents. While that should be a characteristic of all judicial work, the Baron went about achieving it more systematically than most. He did not seem driven by any particular ideology, being content to arrive at his conclusions by dint of the careful application of his finely honed analytical skills.

But not everyone was a huge fan. In the estimation of Sir Edward Jones, who was 16 years younger than Lord MacDermott and served as the unionist MP for Derry/Londonderry from 1951 to 1968, acting as Attorney General for Northern Ireland during the last four years of that period before himself becoming a High Court judge presumably on Lord MacDermott's recommendation and a Lord Justice of Appeal in 1973, retiring in 1984, Lord MacDermott could be somewhat domineering. As he put it:

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130 Ibid 11.

131 Justice and Security (NI) Act 2007, ss 1–9. These have to be considered for renewal every two years. To date they have always been renewed after such consideration. The latest extension was provided by the Justice and Security (NI) Act (Extension of Duration of Non-Jury Trial Provisions) Order 2025 (SI 2025/875).

132 Criminal Justice Act 2003, ss 44–50.

133 The Court is authorised under the Offences Against the State Act 1939. For more details see Brice Dickson, *The Irish Supreme Court: Historical and Comparative Perspectives* (Oxford, Oxford University Press 2019) 200–207. See too Fergal Davis, *The History and Development of the Special Criminal Court 1922–2005* (Dublin, Four Courts Press 2007).

134 Ibid 16.

> I did not find him to have been a great judge but I fully realize that others may not share my view. There is no doubt that he was industrious to a degree and he administered the courts very well indeed. In fact he was a very impressive head of the profession and whether or not one actually liked him no one could fail to respect him. On the whole he rather filled the position of a schoolmaster and in that capacity he was greatly missed when he came to retire. On one occasion, when he made some observation which called in question my experience, I was reminded of Tony Babington's riposte when a similar suggestion had been made to him when he was at the Bar: 'My Lord,' he said, 'I have been in practice at the Bar for ten years. I am therefore of sufficient experience to be a judge. Thereafter there are no degrees of experience.'[135]

Although the context in which Lord MacDermott is said to have questioned Sir Edward's experience is unclear, it seems likely that Sir Edward's overall estimation of the Baron was to some extent coloured by this insult. However, even his close friend Sir Robert Lowry admitted that he did have a prickly side:

> Although he inspired affection, MacDermott was often severe. To those who did not know him, and to some who did, he was not only formidable but frightening, an impression not lessened by his dominating presence. Some felt that, appointing himself the agent of retribution, he adopted as his text the words 'Whom the Lord loveth he correcteth'.[136]

Clearly, Lord MacDermott greatly enjoyed being a judge. As we will see in the next section, he agreed to sit as an *ad hoc* Law Lord in four further cases (one in 1972 and three in 1973) after he had retired from his role as Lord Chief Justice. What is even more public-spirited is that during retirement he also sat in several High Court cases in Northern Ireland, four of which were reported and one of which went on to the Court of Appeal, where his judgment at first instance was actually overturned.[137] His very last reported judgment in Northern Ireland was delivered on 23 June 1975. It is interesting to note that Lord MacDermott's son, John, was appointed as a High Court judge in Northern Ireland in 1973. This is likely to be the only example within the UK or Ireland of a father and son each hearing cases at the High Court level or above at the same time.

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135 Jones (n 63 above) 99.

136 Robert Lowry, 'MacDermott, John Clarke, Baron MacDermott' in *Oxford Dictionary of National Biography* (nd).

137 *Heron v Ulster Bank Ltd* [1974] NI 44. The case turned on the meaning of 'my other children' in a will. According to a letter sent by Lord Lowry CJ to the Lord Chancellor's Department on 27 July 1983, where he was referring to the assistance which retired judges can give to the workload of the High Court: 'Lord MacDermott, although 75 when he retired gave considerable help mainly on wardship from 1971 until his death in 1979' (National Archives LCO 58/24; NI 22/36/05).

THE *AD HOC* LAW LORD, 1951–1973

Even while serving as Lord Chief Justice of Northern Ireland – and for two years thereafter – Lord MacDermott often sat as an *ad hoc* Law Lord in the House of Lords. Blom-Cooper and Drewry calculated that he did so on at least 25 occasions between 1952 and 1967, giving 19 full judgments.[138] Unfortunately, those authors did not list the cases in question. Our own research has identified only 24 such occasions. It may be that he sat in an unreported case (of which there were 25 during this period),[139] as we have not been able to discover which judges sat in those cases. We do know that after 1967 he sat on a further nine occasions, his last appearance being in July 1973.[140] This means that in our estimation he sat as an *ad hoc* Law Lord in a total of 33 cases. Adding that figure to the one relating to his years as a full-time Lord of Appeal, we calculate that altogether he sat in 88 reported cases in the House of Lords. After having sat in 28 Privy Council cases when he was a full-time Lord of Appeal, he then sat in a further eight Privy Council cases after becoming Lord Chief Justice of Northern Ireland, making a total of 36 reported cases.[141] We alluded to his Privy Council cases earlier in this article and so in this section we consider only his *ad hoc* cases in the House of Lords.[142]

It seems that Lord MacDermott never sat in an appeal from Northern Ireland: there were 22 such appeals during his time as Lord Chief Justice and of the 18 which were reported he had been involved in all but one of them in the courts of Northern Ireland – in two when sitting in the High Court and in the other 15 as a Court of Appeal judge – so he was disqualified from hearing them in the House of Lords. The one case in which he did not sit in Northern Ireland was a company tax case.[143] We know that he did not sit in the Lords in one of the four unreported cases because he was again a member of the Court of Appeal in that case.[144] It is possible that he sat in one or more of the other three unreported appeals from Northern Ireland, but if so they are the only examples of that phenomenon.[145] There is no principle which dictates

138 Blom-Cooper and Drewry (n 67 above) 176.

139 Ibid 250–251.

140 Four of his appearances in the House of Lords occurred after he had retired as the Lord Chief Justice.

141 For the full list of all the reported cases in which the Baron sat as an *ad hoc* Law Lord, see the Appendix, part 4.

142 See the text at nn 86–94 above.

143 *Cyril Lord Ltd v Inland Revenue Commissioners* [1965] NI 77 (CA), 42 TC 463 (HL).

144 *Smyth v Cameron* (1959).

145 These cases were *McKeown v Thomas Burrell* (1959), *Rental Holdings Ltd v Hall* (1959) and *O'Hagan v Northern Ireland Farmers' Bacon Co Ltd* (1966).

that a judge from Northern Ireland cannot sit in an appeal to the UK's apex court from Northern Ireland. Indeed, it is now customary for the Supreme Court Justice from Northern Ireland to sit in appeals from that jurisdiction and very often it is that judge who gives the lead judgment in such appeals. As a retired Lord Chief Justice of Northern Ireland Sir Declan Morgan has sat and given the single judgment of the court in an appeal against sentence in a criminal case from Northern Ireland[146] and the current Lady Chief Justice, Dame Siobhan Keegan, has sat both in a matter referred to the Supreme Court by the Attorney General for Northern Ireland[147] and in an appeal in a judicial review application from Northern Ireland.[148] This latter case is, we believe, the first occasion on which a sitting Chief Justice of Northern Ireland has sat in the apex court in an appeal against their fellow judges in the Court of Appeal in Northern Ireland.

As is to be expected, the subject-matter of the 33 cases in which Lord MacDermott served as an *ad hoc* judge was highly varied. But, as with the cases he dealt with as a full-time Lord of Appeal between 1947 and 1951, the dominant subject matter was taxation law (12 cases, or 37.5%). The other legal fields he had to examine were criminal law (8 cases, or 25%), land law (4 cases), employment law (including compensation for work accidents) and family law (3 cases each), and tort law, charity law and patent law (1 case each). He gave a substantive judgment in 25 of the 33 cases, dissenting on only three occasions. Two of the dissents were in tax cases[149] and the third was in an accident at work case where he alone found that the operator of a lathe should have been able to claim compensation for an injury to his hand occurring while he used the lathe.[150] Perhaps his reasoning in that case was influenced by his own work in a munitions factory during the First World War.[151] As Lord Lowry reminds us in his short biography of MacDermott: 'He was a practical expert, as befitted an old machine-gunner, knew about cameras and car engines, and was a first-class woodworker.'[152]

146 *R v Maughan* [2022] UKSC 13, [2022] 1 WLR 2820.

147 *Reference by the Attorney General for Northern Ireland – Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32, [2023] AC 505.

148 *In the Matter of an Application by Rosaleen Dalton for Judicial Review* [2023] UKSC 36, [2025] AC 235.

149 *Southern Railway of Peru Ltd v Owen (Inspector of Taxes)* [1957] AC 324 and *Inland Revenue Commissioners v Lord Rennell* [1964] AC 173.

150 *Sparrow v Fairey Aviation Co Ltd* [1964] AC 1019.

151 In *An Enriching Life* (n 1 above) 60–61, MacDermott mentions his awareness of the dangers of an unguarded moving belt.

152 See Lowry (n 136 above).

Amongst his other important judgments as an *ad hoc* Law Lord one could point first to *Bonsor v Musicians' Union*, where he upheld the right of a trade union member to claim compensation from his union for being wrongfully expelled, supposedly for late payment of his membership fee. After the expulsion the plaintiff found it very difficult to get employment because the Musicians' Union favoured a closed-shop policy and would not allow non-union musicians to play alongside its members.[153] Mr Bonsor, who died during the course of the litigation but whose widow was allowed to take up his case, was represented by a young Anthony Lester, who many years later became a leading human rights lawyer and a peer (Lord Lester of Herne Hill QC). The Lords' decision in this case upheld a dissent by Denning LJ in the Court of Appeal and built on the foundation stone laid down in the famous case of *Taff Vale Railway Co v Amalgamated Society of Railway Servants*, where the House of Lords ruled that a trade union can sue and be sued even though it is not a 'juristic person'.[154] Lord MacDermott addresses the problem posed when a member of an organisation is suing a large number of their fellow members and a year later, in his Hamlyn Lectures, as we shall see, he devoted his final talk to 'The power of numbers', citing the *Bonsor* case as an example of how the law can control that power.[155]

In *National Deposit Friendly Society Trustees v Skegness Urban District Council* Lord MacDermott set out clearly why a convalescent home did not qualify for rate relief as an institution 'concerned with the advancement of social welfare' because the Friendly Society which ran the home was established entirely for the benefit of its own members and lacked the element of altruism or public benefit required by legislation.[156] In doing so he drew upon his own judgment in the charity law case of *Oppenheim v Tobacco Securities Trust Co Ltd* in 1950, where he dissented.[157] On the other hand, in *Dingle v Turner*, he joined his colleagues in ruling that a trust for 'poor employees' was charitable, again citing the *Oppenheim* case.[158] In *AMP Incorporated v Hellermann Ltd* he sided with the majority in a 3:2 decision upholding the right of a patentee of a crimping tool to have the specification of the patent amended.[159] In the last case he heard, *Williams v Beasley*,

153 [1956] AC 104.

154 [1901] AC 426.

155 John Clarke MacDermott, *Protection from Power under English Law* (London, Stevens 1957) 189.

156 [1959] AC 293, interpreting the Rating and Valuation (Miscellaneous Provisions) Act 1955, s 8(1)(a).

157 [1951] AC 297.

158 [1972] AC 601.

159 [1962] 1 WLR 241. A crimping tool is a device which facilitates the connection of wires to other equipment.

on 18 July 1973, he and his colleagues reversed the Court of Appeal when ruling that a solicitor who was being sued for negligence was not entitled to have the issue resolved with the help of a civil jury.[160]

Before concluding this brief survey of Lord MacDermott's work as an *ad hoc* Law Lord we will look at two further batches of House of Lords cases, those dealing with criminal law and those dealing with family law.

Criminal law cases

Lord MacDermott gave a judgment in four of the eight criminal law cases he dealt with. In 1966, in a case which mirrors *Williams v Beasley*, just mentioned, he held in *Toohey v Woolwich Justices* that a defendant who was charged in a magistrates' court with the offence of assaulting a constable was not entitled to opt for trial by jury because the relevant legislation precluded such a mode of trial if the offence was an 'assault'.[161] In 1969 he explained in *S (An Infant) v Manchester City Recorder* that a court of summary jurisdiction can allow a plea of guilty to be withdrawn at any time up to the announcement of a sentence.[162] In 1973 he gave two judgments interpreting provisions in the recently enacted Theft Act 1968. The first was in *DPP v Ray*, where he was part of the majority in a 3:2 decision holding that the defendant had been guilty of deception when he left a restaurant without paying for his meal even though when he first entered the restaurant and ordered his meal he had intended to pay.[163] The second was in *DPP v Turner*, where paying for something by handing over a worthless cheque was found to be 'obtaining a pecuniary advantage by deception'.[164] In four other criminal cases Lord MacDermott entered a simple concurrence.[165]

Family law cases

In his last four years as an *ad hoc* Law Lord, Lord MacDermott gave a judgment in a trio of important cases dealing with family law issues.[166] The first was *J v C* in February 1969, after a seven-day hearing in

160 [1973] 1 WLR 1295. Judgment was given just a week after the hearing, on 25 July 1973. Just three months later Lord MacDermott's son, John MacDermott QC, was elevated to the High Court bench in Northern Ireland.

161 [1967] 2 AC 1. The legislation was the Magistrates' Courts Act 1952, s 25(1).

162 [1971] AC 481.

163 [1974] AC 370. The two dissenting judges were Lord Reid and Lord Hodson.

164 [1972] AC 601.

165 *Churchill v Walton* [1967] 2 AC 224; *Athanassiadis v Government of Greece* [1971] AC 282; *Crickitt v Kursaal Casino Ltd (No 2)* [1968] 1 WLR 53; *Atkinson v US Government* [1971] AC 197.

166 These cases were also highlighted by Sir Declan Morgan in his lecture on Baron MacDermott given at the Spring Discourse of the Irish Legal History Society in the Inn of Court of Northern Ireland on 12 April 2024.

December 1968.[167] The case pitted the Spanish parents of a 10-year-old boy against his English foster parents. The boy had lived most of his life with the latter and was well settled with them and their own five children. His Spanish parents were unimpeachable but were now objecting to the fact that the English foster parents wished to bring the boy up within the Church of England rather than the Roman Catholic Church and they therefore asked that he be returned to Spain to live with them. The trial judge and the Court of Appeal both held that the boy should remain with his foster parents in England and the House of Lords unanimously agreed. It was a case where the welfare of the child needed to take priority even over the right of the parents to bring up their own child.

Lord Guest gave the lead judgment but Lord MacDermott followed up with an even fuller one.[168] He drew in particular on *Ward v Laverty*, the first ever appeal from the Court of Appeal in Northern Ireland to reach the House of Lords, which also concerned the religious upbringing of a child.[169] Shortly after that decision Parliament enacted the Guardianship of Infants Act 1925, section 1(1) of which enshrined in legislation for the first time the principle that:

> Where in any proceeding before any court … the custody or upbringing of an infant … is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration.

The precedential value of Lord MacDermott's carefully structured judgment lies in the clarity with which he expressed his understanding of what the last part of that subsection means in practice:

> Reading these words in their ordinary significance, … it seems to me that they must mean more than that the child's welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules upon or determines the course to be followed.[170]

He went on to add:

> While there is now no rule of law that the rights and wishes of unimpeachable parents must prevail over other considerations, such rights and wishes, recognised as they are by nature and society, can be

167 [1970] AC 668.

168 Lord Upjohn and Lord Donovan also issued judgments.

169 [1925] AC 101. He also considered *In re O'Hara* [1900] 2 IR 232, a decision of the Irish Court of Appeal.

170 [1970] AC 668, 710–711.

> capable of ministering to the total welfare of the child in a special way, and must therefore preponderate in many cases. The parental rights, however, remain qualified and not absolute …[171]

J v C is still regularly cited in the courts today as, for example, in *Re P (Circumcision: Child in Care)*,[172] *Re G (A Child) (Care Proceedings: Welfare Evaluation)*[173] and *Re G (Children) (Residence: Same Sex Partner)*.[174]

A year or so later Lord MacDermott and his fellow Law Lords had to consider *J v C* when issues arose in two appeals about whether blood tests should be conducted on young children in order to determine who their fathers were: *S v S; W v W*.[175] In reaching the same conclusion as his colleagues, Lord MacDermott set out the history of how courts have dealt with children's issues and said that 'while the court should be alert to exercise its protective jurisdiction on behalf of an infant, it does not need to be satisfied before ordering a blood test that the outcome thereof will be for the benefit of the infant'.[176] He effectively distinguished *J v C*, or at least limited its application. That he felt able to do so indicates that he was prepared to move with the times, although he clearly felt uncomfortable about the changing *mores*:

> My Lords, I confess I have come to this last conclusion without any certain view as to its ultimate, general effect. I suppose this conclusion … might … bring about more paternity issues and thus produce an increase in the number of bewildered and unhappy children. I hope not. I do not regard such a deplorable consequence as inevitable. But if it happens, I venture to think that the underlying cause will not be the use of serological science to get at the truth; and that it is far more likely to be found in the changes which have occurred in the standards of marriage and family relationships, and in the legislation which has reflected those changes. This is not to suggest that the plight of the children has been ignored. Parliament has done much for them, but it has been a salvage operation.[177]

The Baron's third important family law case was *Re W (An Infant)*,[178] where what was at issue was whether the mother's refusal to consent to the adoption of her child was 'unreasonable' within the terms of

171 Ibid 715.
172 [2021] EWHC 1616 (Fam), [2022] 4 WLR 53.
173 [2013] EWCA Civ 965.
174 [2006] UKHL 43, [2006] 1 WLR 2305.
175 [1972] AC 24.
176 Ibid 51.
177 Ibid.
178 [1971] AC 682.

section 5(1)(b) of the Adoption Act 1958.[179] On the facts the House of Lords unanimously held, reversing the Court of Appeal, that it was. They did not apply the *J v C* approach – indeed that case was not even cited to them – but they did point out that under section 7(1)(b) of the 1958 Act a court could not make an adoption order unless it was satisfied 'that the order if made will be for the welfare of the infant'. Lord MacDermott, in his judgment, followed a pattern he had used many times before, whereby he first asked what was the natural meaning of the words used in the legislation and then checked to see whether that meaning was supported by the relevant case law.[180] Here he concluded that it was. It must have gone against the grain for him to conclude that this mother had to give up her child for adoption, but on the sad facts before him he was clearly of the view that doing so was in the best interests of the child.

Having briefly surveyed Lord MacDermott's judgments as an *ad hoc* Law Lord, we will next turn our attention to how the Law Lords treated Lord MacDermott's judgments within Northern Ireland when they were appealed to the House of Lords.

THE VIEWS OF THE HOUSE OF LORDS ON LORD MacDERMOTT'S JUDGMENTS

A recurring feature in the appeals heard from Northern Ireland during the 1950s and 1960s by the Appellate Committee of the House of Lords was the deference they tended to pay to the relevant judgments of Lord MacDermott CJ in the courts below. In two cases his view as the trial judge was preferred by the Law Lords to that of the Court of Appeal in Northern Ireland,[181] in one case his views as part of the majority in the Court of Appeal were approved[182] and in a further three cases his *dissenting* judgments in the Court of Appeal were approved.[183] On the other hand, there were five cases in which his views in the Court of Appeal were *not* approved. It is not unusual for the views of senior judges to differ on knotty legal questions, so nothing significant

179 This read: '(1) The court may dispense with any consent required by paragraph (a) of section 4 (1) of this Act if it is satisfied that the person whose consent is to be dispensed with – (a) has abandoned, neglected or persistently ill-treated the infant; or (b) cannot be found or is incapable of giving his consent or is withholding his consent unreasonably.'

180 See *Re W (An Infant)* (n 178 above) 707–715.

181 *Attorney General for Northern Ireland v Gallagher* [1963] AC 349; *Northern Ireland Hospitals Authority v Whyte* [1963] 1 WLR 88.

182 *IRC v Herdman* [1969] 1 WLR 1919.

183 *Cavanagh v Ulster Weaving Co Ltd* [1960] AC 145; *Bill v Short Bros and Harland Ltd* [1963] NI 7; *Irwin v White, Tomkins and Courage* [1964] 1 WLR 387.

should be read into the fact that of his 11 judgments which were later considered by the House of Lords, five of them were not endorsed. The cases in the three categories just mentioned each deserve separate attention.

Lord MacDermott's views approved over those of the Court of Appeal

The first of the two cases in which the House of Lords endorsed the first instance judgments of Lord MacDermott rather than the judgments of the Court of Appeal is *Attorney General for Northern Ireland v Gallagher*.[184] Lord MacDermott CJ tried Patrick Gallagher in 1961 for the murder of his wife, Rose. Gallagher's defences were that he was either insane at the time or, by reason of the consumption of alcohol, incapable of forming the intent necessary to constitute murder. It was clear, however, that he had formed the intention to kill his wife even before he consumed alcohol on the day in question. (In 1961 Northern Ireland's law did not permit a defendant to plead 'diminished responsibility', a defence which allows the defendant to be found guilty of manslaughter.)[185] Lord MacDermott directed the jury on how to apply the law to the facts and they then found the defendant guilty of murder. In the Court of Criminal Appeal, however, the three judges took the view that Lord MacDermott had misdirected the jury by telling them to consider whether the defendant was insane before he started drinking on the morning of the killing rather than when he carried out the killing. They therefore directed that Gallagher should be acquitted, as they had no power to convict him of manslaughter or to order a retrial.

On appeal by the prosecution to the House of Lords – one of the first criminal cases to reach that court under the new appeal procedures introduced by the Administration of Justice Act 1960 – two issues were considered, each very important. The first was whether, in considering the appeal, the Law Lords were restricted to examining only the specific point of law which had been deemed of sufficient public importance to merit their Lordships' consideration of the case, that is, whether Lord MacDermott had been correct to tell the jury to assess Gallagher's state of mind before he started drinking. Their Lordships held that they were not so restricted: once leave to appeal had been granted they could consider other matters as well (though they suggested that totally irrelevant matters could not be). Here – and this is the second issue considered – the other matter was what kind of order the House of

184 [1963] AC 349.

185 The defence of diminished responsibility was introduced for England and Wales by the Homicide Act 1957 but not in Northern Ireland until the coming into force of the Coroners and Justice Act 2009, s 53, on 1 June 2011.

Lords was able to make having answered the point of law in question. Had they not had that power then whatever decision they came to on the point of law could have no effect on the order issued by the Court of Criminal Appeal – that Gallagher should be acquitted. But the Law Lords unanimously held that the outcome should be that his conviction for murder should be restored.[186] As Lord Goddard pointed out:

> this case affords a striking illustration of what may result from the Court of Criminal Appeal in Northern Ireland, as in England, having no power to order a new trial in an appropriate case. Had it not been possible for the court to certify that a point of law of general importance arose in the case and for this House to hold it was fit for their consideration, a man who had brutally murdered his wife and whom a jury had declined to find was insane would have had to be set at liberty free of any consequence of his crime.[187]

The second of the two cases where the Law Lords favoured Lord MacDermott's position over that of the Court of Appeal is *Northern Ireland Hospitals Authority v Whyte*.[188] At first instance Lord MacDermott had to consider whether, on the construction of his contract of employment, a consultant physician was able to charge fees for the work he carried out in assessing chest and lung X-rays of applicants wanting to join the RUC: there had been a worrying increase in cases of pulmonary tuberculosis amongst RUC officers because many of them lived in barracks in close contact with other officers. His Lordship's conclusion was that this was work which the consultant was obliged to undertake as part of his salaried employment, but the Court of Appeal disagreed (Curran LJ and Sheil J, with Black LJ dissenting). It is unusual for a dispute over the interpretation of a contract to reach the House of Lords but on this occasion leave was granted for a hearing (which lasted three days). The Law Lords held unanimously that Lord MacDermott was right and the Court of Appeal wrong. The assessments conducted were not to ensure that police recruits were fit so much as to prevent the spread of tuberculosis and it was therefore an appropriate task for the Tuberculosis Authority to require a consultant to perform as part of his routine work within hospital and specialist services without any extra pay.

186 See, in particular, the judgment of Lord Reid at [1963] AC 349, 364–368.
187 Ibid 369.
188 [1963] 1 WLR 882.

Lord MacDermott's views in the Court of Appeal approved

On four occasions the views expressed by Lord MacDermott in the Court of Appeal were approved when the cases reached the House of Lords. What is remarkable is that in the first three of those cases it was his dissenting judgments that were approved. They were all cases on an employer's liability towards their employees and they illustrate well the Chief Justice's confidence that juries should be left to make up their own minds on whether, on the particular facts of the case, there had been negligence on the part of the employer. (It should be noted that civil juries remained in use in Northern Ireland for negligence cases for much longer than in England and Wales. They did not stop being used until the mid-1980s.)

In *Cavanagh v Ulster Weaving Co Ltd* a civil jury, directed on the law by Black LJ, held the defendant company was liable for negligence when one of its employees fell from a roof because he had been supplied with rubber boots which, when wet, were slippery. On appeal the Court of Appeal (Curran LJ and Sheil J in the majority, Lord MacDermott CJ dissenting) held that the employer should not be liable because the 'set up' in question was in line with custom and practice in that line of work. The House of Lords, however, restored the verdict of the jury.[189] In doing so they pointed out that the majority in the Court of Appeal had fallen into the error of treating evidence of custom and practice as virtually conclusive, entitling them to say that the case should have been withdrawn from the jury. Instead, said the Law Lords, Lord MacDermott's statement of the law was more accurate. He had, after all, been a member of the House of Lords bench which had decided *Paris v Stepney Borough Council* almost a decade earlier, a case where a worker succeeded in proving negligence even though standard practice had been adopted by the employer, the crucial point being that he was a particularly vulnerable individual who had already lost the sight of one eye and not enough care had been taken to protect that particular person from further injury.[190]

In *Bill v Short Bros and Harland Ltd* the plaintiff was a worker who tripped over an airhose on the floor of his workplace. Sheil J withdrew the case from the civil jury when evidence was produced that the plaintiff could have avoided the accident himself. In the Court of Appeal both Black LJ and Curran LJ upheld the trial judge's decision but Lord MacDermott was of the view that the decision on whether there had been negligence on the part of the employer should have been left to

189 [1960] AC 145.
190 [1951] AC 367. See too p 223 above.

the jury.[191] The Law Lords unanimously agreed with him, saying that, while it is for the trial judge to say whether there is evidence that the employer might have been negligent, if there is such evidence the judge should then leave it to the jury to decide whether it is enough to hold the employer liable. Just because there may also have been evidence of the employee's contributory negligence does not mean that the case should be taken away from the jury.[192]

In *Irwin v White, Tomkins and Courage* a civil jury had found an employer to be liable even though the employee had been killed by part of a machine which, while itself operational, was not yet connected to another part of the machine to make the whole machine operational; moreover there was no explanation for why Mr Irwin was in a certain position at the time of the accident. The Court of Appeal (Curran LJ and Sheil J, Lord MacDermott CJ dissenting) overturned the jury's decision but again the House of Lords unanimously reversed the Court of Appeal, preferring Lord MacDermott's approach.[193] They concluded that the high threshold for an appeal court overturning a jury's decision had not been reached and that it was reasonable for the jury to assume that Mr Irwin had got into the position in which he was found because he had accidentally slipped.

The Court of Appeal case in which Lord MacDermott's *concurring* judgment was approved by the House of Lords was *IRC v Herdman*, a rare appeal from Northern Ireland in a taxation case. As part of the Court of Appeal Lord MacDermott CJ allowed an appeal by the controlling shareholder of Herdman's Ltd on a case stated by the Commissioners for the Special Purposes of the Income Tax Acts. The dispute turned on whether income received by Mr Herdman in the Republic of Ireland from the company he controlled in Northern Ireland should be liable to tax within the UK. On the interpretation of the relevant statutory provision[194] the Court of Appeal, reversing the Commissioners' decision, concluded that no tax was payable on that income[195] and the House of Lords endorsed that conclusion.[196] Lord Wilberforce summed up their Lordships' position thus:

> The reasoning of the learned Lord Chief Justice seems to me unanswerable. Since I see no prospect of improving upon the language he has used, it is sufficient to express my entire concurrence with it.[197]

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191 [1963] NI 1.
192 Ibid.
193 [1964] 1 WLR 387.
194 Income Tax Act 1952, s 412(1).
195 [1968] NI 74.
196 [1969] 1 WLR 1919.
197 Ibid 328.

Lord MacDermott's views in the Court of Appeal not approved

As previously stated, there were five occasions on which Lord MacDermott's views as a Court of Appeal judge were *not* endorsed by the House. One of them is unreported,[198] but the other four each require a mention. First, In *Belfast Corporation v OD Cars Ltd* Lord MacDermott CJ and Black LJ had held that a company was entitled to compensation under the Planning (Interim Development) Act (NI) 1944 because its planning application had been rejected by the Corporation, but the House of Lords unanimously held that the right to use property in a particular way is not itself 'property' and that therefore the restrictions imposed by the Planning Acts did not contravene the statutory provision which banned the Parliament of Northern Ireland from allowing the taking of property without compensation.[199] There was clearly some unease on the part of the Law Lords at differing from Lord MacDermott, expressed most diplomatically by Lord Radcliffe:

> It is no disrespect to the learning and weight of the judgment of the Lord Chief Justice in the Court of Appeal in Northern Ireland if I say that my principal reason for disagreeing with his conclusion is that I do not believe that the present case raises the issues that he has dealt with quite in the form in which he considers them.[200]

Second, in *McClelland v Northern Ireland General Health Services Board*, in which MacDermott LCJ had supposedly 'overborne' his colleague Black LJ to get his agreement to hold that the Board was free to dismiss Mrs McClelland because she was getting married (Porter LJ dissenting),[201] the House of Lords held by three to two that such a conclusion was unjustified.[202] The majority interpreted the terms of the employment contract in question as precluding the implication of any implied right to dismiss a female officer who was getting married. Lord MacDermott, on the other hand, had decided that there was no implied term to the effect that the Board could *not* dismiss someone

198 *Smyth v Cameron* (1959), referred to in *Final Appeal* (n 67 above) where, at 229, Blom-Cooper and Drewry suggest that the case was given leave to appeal on the strength of the dissenting judgment of Lord MacDermott in the Court of Appeal. The case concerned the reasonableness of a civil jury's verdict that a 'master' (whom we would today call an employer) was not guilty of negligence causing damage to his 'servant' (employee), but the appeal was unsuccessful: ibid 387 and 460.

199 [1960] AC 490. The ban was imposed by the Government of Ireland Act 1920, s 5(1).

200 Ibid 522.

201 [1956] NI 127.

202 [1957] 1 WLR 594. The story of this case is told in Jones (n 63 above) 69–70. Sir Edward Jones was the senior counsel representing Mrs McClelland.

for that reason. Sadly, the House of Lords decision did not mean that employers could not *expressly* impose a marriage ban in employment contracts. That injustice was removed only when the Sex Discrimination (NI) Order 1976 came into effect.

Third, in *Scottish Cooperative Wholesale Society Ltd v Ulster Farmers' Mart Co Ltd*, the issue was whether the actions of the Society in setting up an abattoir in Enniskillen and a scheme for the sale and disposal of live pigs and carcasses was a 'disturbance' of the existing market rights of the Farmers' Mart (which derived from letters patent issued by King James I in the early 1600s). Lord MacDermott, together with Black LJ and Sheil J, held that it was,[203] but the House of Lords unanimously disagreed.[204] They said that Lord MacDermott had stated the correct legal principles but that he had erred in the way he applied them: he had concluded that a 'disturbance' was caused by the fact that contracts for the sale of live pigs had been made on the Society's premises, when, in the Law Lords' view, the contracts had in fact already been concluded by the time the pigs were brought to the premises. The case raised the interesting question of what kind of commercial conduct should constitute an actionable tort in the eyes of the law: when should a commercial competitor be liable to an existing enterprise for damage caused to the latter by the establishment of a rival business? Another interesting feature of this case is that one of the barristers representing the successful appellants was none other than Lord MacDermott's son, John. As mentioned earlier, in those days it was not deemed inappropriate that one of the lawyers in a case should be a close relative of one of the judges.[205]

Fourth, and finally, Lord MacDermott's views were not accepted in the constitutionally important case of *McEldowney v Forde*,[206] although the Law Lords were split three to two on the matter. The case illustrates well, we think, Lord MacDermott's approach to 'the rule of law', even if that phrase is not explicitly used by him in his judgment, nor in those of the two Law Lords who agreed with him.[207] The question at issue was whether the Minister for Home Affairs in Northern Ireland had the power, by a regulation he made in 1967, to add 'republican clubs and any like organisation howsoever described' to the list of organisations that were unlawful in Northern Ireland. The answer depended on whether such a regulation was 'making further provision for the preservation of peace and maintenance of order',

203 [1958] NI 78.

204 [1960] AC 63.

205 See too n 118 above.

206 [1971] AC 632. The case is often referred to as 'the Republican Clubs case'.

207 But just four years after delivering his judgment in *McEldowney v Forde*, Lord MacDermott, then retired from the judiciary, devoted the first of the MacDermott Lecture series to 'The decline in the rule of law': see below at n 231.

as required by section 1(3) of the Civil Authorities (Special Powers) Acts (NI) 1922–1943. In the Court of Appeal McVeigh and Curran LJJ held that it was, but Lord MacDermott dissented.[208] On appeal to the House of Lords, Lords Hodson, Guest and Pearson agreed with McVeigh and Curran LJJ, while Lords Pearce and Diplock agreed with Lord MacDermott, so the appeal was dismissed. Lord MacDermott's apparently more liberal stance was based on the argument that the regulation in question was far too vague and wide to be embraced by the enabling legislation. He maintained that the phrase 'any like organisation howsoever described' made the regulation even vaguer. The two dissenting judges in the House of Lords were of the same view.

McEldowney v Forde is one of those cases about which lawyers can argue interminably. When the Court of Appeal's decision was announced it was subjected to rigorous scrutiny by the editor of the *Northern Ireland Legal Quarterly*, Professor Harry Calvert.[209] He did not agree with every part of Lord MacDermott's judgment but he certainly agreed with its conclusion. He called the regulation in question 'utterly ludicrous' and went on to say that 'the qualities of the 1967 regulation highlighted by Lord MacDermott CJ in his dissenting judgment render the regulation indubitably offensive in some respects'.[210] It is safe to say, however, that in this context Lord MacDermott was on the right side of history. Today it is almost unthinkable that such a wide-ranging regulation, even when issued against the kind of background that obtained in Northern Ireland in 1967, would be considered lawful by the courts. Judges have become much stricter in the way they scrutinise executive powers.

THE LECTURER

No appraisal of Lord MacDermott's legal life would be complete without attention being given to his extra-judicial legal work. This took the form of, first, contributions to the academic study of law and, second, reports that he compiled on improvements to the administration of the law. This section of the article deals with the former and its next section will deal with the latter. Lord MacDermott's most notable academic contributions include his Hamlyn Lectures of 1957, entitled *Protection from Power under English Law*,[211] his address as President of the Holdsworth Club in Birmingham entitled 'Murder in 1963', his Bentham Club lecture in 1968 on 'The interrogation of suspects in

208 [1970] NI 11.

209 Harry Calvert, 'Special powers extraordinary' (1969) 20 Northern Ireland Legal Quarterly 1.

210 Ibid 16.

211 MacDermott, *Protection from Power* (n 155 above).

custody',[212] and his address in 1972 which inaugurated the annual lecture series named in his honour, his chosen topic being 'The decline of the rule of law'.[213] We shall consider each of these academic works in turn and then briefly consider his other academic writings.

The Hamlyn Lectures

The Hamlyn Lectures series began in 1949 as a result of arrangements made under the Hamlyn Trust. Emma Hamlyn was the daughter of a solicitor in Devon. While she never practised law herself she took a keen interest in its study and left a fund of money in her will for a series of annual lectures. They are delivered by a highly esteemed judge, legal practitioner or academic and are usually given as a series of three talks, later written up into book form. Lord MacDermott's lectures were the ninth in the series and remain the only Hamlyn Lectures delivered by someone with a close connection to Northern Ireland. His choice of topic indicates his concern for the ordinary citizen:

> What I am principally concerned with are those concentrations or regions of power which, by their weight or their nature, conduce to the oppression of the individual. How and to what extent does the law react towards power of that order? How far does it succour those upon whom such power bears? Is it the law's function to keep a fair balance between those who have and those who are subject to such power? And, if so, does the law discharge that function?

He then proceeds to closely examine six different examples of the exercise of power, three in the public realm – the power of prosecution authorities, the power of Parliament and the power of the government – and three in the private – the power of wealth and status, the power of monopolies and restrictive associations and the power of 'numbers' (where he talks mainly about the power of trade unions).

This is not the place to engage in detail with Lord MacDermott's arguments but three general points are worth stressing. First, as was observed in a review of the lectures by a prominent French jurist, the lectures cover a surprisingly wide range of topics and illustrate clearly how a common law system is able to arrive at concrete solutions to difficult legal problems, often without the need for resort to legislation.[214] Second, and this was a matter stressed in a longer,

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212 John Clarke MacDermott, 'The interrogation of suspects in custody' (1968) 21 Current Legal Problems 1–22.

213 John Clarke MacDermott, 'The decline of the rule of law' (1972) 23 Northern Ireland Legal Quarterly 475–496. See too n 207.

214 Denis Levy, 'Book review' (1964) 16(1) Revue internationale de droit comparé 253–254. He said that he could not recommend the lectures too highly to lawyers from outside the common law world.

anonymous, review of the lectures in a leading English legal journal,[215] Lord MacDermott foresees the need for greater judicial control over legislative and executive power. At one point he advocates for the establishment of an Administrative Council:

> composed of a number of distinguished administrators and experienced lawyers, to which an executive department could, at the discretion of its Minister, refer an administrative problem, involving the rights, welfare or livelihood of the subject, for guidance or decision.[216]

No such council was established, but Lord MacDermott did live long enough to witness the early blossoming of judicial review applications throughout the UK, a development which he no doubt heartily approved of.

A third feature of these lectures is the frankness and pragmatism they display. It is easy to detect that before he was a judge Lord MacDermott was a politician. In that role he had to operate not just within the cauldron of Northern Ireland's politics, which even in the 1930s and 1940s were highly sectarianised, but also in the context of the Second World War. For those who did not live through the 1940s and 1950s it is difficult to comprehend the impact which the struggle against Nazism must have had on those in positions of responsibility in the UK. In the case of Lord MacDermott it seems to have marked him deeply. He would have been more aware than most, having served as Minister of Public Security and then as Attorney General, that it is all too easy for a state to slip into bad habits when seeking to defeat a ruthless enemy. He seems to have been very conscious of the need to fight oppression by methods that do not sink to those which are resorted to by the oppressors themselves. As he puts it in the conclusion to his Hamlyn Lectures, 'the proper measure of protection necessitates the holding of a just balance between power and liberty'.[217]

The Holdsworth Club Address

Lord MacDermott's Holdsworth Club Lecture, 'Murder in 1963', is an incisive critique of the then state of the law of murder in England and Wales. The lecture was given on 8 March 1963 during his presidency of what is still possibly the UK's best known student law society, that of the University of Birmingham. It has been in existence since 1928 and Lord MacDermott was its President in 1962–1963. The lecture is a startling one in that it is an example of a very senior serving judge intruding into a particularly important area of the law in order to make suggestions as to how the law should be amended by specific legislation

215 'C' (1958) 21 Modern Law Review 569–573.

216 MacDermott, *Protection from Power* (n 155 above) 78.

217 Ibid 195.

which the judge attempts to draft. He does so, first, in relation to the *mens rea* ('guilty mind') required for the crime of murder: he joins critics of the objective test adopted by the House of Lords in *Director of Public Prosecutions v Smith*[218] and instead favours introducing a more subjective element, whereby a person is not guilty of murder if the jury decides not to infer that they intended the natural and probable consequences of their conduct. It is difficult to assert that Lord MacDermott's draft clause directly prompted a change in the law, but just four years later, through section 8 of the Criminal Justice Act 1967, Parliament provided as follows:

> A court or jury, in determining whether a person has committed an offence
>
> (a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions; but
>
> (b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.[219]

This provision is still in place for England and Wales, but there has been a lot of additional case law on what it means in practice and on where the courts should draw the boundary line between murder and manslaughter.[220] It is safe to assume that Lord MacDermott would have been content that serious thought continues to be given to how to make this area of law more certain and effective.

The second aspect of the law on murder addressed by the Baron in his Holdsworth Lecture is the one relating to the mental condition of the accused. He points out some deficiencies in the common law's so-called M'Naghten rules on the topic, and also in section 2 of the Homicide Act 1957, which (except in Northern Ireland)[221] allowed for a charge of murder to be reduced to manslaughter if the accused is suffering from 'diminished responsibility'. To address these deficiencies Lord MacDermott drafted four clauses, one of which has four sub-clauses.[222] There is not the space to explain his proposals in detail here, but his goal was obviously to rationalise the law in what is a difficult area. There was no immediate legislative reaction to his proposals and, although there have been subsequent developments in the field, his suggestion that if a person is to be exonerated from

218 [1961] AC 290.

219 For Northern Ireland see the Criminal Justice Act (NI) 1966, s 4.

220 See eg Jonathan Herring, *Criminal Law: Text, Cases, and Materials* 10th edn (Oxford, Oxford University Press 2022) 129–135.

221 A separate provision was made for Northern Ireland in the Criminal Justice Act (NI) 1966, s 5.

222 Holdsworth Lecture, 'Murder in 1963' (1963) 22–24.

murder on grounds of insanity the insanity would need to be proved beyond reasonable doubt rather than on the balance of probabilities has certainly not been endorsed. However, the most recent amendments to the law on impaired mental responsibility in cases of homicide do go some way to recognising the concerns which Lord MacDermott had with the law as it stood in his time.[223]

Lord MacDermott's third focus in his Holdsworth Lecture is on whether the categories of 'capital murder' should be expanded. Five such categories were listed in the Homicide Act 1957 and he suggests that three further categories should be added, such as 'any murder done for the purpose of destroying evidence of the commission of any offence'. But the concept of capital murder was removed from English law when capital punishment was abolished in 1965,[224] so the extent of its reach is no longer an issue. Capital punishment was abolished in Northern Ireland in 1973.[225] A report from the Law Commission of England and Wales in 2006 called for a distinction to be made between first degree murder and second degree murder,[226] as is common in the United States and some other countries, but the idea has not been taken up by Parliament.

The Bentham Club Address

The topic chosen for this lecture was one with which Lord MacDermott had already had to grapple on many occasions as a judge. In 'The interrogation of suspects in custody' he refers frequently to the man after whom the Club he was presiding over for a year was named, Jeremy Bentham, a political philosopher who was notoriously suspicious of lawyers and judges. The first three sections of the lecture take us on an historical tour of the development of three important legal topics – the right of suspects not to incriminate themselves when being questioned by the police, the inadmissibility in evidence of a suspect's confession unless it was given voluntarily and in the absence of oppression, and the judges' discretion to exclude evidence that has been obtained unfairly. He then explains the origins and development of 'the Judges' Rules', first set out in 1912 and then added to in 1918. They were superseded (although not in Northern Ireland) by a further set of Judges' Rules issued in 1964.

Lord MacDermott criticises the Judges' Rules for being too general and leaving too much to the interpretation of the police. He actually declares that he prefers the Scottish approach to police interrogation:

223 See the Criminal Justice Act (NI) 1966, s 5(1), inserted by the Coroners and Justice Act 2009, s 53(1).

224 By the Murder (Abolition of Death Penalty) Act 1965.

225 By the Northern Ireland (Emergency Provisions) Act 1973, s 1.

226 *Murder, Manslaughter and Infanticide Report* (LC 304 2006).

'have each case decided on its own facts and in the light of the applicable principles'.[227] He suggests that the Government should issue instructions to the police setting out those principles:

> The instructions should ... forbid any treatment of a suspect in any kind of custody which would savour of oppression, of threats or promises, or of anything in the nature of 'grilling' or cross-examination. This conclusion seems to me on balance to favour the administration of criminal justice rather than the contrary. It would make for fairness; it would protect the reputation of the police; and it would not be altogether lost in its effect on the criminal classes.[228]

Lord MacDermott adds that in certain cases the police should be allowed to detain a suspect for examination before a magistrate (a system that is common in civil law countries), though not under caution and before being charged. He even thinks that senior police officers could be sworn in as justices in districts where it is difficult to obtain the services of a trained magistrate.[229] These proposals were made because of the 'tide of crime' which he thought the country was witnessing at that time (little did he know what the future held).[230]

Clearly, Lord MacDermott had a deep desire to ensure that suspects were treated fairly while being questioned by the police. He was more than 15 years ahead of his time in terms of making definite recommendations for change. It is likely that he would have been very pleased with the rules and codes of practice that were eventually put in place in England and Wales in this area by the Police and Criminal Evidence Act 1984, and in Northern Ireland by the Police and Criminal Evidence (NI) Order 1989.

The MacDermott Lecture

The inaugural lecture in the MacDermott Lecture series was, appropriately, given by the man himself. He was asked to speak on a topic of his own choosing, and he chose 'The decline of the rule of law'.[231] The theme is close to that adopted for his Hamlyn Lectures[232] and it has been much written about by subsequent judges, most notably

227 See MacDermott, 'The interrogation of suspects' (n 212 above) 16. See too 19.
228 Ibid 20.
229 Ibid 21.
230 Lord MacDermott's proposals were cited with some approval by Alec Samuels in 'Interrogation of the suspect' (1972) 23 Northern Ireland Legal Quarterly 393.
231 See MacDermott, 'The decline' (n 213 above). See also the text at nn 253 and 254 below.
232 In fact he quotes from his Hamlyn Lectures: ibid 479.

Lord Bingham.[233] Lord MacDermott was clearly worried that adherence to the rule of law was slipping. He provides evidence for that and then makes various suggestions as to how the decline could be halted, including in Northern Ireland. It should be remembered that he was speaking at Queen's University Belfast in 1972, the worst year of the Troubles, during which 470 people were killed and 4,876 were injured.

However, Lord MacDermott's main evidence for a decline in the rule of law was a rise in criminality. He points out that between 1961 and 1971 the number of indictable offences known to the police in the UK rose by more than 100 per cent – from 924,250 to 1,857,632. His comments on this are probably typical of his time, though they may jar with present day sentiments:

> [T]he specific causes of this malignant disease remain difficult to ascertain and isolate, and remedial measures may have to take various forms. It is to be remarked, moreover, that it has spread during a period of affluence and of educational facilities available on a greater scale than ever before. Poverty and ignorance would not, therefore, appear to be major contributory factors; but it seems likely that at any rate a partial explanation of the phenomenon is to be found in a loss of moral values in an increasingly permissive society, the break up of family life and a lack of national purpose. Yet, whatever the causes, there can be little doubt that the general attitude to the law and law breaking has altered for many. I remember when to be 'summoned' by the police was widely regarded as a family disgrace. Now it is different and repentance is often more related to the error of being caught than to the commission of the offence. The idea that the law is the bond of the community and that the community suffers when it is broken seems to be on the way out.[234]

Lord MacDermott found further evidence for a decline in the rule of law in the industrial action being taken by trade unions (he talks again about the difficulty with 'numbers', as he did in his Hamlyn Lectures) but he also calls out the British state for its tolerance of the infamous 'five techniques' used during 'in depth' interrogation of criminal suspects in Northern Ireland (these were hooding, wall-standing, continuous loud noise, reduced diet and lack of sleep).[235] He then made one of his most controversial statements, claiming that the physical mistreatment of detainees:

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233 See Tom Bingham, *The Rule of Law* (London, Penguin 2011). This won the Orwell Prize for Political Book of the Year in 2011. See too Sir Robert Carswell, 'Human rights and the rule of law' (1999) 6 Journal of Clinical Forensic Medicine 249. On 20 November 2002 Sir Robert delivered a lecture at the University of Cambridge on the same theme entitled 'The breastplate of judgment: human rights in the House of Lords'.

234 See MacDermott, 'The decline' (n 213 above) 485.

235 Ibid 486–488. The abuses had been called out by the 'Report of the Enquiry into Allegations against the Security Forces of Physical Brutality in Northern Ireland Arising out of Events on the 9th August, 1971', chaired by Sir Edmund Compton (Cmnd 4823 1971).

> not only slighted the Rule [of Law], but it did perhaps more than anything else to bring the policy of internment into disrepute. Repugnant though it is, there is a place, compatible with the Rule of Law, for internment, as an instrument of almost last resort, which is authorised by Parliament in times of emergency. But the methods I have described are no part of statutory internment and their use serves to show how the Rule may suffer at the hands of authority.[236]

This is not a publication in which to argue the pros and cons of internment but it is perhaps safe to say that on this matter Lord MacDermott was on the wrong side of history. Internment continued for more than four years and nearly all academic commentators, whether contemporary or subsequent, legally informed or not, are of the view that the policy set back a resolution of the conflict in Northern Ireland by many years.[237] Of course, we do not know the answer to the counter-factual question: would the level of violence have been even worse if internment had not been used?

Lord MacDermott ends his inaugural lecture by mentioning some ideas for halting the slide in the rule of law. The first two of these are a call for '[a]n all-round effort to restore the moral standards of the nation' and promulgation of the rule of law 'through the medium of a general education'. He added that government should take preservation of the rule of law more seriously, particularly in Northern Ireland where, as he also observed in his contemporaneous *Juridical Review* article,[238] more needed to be done to clarify and strengthen emergency legislation, the law on explosives and firearms, powers of arrest and the use of force relating to the prevention of crime, the capture of criminals and the restoration of order. In particular he called for it to be an offence to go about masked or otherwise disguised, irrespective of whether any malevolent intent could be proved. He seemed to be hoping that the armed forces would be given greater powers to deal with the disorder in Northern Ireland but was careful to add that:

> the degree and extent of the executive's power of control and direction cannot be left at large, and the history and nature of the Rule of Law call for a careful approach to this problem with the powers of the executive reasonably defined and openly declared.[239]

His final thought was that the rule of law:

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236 See MacDermott, 'The decline' (n 213 above) 488.

237 See eg Tom Hadden, Kevin Boyle and Paddy Hillyard, *Law and State: The Case of Northern Ireland* (London, Martin Robertson 1974) 75–77; Gerard Hogan and Clive Walker, *Political Violence and the Law in Ireland* (Manchester, Manchester University Press 1989) 86–100; David McKittrick and David McVea, *Making Sense of the Troubles* (Belfast, Blackstaff Press 2000) 67–75.

238 John Clarke MacDermott, 'Law and order in times of emergency' (1972) Juridical Review 1 (see text at n 250 below).

239 See MacDermott, 'The decline' (n 213 above) 493.

> … does not tell us how to engender brotherly love afresh but that a way of getting to that point some day would be to open all of Northern Ireland's schools to the children of all religions … [I]t would in time substitute friendship and respect for hate and suspicion.[240]

Alas, this early call for universally accessible integrated education in Northern Ireland went unheard. Half a century later, in the academic year 2024–2025, only 8 per cent of children in Northern Ireland were benefiting from that type of learning environment.[241]

Fifty years after Lord MacDermott inaugurated the annual lecture series which continues under his name to this day, a Special Issue of the *Northern Ireland Legal Quarterly* collated and reproduced some of the subsequent lectures that had been included in that learned journal between 1998 and 2022.[242] In their editorial introduction to the Special Issue, Professors David Capper, Heather Conway and Mark Flear summarised its contents as follows:

> In this supplementary special issue we bring together, for the first time, lectures published in these pages from 1998–2022. Contributions are, fittingly for such a prestigious lecture series, by world-leading and renowned commentators. With just two exceptions, Twining, Professor of Law at University College London, whose lecture was in 1998, and Beloff, King's Counsel, whose lecture was in 2014 (although at the time of speaking – and writing in these pages – he was, of course, Queen's Counsel), most contributors serve(d) as judges (or equivalent). These contributions comprise (in (chronological) order of publication): Goldstone, writing in 1999 as Justice of the Constitutional Court of South Africa; Sedley, writing in 2001 as Lord Justice of Appeal, Judge *ad hoc* of the European Court of Human Rights and a Member *ad hoc* of the Judicial Committee of the Privy Council; McLachlin, writing in 2003 as Chief Justice of Canada; Higgins, writing in 2008 as President of the International Court of Justice; Hogan, writing in 2021 as Advocate General of the European Court of Justice (and who is now Judge of the Supreme Court of Ireland); and O'Leary, writing in 2022 as Vice-President of the European Court of Human Rights (and who is now President of that court).
>
> Beyond the following, we largely let the contributions speak for themselves. Indeed, the range of contributions themselves clearly underscores the MacDermott Lecture series as an immensely valuable and much-needed vehicle for the exchange of often fresh and provocative thinking between leading lights of the judiciary, bar and academy, and a deeply engaged audience at Queen's University Belfast. That audience includes legal academicians, members of the judiciary of Northern Ireland, and representatives from the legal professions and across wider society. We hope that you, the reader, find the individual lectures

240 Ibid 496.

241 See 'School Census Key Statistics 2024–25' (Department of Education).

242 See (2022) 73(S1) Northern Ireland Legal Quarterly.

> interesting and original contributions that push forward discourse around the law, as well as providing engaging and enjoyable reads.
>
> Most importantly, we hope you share our view that the contributions are a fitting testament to the life and work of Lord MacDermott, a towering figure in the legal history of Northern Ireland, the island of Ireland, and indeed these islands. We are proud to take the opportunity presented by the 50th Anniversary of the Lecture Series to honour Lord MacDermott's contribution and legacy in the pages of this journal.[243]

Other academic writings

'Law and practice in Northern Ireland' is the title of a talk given by Lord MacDermott at University College London on 20 February 1953.[244] It is an erudite account of the differences between the laws and legal system of Northern Ireland and those of England and Wales. He ranges across land law, equity, contract and tort, criminal law and statute law. On the last topic he refers to the case law governing the legislative competence of the Northern Ireland Parliament.[245] He then describes the court system in Northern Ireland, pointing out that the county courts still make use of the simplified 'civil bill' procedure and that nine out of 10 civil suits in the High Court are heard with a jury. The latter feature has long since disappeared, but civil bills continue in use. The informative and scholarly lecture ends with a consideration of the legal professions in Northern Ireland, where he stresses that barristers work out of a library, not chambers, and that they do not make use of clerks to negotiate their fees.

A year later Lord MacDermott chose to focus on two particular aspects of the legal system of Northern Ireland when he gave a lecture to the Society of Public Teachers of Law.[246] As is still relatively common in academic circles, research conducted for one lecture can often be remined for a future lecture on a related theme. In 'The Supreme Court of Northern Ireland – two unusual jurisdictions' the Baron talked in more detail about, first, 'the constitutional jurisdiction' of the higher courts in Northern Ireland and, second, the civil bill procedure within the county courts.

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243 David Capper, Heather Conway and Mark Flear, 'Celebrating the 50th Anniversary of the MacDermott Lecture Series at Queen's University Belfast' (2022) 73(S1) Northern Ireland Legal Quarterly i, ii.

244 John Clarke MacDermott, 'Law and practice in Northern Ireland'(1953) 10 Northern Ireland Legal Quarterly 47.

245 Especially *In Re a Reference under the Government of Ireland Act 1920* [1936] AC 352 (Privy Council) and *Gallagher v Lynn* [1937] AC 863 (House of Lords).

246 John Clarke MacDermott, 'The Supreme Court of Northern Ireland – two unusual jurisdictions' (1954) 2 Journal of the SPTL (new series) 201.

With regard to the former, Lord MacDermott focuses on the higher courts' power to consider whether an Act of the Northern Ireland Parliament, or some action of the Northern Ireland Government, is consistent with the provisions of the Government of Ireland Act 1920. He looks in particular at the wording of section 5(1) of the Act:

> In the exercise of their power to make laws under this Act neither the Parliament of Southern Ireland nor the Parliament of Northern Ireland shall make a law so as either directly or indirectly to establish or endow any religion, ... or take any property without compensation.

Any law made in contravention of section 5(1) was declared by section 5(2) to be void and any existing legislation disadvantaging someone on account of religious belief 'ceased to have effect'. Lord MacDermott analyses case law on when a law can be said to have 'directly or indirectly' done something. He explains, as well, why he chose in *Ulster Transport Authority v James Brown & Sons Ltd* to give a broad interpretation of the word 'take' in the last line of section 5(1).[247] He noted, in a tone which resonates with more modern controversies over the status of 'constitutional' legislation, that 'the exercise of this constitutional jurisdiction does not, so far as I have been able to discern, necessitate any radical departure from the ordinary canons of statutory interpretation'.[248]

On civil bills he tracks their history since the thirteenth century and sets out their practical advantages: 'The absence of pleadings has, in particular, proved advantageous. It keeps down costs, saves delay and I believe it also makes for an expeditious trial.'[249]

Lord MacDermott's 'Law and order in times of emergency', delivered at the University of Dundee on 4 February 1972, just five days after Bloody Sunday (which he does not expressly allude to but which would certainly have been in his mind and in that of each member of his audience too), addresses some of the issues he looked at in his eponymous lecture later that same year, which we have already summarised.[250] He bemoaned the rise in crime and intimated that in the criminal justice process 'the scales of justice are weighed too heavily on the side of the modern offender'.[251] He favoured the abolition of repeated cautioning and other formal requirements such as those contained in the Judges' Rules and he was now of the view that the accused should be made 'a compellable witness in his own defence'

247 [1953] NI 79.

248 MacDermott, 'The Supreme Court of Northern Ireland' (n 246 above) 208. This seems to chime with what the Supreme Court said more than 60 years later in *In re Agricultural Sector (Wales) Bill* [2014] UKSC 43, [2014] 1 WLR 2622.

249 MacDermott, 'The Supreme Court of NI' (n 246 above) 208, 211.

250 MacDermott, 'Law and order' (n 238 above).

251 Ibid 5.

once the prosecution has made a *prima facie* case, though he did continue to insist that confessions should be inadmissible if they were not truly voluntary or if they were made as a result of oppressive or unfair treatment and he wanted judges to retain a discretion to excuse an accused from having to give evidence if this was just and fair.[252] He felt that such reforms would lead to fewer pleas of 'not guilty' in cases where there was no real answer to the charge.

Lord MacDermott went on to explain that he thought the law on what constitutes reasonable force by the police (or army) should be clarified. Somewhat surprisingly, he also lamented the fact that the immunity provided to law enforcers under the Riot Act 1787, even for the killing of rioters, had been repealed by the Criminal Law Act (NI) 1967 and he went on:

> if the legislature could devise a way of according a similar immunity to those who may hereafter have to bear the burden of restoring law and order, it would, I think, conduce to vigorous action where that is needed, and be commonly regarded as a reasonable safeguard for those whose thankless task it is to keep the peace in times of tumult and disturbance.[253]

In his consideration of how to deal with 'organised subversion' the Baron considers the practice of internment. He notes that it was introduced in Northern Ireland on 9 August 1971 and says: 'The decision to apply it has been the subject of much bitter controversy into which I cannot enter.'[254] But later he states:

> On balance, and speaking generally, my conclusion is that internment is capable of affording the public a degree of protection which, in the course of a serious emergency, it might not otherwise get; and that no case has yet been shown for abandoning it altogether as a means of restoring order.[255]

He thought the current statutory regime concerning internment should be replaced by a clearer and more up-to-date instrument, one that accorded better with the European Convention on Human Rights. Moreover, as was the case in his lecture at Queen's University some months later,[256] Lord MacDermott was resolute in agreeing with the Compton Committee's finding that the 'five techniques' used by security forces when questioning detainees in Northern Ireland amounted to ill-treatment. As he put it:

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252 Ibid.
253 Ibid 11.
254 Ibid 12.
255 Ibid 15.
256 See the text at n 231 *et seq* above.

> I would conclude that the interrogation of suspects in times of emergency cannot, as the law now stands, be lawfully aided by methods producing mental or physical stress amounting to ill-treatment or ill-usage.[257]

Two further unpublished papers

Reference was made earlier in this article to an unpublished piece by Lord MacDermott which we came across in the papers preserved by his family.[258] We found two other unpublished pieces within those papers.

The first was the handwritten transcript of a talk entitled 'The law is alive', a title which is written below an earlier one that has been struck through and appears to read 'The leaven of the law' (the Baron's handwriting was notoriously difficult to decipher). It is dated 14 January 1947, when he was still a judge of the High Court,[259] and is the text of a talk delivered to trainee solicitors in Northern Ireland.[260] In it he encourages the trainees to commit to their profession by stressing to them how relevant and interesting the law can be as it moves with the times:

> How can we come to realise not only that the law is alive but that its impact on our fellows is such as to demand of all who would follow it the best they can give of mind and character?[261]

He expresses his admiration for authors who have the skill to convey new ideas 'in good and understandable English', citing as a model

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257 MacDermott, 'Law and order' (n 238 above) 20. At this time the Parker Committee was still considering whether the procedures governing the interrogation of persons suspected of terrorism required amendment. In due course it found that, even though some of the techniques employed amounted to criminal assaults, they should continue so long as they had ministerial approval and occurred in the presence of an army officer and a doctor with psychiatric training; the practices also did not amount to humiliating and degrading treatment, cruelty or torture: *Report of the Committee of Privy Counsellors Appointed to Consider Authorised Procedures for the Interrogation of Persons Suspected of Terrorism* (Cmd 4901 March 1972). Lord Gardiner, a former Labour Lord Chancellor from 1964 to 1970, dissented. See, for further commentary, Ian Brownlie, 'Interrogation in depth: the Compton and Parker Reports' (1972) 35 Modern Law Review 501–507. In I*reland v UK* (1979–80) 2 EHRR 25 the European Court of Human Rights ruled that the five techniques did amount to inhuman or degrading treatment, but not to torture.

258 See the text at n 129 above.

259 Rather touchingly, the notebook in which this address is written has a press clipping tucked in at the back taken from the *Belfast News Letter* of 14 April 1947: it celebrates the elevation of Mr Justice MacDermott to the role of Lord of Appeal in Ordinary.

260 John Clarke MacDermott, 'The law is alive' (unpublished paper 1947); at 23 he refers to 'this country' as opposed to England, but at 36 he refers to 'this kingdom'.

261 Ibid 4 (addendum).

Sir James Jeans' well-known work on astrophysics, *The Mysterious Universe* (1930), and he repeatedly emphasises the importance of speaking plainly ('your first objective must be to master the language of the community rather than the language of the profession').[262] He urges the students to read 'the authorised version of the scriptures [which] is still the greatest storehouse of the language',[263] and also older classics, but he refers as well to more modern literature by the likes of Winston Churchill, Arthur Conan Doyle, John Buchan, John Galsworthy and the Northern Ireland novelist Forrest Reid.

The 1947 address is a testament to Lord MacDermott's own approach to judgment-writing: he values clarity and precision above all else, while seeking to avoid jargon or very specialised vocabulary. As an example of 'a masterpiece of lucidity' he cites the judgment of Lord Macnaghten in *Van Grutten v Foxwell*, which concerned the powers of the owner of a freehold estate.[264] He admits that '[s]ometimes one finds a judge at his best when dissenting', giving as instances of this the dissents by Kennedy LJ in the shipping contract case of *Biddle Bros v E Clements Horst Company*[265] and by Lord Atkin in the administrative law case of *Liversidge v Anderson*.[266] As regards the latter, Lord MacDermott strongly implies that he would have agreed with Lord Atkin's lone dissent if he himself had been sitting in the case. He then cites several judgments in Irish cases which in his view again demonstrate that the law is 'alive'.

MacDermott moves on to speak of how important it is for lawyers to be aware of legal history:

> you must realise from the outset that you cannot divorce the political or social or economic history of a people from its laws ... [I]t is not too much to say that the growth of a nation can best be traced in the development of its laws. They are the skeleton to which the flesh and sinews of society cling. If the bones stop growing all that they support is stunted as well.[267]

He proceeds to mention current trends in the law, such as 'a man's right to earn his livelihood depends increasingly on his status as a trade union member rather than on his capacity to contract to perform a particular service'[268] and he illustrates the value of legal history by reminding us of how the modern law of rating can be traced back

262 Ibid 14.
263 Ibid.
264 [1897] AC 658; the doctrine he elaborated was known as the rule in *Shelley's Case* 1 Co Rep 93b (1581).
265 [1911] 1 KB 934.
266 [1942] AC 206.
267 MacDermott, 'The law is alive' (n 260 above) 32–33.
268 Ibid 38.

to the fallout from the dissolution of the monasteries by Henry VIII and the subsequent Elizabethan Poor Law (the Poor Relief Act 1601). Furthermore, he advises students to brighten their study of the law by reading about the lives and times of great lawyers of the past (eg in Baron Campbell's *The Lives of the Lord Chancellors and Keepers of the Great Seal of England*, first published in 1847). He finished his address by reminding his audience that 'a mastery of the facts [in a case] need not discourage the exercise of an intelligent imagination in the work of your profession' and in his final stirring sentence he writes:

> The law will lead you to many duties. In their performance your unprecedented opportunity for service to the community will be great – perhaps greater today than ever. But you may only grasp it as it should be grasped if you have learned that the law is ALIVE.

The second unpublished paper we discovered was entitled 'Simple justice'. It seems to have been written in 1950, as it refers to 'the Legal Aid and Advice Act of last year', to a committee chaired by Sir Raymond Evershed that was currently examining Supreme Court procedure, and to 'the Annual Practice – the White Book – for 1949'.[269] It is an address to the President of a club or society, most of the audience again comprising students 'getting to know the law and taking the first steps to enter the legal profession'.[270] He understandably borrows to some extent from his 1947 address, again alluding to 'the life of the law':

> To meet the never ending changes in the fabric of our life as a community the law must be a live thing, capable of growth, to some degree responsive and accommodating so that its bonds while giving support and control never grow tight enough to choke the society it governs.[271]

Lord MacDermott lauds the goal of simplifying the law, giving as examples of legal fields that would benefit from simplification the law on 'money claims' (sometimes referred to as 'the law of quasi-contract'), defamation and charities. Although he hinted in 'The law is alive' that codifying the law can lead to its stultification,[272] he here boldly calls for the codification of criminal law and (but surely not too seriously?) for a 'bonfire' to be made of old law reports ('say up to 1873'), with a commission being appointed 'to press all the juice out of the old reports ... into a single volume of principles'.[273] Turning to matters of legal practice and procedure, he expresses his support for dispensing

269 John Clarke MacDermott, 'Simple justice' (unpublished paper 1950) 2 and 14. *The Final Report of the Committee on Supreme Court Practice and Procedure* (HMSO Cmd 8878) was published in 1953, but there were three interim reports published in 1949 (Cmnd 7764), 1951 (Cmnd 8176) and 1952 (Cmnd 8617).

270 Ibid 2.

271 Ibid 6.

272 MacDermott, 'The law is alive' (n 260 above) 32–33.

273 MacDermott, 'Simple justice' (n 269 above) 12.

with the wearing of wigs in courtrooms[274] and recounts at some length the story of how the 'civil bill' procedure developed in Northern Ireland and how it had its roots in an English procedure whereby in the fourteenth century the Court of King's Bench was already dealing separately with legal actions begun not by a writ but by a bill.[275] That is a topic which, as we have seen, Lord MacDermott returned to in his lecture at University College London in 1953 and also in his address to the Society of Public Teachers of Law in 1954.

An underlying motif in 'Simple justice' is the notion that, up to a point, judges should be trusted to mould the law in accordance with their perceptions of justice – not in a 'palm-tree justice' way but in accordance with collective judicial expectations:

> For some reason we have still a great repugnance to claims *ex aequo et bono*, founded that is, essentially on what is just and right. To simplify matters by encouraging that sort of claim would, of course, be a great test of the judiciary. But why not try the Judges? Every now and again one gets the expression in a statute or SR&O [a Statutory Rule or Order] 'as the Court shall deem just'. I cannot but think it means that the draftsman has come to the end of his tether. But why not try it – not all the time – but more frequently than at present? I sometimes doubt if we will ever make full use of the high qualities of our judges if we remain reluctant to treat them as *judges of justice* in cases where to do so will not rob the law they administer of the requisite degree of certainty.[276]

In closing his address the Baron says he 'must resist the temptation to dilate on judicial attributes' but he tells his audience that if they want a short summary they can find it in the book of the prophet Micah at chapter 6, verse 8.[277] This reads, in the King James' version of the Bible:

> He hath shewed thee, O man, what is good; and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?

THE REPORT WRITER

During his tenure as Lord Chief Justice of Northern Ireland, Lord MacDermott's workload was not confined to hearing cases and writing judgments. As some of the above commentary has shown, he was also responsible for a range of other tasks which included making recommendations to the Lord Chancellor in respect of senior judicial appointments, allocating cases to his colleagues, and making

274 Ibid 4.
275 Ibid 16–22.
276 Ibid 10.
277 Ibid 23.

administrative decisions essential to the running of the local court system. However, in addition to ensuring the smooth running of that system, it is important to highlight Lord MacDermott's involvement in a significant review of the superior courts' governing legislation, a review which ultimately led to legislative reforms brought about by the Judicature (NI) Act 1978. He was also a member of the Gardiner Committee which made proposals on measures to deal with terrorism in Northern Ireland. However, before outlining Lord MacDermott's involvement in each of those notable projects, we shall begin this section by mentioning the first major report that he was appointed to produce alongside his duties as Lord Chief Justice, in his role as Chairman of the Commission on the Isle of Man Constitution.[278]

Report on the Isle of Man Constitution

On 18 March 1958, the Lieutenant Governor of the Isle of Man, Sir Ambrose Dundas Flux Dundas, appointed Lord MacDermott as the Chairman of a new Commission established 'to enquire into and report upon the Constitution of the Isle of Man and its working, and to make recommendations for any changes that they may consider desirable and practicable'.[279] Lord MacDermott was joined on the Commission by J Chuter Ede, Sir Lionel F Heald, Sir Frederick Armer and Sir Francis Mudie.[280] Together, they spent 12 months working in accordance with the terms of reference quoted above.[281]

The Commission was appointed because of 'certain differences' which had emerged between the various branches of government on the Isle of Man, including in particular the emergence in 1957 of 'a reforming group' in the House of Keys (the House of Keys being the only wholly elected branch of the Government).[282] The Commission itself took the view that those events were underpinned and explained by two broad considerations: firstly, the gathering of momentum towards a more representative form of government on the island, and secondly,

278 We also note, for completeness, that Lord MacDermott took on a further range of non-judicial responsibilities during his lifetime that we do not explore here because we have been unable to discover anything of substance about them, certainly as regards their relevance to the law. For instance, in the posthumous tribute published by Sir Robert Lowry (n 4 above), the following responsibilities are listed: Chairman of the Joint Select Committee on Road and Rail Transport in 1939, Chairman of the National Arbitration Tribunal from 1944 to 1946, Pro-Chancellor of Queen's University Belfast from 1951 to 1969, Chairman of the Northern Ireland Branches of the Multiple Sclerosis Society and Cancer Research Centre, and President of the Boys' Brigade.

279 *Report of the Commission on the Isle of Man Constitution: Volume 1* (14 March 1949). A copy of the Warrant of Appointment is included on p 3 of this volume.

280 Ibid.

281 Ibid. The report of the Commission was published on 14 March 1959.

282 Ibid para 18.

a widening of the island's financial powers at a time of economic uncertainty, which had focused popular attention on the importance of having a constitution which was not only more representative but also as efficient as possible.[283]

Guided by these contextual considerations, the Commission embarked upon an extensive work programme. It visited the Isle of Man both collectively and individually, studied previous reports and other literature, received lengthy written submissions in response to a call published through the 'insular Press', and sat in the Tynwald Court Chamber between 23–26 September 1958 in order to hear evidence from various bodies and persons in public, including some who had submitted written evidence previously, before finally arriving at a unanimous set of recommendations and conclusions.[284]

The 34 recommendations and conclusions of the Commission traverse a range of issues in connection with the composition and operation of the Legislative Council, the House of Keys, the Tynwald Court, the Executive Government and other administrative bodies.[285] Two examples may suffice to illustrate the way in which those recommendations and conclusions sought to meet the concerns which had led to the Commission's creation. Firstly, the Commission recommended an increase in the elected membership of the Legislative Council (such that it would have five elected members and three appointed places).[286] Secondly, the Commission recommended that the Lieutenant Governor's functions relating to the control of finance should be shared by and eventually transferred to a statutory Finance Board (consisting of five members elected by Tynwald).[287]

In 1961, an Act of Tynwald gave legal effect to many of the recommendations made in the report that Lord MacDermott and his fellow Commissioners had diligently devised for official consideration.[288] This much shows that at least some of MacDermott's hopes that those recommendations might be used to further 'the prosperity of the Isle and its people'[289] were widely accepted and taken forward by those in power.

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283 Ibid paras 19–20.

284 Ibid paras 1–4.

285 Ibid. The recommendations and conclusions are summarised in a list at para 99. For an explanation of the Isle of Man's constitutional organs and their history, see Peter Edge, *Manx Public Law* (Isle of Man Law Society 1997) chs 8 and 9.

286 Ibid para 42.

287 Ibid paras 80–86.

288 Isle of Man Constitution Act 1961.

289 Commission Report (n 279 above) para 100.

Report on the Supreme Court of Judicature

Northern Ireland had no standalone Law Commission during Lord MacDermott's tenure as Lord Chief Justice – indeed, Lord MacDermott was reportedly 'lukewarm' about proposals to create a dedicated Northern Ireland Law Commissioner[290] – but the region was occasionally visited by Neil Lawson QC in his capacity as a member of the newly established Law Commission of England and Wales. On one such visit in June 1965, Mr Lawson met with a range of individuals connected to the running of the legal system and prepared a note for the UK Lord Chancellor which recorded the following issue in a list of 'emergent proposals':

> The Government of Northern Ireland and the Lord Chief Justice are extremely anxious that we should include in our first programme the following topic:
>
> 'a modernised Judicature Act for Northern Ireland'
>
> The Supreme Court of Judicature of Northern Ireland is a matter in respect of which the Northern Irish Parliament is prohibited from legislating. The Supreme Court is at present controlled by a multiplicity of statutes, many of them long out of date, the principal among which is the Supreme Court of Judicature (Ireland) Act, 1877. A good deal of work has already been done by various individuals and committees by way of recommendations for reform. The Lord Chief Justice and the Attorney-General both stressed that they regarded a modern Act as an urgent need, and this view was clearly shared by members of the profession of both branches with whom I also had discussions on this matter. I therefore recommend that we should include this subject in our first draft programme.[291]

In a letter addressed to the Lord Chancellor some months later, Lord MacDermott explained that while he had taken a 'close interest' in securing a modernised Judicature Act, and while he had made 'a number of efforts to obtain such a measure', he had 'no official responsibility in relation to the preparation or content' of such an Act.[292] Lord MacDermott concluded, that his role should be 'mainly advisory and

290 Letter from the Attorney General to the Minister of Home Affairs, 9 March 1965, Public Record Office of Northern Ireland, CAB/9B/241/2A. For a wider account of the relevant landscape, see Neil Faris, 'Fifty years of law reform – a note on the Northern Ireland style' in Matthew Dyson, James Lee and Shona Wilson Stark (eds), *Fifty Years of the Law Commissions: The Dynamics of Law Reform* (Oxford, Hart 2016) ch 5.

291 'Report on and Recommendations Following the Law Commissioner's Visit to Northern Ireland 29th/30th June, 1965', dated 1 July 1965, National Archives, LCO 65/333/1.

292 Letter dated 10 December 1965, MacDermott to Gardiner, National Archives, LCO 65/333/1.

consultative'. Nonetheless, MacDermott was obviously keen to shape the direction of this law reform project from its outset, as this revealing excerpt from the same letter makes plain:

> Perhaps I should say here, in a word or two, why I regard the task as extensive. The new Act will hardly be worthwhile if it is only a new edition of the Act of 1877. What is wanted is a statute which makes a fresh start: which will (A) speak with a minimum of reference to the past and repeal all ancient statutory procedures; (B) incorporate and modernise jurisdictions habitually exercised by members of the Judiciary – e.g. the protection etc. of minors and persons of unsound mind; (C) provide for terms and conditions of service for the Supreme Court staff – we have, for example, no retiring age; (D) simplify and expedite existing procedures. We have done a fair amount in this direction administratively by new rules; but I think we could make things quicker and cheaper, say in Chancery Chambers, if we repealed most of the old Acts; and (E) give us (if it can be devised) a rule-making power that will be less at the mercy of professional inhibitions and allow of a certain measure of experimentation. There are other more controversial matters – e.g. the restriction of the right to trial by jury, and the provision for certain well-known types of case (e.g. personal injury claims) of a summary procedure with no pleadings.

It will be seen, below, that many of these proposals came to pass, but we pause at this point to display another excerpt from Lord MacDermott's letter to the Lord Chancellor in which, as far back as December 1965, he floated what would have been fairly radical ideas about establishing a UK Supreme Court, among other things:

> I note with interest that you are contemplating an examination of the structure of the Courts in England and Wales. This raises the possibility of a wider survey than that which I have just outlined. Has the time come to envisage a United Kingdom Supreme Court? This need not necessarily injure local professional interests, and it would help lift us from the ridiculous situation that besets us now with three different domiciles and three jurisdictions each foreign to the other, with no common, prevailing power of enforcement. Again, is the distinction between the County Courts and the High Court to continue unmodified? In Northern Ireland the political responsibility for the two systems is divided and it may not be the right time to change that. I have often thought, however, that there is much to be said for the Scottish system, particularly in a small area such as ours.[293]

While it is a shame that Lord MacDermott did not live to see his vision of a UK Supreme Court come to fruition in 2009, the fact that he had the imagination to envisage one and the audacity to propose its creation is another interesting indicator of his horizon-scanning mind.

By February 1966, the Law Commission of England and Wales had settled on terms of reference for a committee on the Supreme Court

293 Ibid.

of Judicature in Northern Ireland and on its proposed membership. Interestingly, it seems that despite resisting efforts to place the responsibility for this project in his hands, Lord MacDermott was convinced that he should be Chairman of the committee after it was agreed that there would be a Deputy Chairman appointed from among his judicial peers, namely Lowry J.[294] Lord MacDermott described his reluctance to assume the Chair in these terms:

> I have only a limited amount of time and no desire to add any very heavy burden to my existing commitments. If I act on this Committee it will mean less time for other things, and that just when the demands of the courts seem to be increasing. However, I promised to help and if you and the Lord Chancellor think that I can best do so by acting as Chairman, I am prepared to try. The nature of the Committee and the ease with which it can be divided to fulfil different functions should be a considerable help.[295]

This correspondence suggests MacDermott was a man aware of his responsibilities, eager to avoid taking on more than he was capable of handling well, just as it shows a man who understood the value of trust and delegation.

MacDermott was formally appointed along with seven other committee members and a secretary in March 1966, with their terms of reference being:

> to examine the law applicable to the Supreme Court of Judicature of Northern Ireland, taking into consideration (inter alia) the Report on the Supreme Court of Northern Ireland (1957; Cmnd. 227) and the extent to which the recommendations made in that Report have been implemented, and to make recommendations.

Interestingly, MacDermott and his committee were warned not to treat the Supreme Court of Judicature (Consolidation) Act 1925 which was then in force for England and Wales as 'a sort of model' to be aspired towards given that it was itself viewed as outmoded in several respects.[296]

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294 'Note of a Meeting at the Law Commission at 2.30 p.m. on Monday, 14th February 1966', dated 15 February 1966, National Archives, LCO 65/333/1.

295 Letter dated 1 March 1966, MacDermott to Scarman, National Archives, LCO 65/333/1.

296 Letter dated 5 April 1966, National Archives, LCO 65/333/1. A list of 'scrappy suggestions' as to how the 1925 Act could be usefully amended is set out in a letter dated 18 May 1966 in the same file. They include a proposal to confer power on the High Court to make an 'Instalment Order', a proposal to change the requirement for a Divisional Court to hear appeals in the High Court, and a proposal to confer power to order discovery against a person who is not a party to proceedings, among other things.

Consistent with that advice, and building on the recommendations of 'the Sheil Committee' Report (Cmnd 227) consistently with its terms of reference, the report that MacDermott and his committee eventually produced was clearly tailored to the specific needs of Northern Ireland. It was delivered to the Lord Chancellor in December 1969,[297] before being printed and laid before Parliament in March 1970 as a Command Paper.[298] In due course, most of the report's 97 recommendations would be reflected in the Judicature (NI) Act 1978, which fundamentally reorganised and reconstituted Northern Ireland's court structures and which, to a large extent, continues to govern those structures today. The details of these reforms are too extensive to recount here, but a good example is the abolition of the Court of Criminal Appeal which had existed since 1930[299] and the transfer of all its jurisdiction to a 'new' Court of Appeal with jurisdiction over both civil and criminal matters.[300] These provisions stemmed directly from the MacDermott Report and have streamlined the workload of his successors as President of the Court of Appeal from 1978 onwards. They are just one illustration of the enduring impact of his role in leading this extensive law reform project, even if that role was assumed with some initial hesitation.

Report on measures to deal with terrorism

In 1974 the newly elected Labour Government decided to appoint a Commission 'to consider what provisions and powers, consistent to the maximum extent practicable in the circumstances with the preservation of civil liberties and human rights, are required to deal with terrorism and subversion in Northern Ireland, including provisions for the administration of justice'. The Commission was chaired by Lord Gardiner, a former Lord Chancellor, and had six other members, one of whom was Lord MacDermott. It had its first meeting in June 1974 and published its report in January 1975.[301] During that short period it held 10 hearings, each lasting one, two or three days, one half of them in Belfast and the other half in London. In all it met for a total of 29 days, hearing from 97 witnesses and considering 157 written submissions. This was all no mean task for a man in his late seventies.

297 Letter dated 18 December 1969, MacDermott to Gardiner, National Archives, LCO 65/333/1.

298 *Report of the Committee on the Supreme Court of Judicature of Northern Ireland* (Cmnd 4292).

299 Judicature (NI) Act 1978, s 34(3).

300 Ibid ss 3, 34(2).

301 *Report of a Committee to Consider, in the Context of Civil Liberties and Human Rights, Measures to Deal with Terrorism in Northern Ireland* (Cmnd 5847).

The Committee made 47 conclusions and recommendations, the stand-out ones being that the UK Government had acted consistently with the European Convention on Human Rights in restricting certain fundamental liberties in Northern Ireland but that consideration should be given to the enactment of a Bill of Rights; that trials of scheduled (ie terrorist-related) offences should continue to be conducted by courts without juries; that the Northern Ireland (Emergency Provisions) Act 1973 should be amended so as to declare that the courts have a discretion to exclude admissions by persons charged; that a new offence of being concerned in terrorism should be created; that there should be a new summary offence of being disguised in a public place or in the vicinity of a dwelling house; that an independent means of investigating complaints against the police should be introduced and its extension to the army considered; that the introduction of special category status for convicted prisoners was a serious mistake; that detention without trial should remain in place for the time being but not as a long-term policy; and that a Detention Advisory Board and a Release Advisory Committee should be established to help govern the detention system.

The Committee was unanimous on all points, some of which Lord MacDermott had already advocated for in his lectures. But he alone entered some reservations relating to the report. The four main ones were: (1) he could not agree with the conclusion that a political framework in a plural society such as Northern Ireland could not endure unless 'recognition is given to the different national inheritances of the two communities' (he claimed that he did not know what that phrase meant); (2) he could not agree that it was doubtful if emergency measures could produce lasting solutions on account of the social damage they may bring about:

> the object of what the security forces are doing is to stop the campaign of violence and so pave the way for peace. Most of the long-term damage, of the scarring and the misery, is due first and last to the terrorist, and I would find this part of the Report more acceptable and a truer picture of events if it recognised this stark fact more fully ...

And (3) he did not think that the suggestion for a Bill of Rights should have been made: 'This is a difficult subject which does not always live up to its expectations'; and (4) though he agreed with the Committee's proposed changes to the detention regime, he thought that the wording used in relation to the policy of detention made 'an uncertain sound'.[302]

Lord MacDermott's own view on detention without trial at this point was expressed as follows:

302 Ibid 57–58.

> Despite the repugnance which in common with most I feel for a system of detention, the evidence seemed to me conclusive that, with all its many failings and mistakes, detention still helps to protect the public safety and should therefore stand until such time as the Secretary of State may reach a different conclusion. The main protection it renders is to keep a substantial body of hard-core terrorists out of circulation. If those were released there was ample evidence to support the view that terrorism would be intensified and intimidation increased. These are both grave consequences. Most of the gains from detention would be lost, risks to life and limb and property would mount, and more intimidation would mean that the increasing success of the RUC in bringing terrorists to trial before the ordinary criminal courts would be set back'.[303]

When he wrote these words Lord MacDermott was already well into his retirement. He had ceased to be the Lord Chief Justice more than three years earlier, though he was still occasionally sitting as an *ad hoc* judge in the High Court. His views were undoubtedly informed by his personal experiences of living and working in Northern Ireland for very many years. To some they may seem surprising. They are based, it seems, on public safety grounds rather than on political grounds. It should be remembered that his views were endorsed, implicitly, three years later by the judgment of the European Court of Human Rights in *Ireland v UK*:

> Being confronted with a massive wave of violence and intimidation, the Northern Ireland Government and then, after the introduction of direct rule (30 March 1972), the British Government were reasonably entitled to consider that normal legislation offered insufficient resources for the campaign against terrorism and that recourse to measures outside the scope of the ordinary law, in the shape of extrajudicial deprivation of liberty, was called for. When the Irish Republic was faced with a serious crisis in 1957, it adopted the same approach and the Court did not conclude that the 'extent strictly required' [in Article 15 of the European Convention on Human Rights] had been exceeded.[304]

CONCLUSION

The legal life that John Clarke MacDermott led was actually fairly typical of his contemporaries, up to a point. His skill as a barrister and his willingness to enter the political fray saw him appointed as the Attorney General for Northern Ireland. From that point onwards he was essentially guaranteed to secure a judicial role by virtue of the constitutional customs then applicable in Northern Ireland. On the

303 Ibid 58.

304 (1978–80) 2 EHRR 25, para 212; in support of this statement the Court cited what it had said in *Lawless v Ireland (No 3)* (Merits) (1979–80) 1 EHRR 1, 27 and 33.

other hand, nobody could have predicted that, after an impressive but relatively short stint in the High Court of Northern Ireland, MacDermott would proceed to the House of Lords as a Lord of Appeal in Ordinary. Having been given that opportunity it then became conceivable that he might later transition from there to the office of Lord Chief Justice and President of the Court of Appeal in Northern Ireland.

Viewed from this perspective, unpredictability is possibly the most notable feature of Lord MacDermott's legal life. His intelligence and industry obviously played a significant part in shaping the career that he forged but, as with most legal careers in the twentieth century, the role of his inherited privileges and circumstantial good fortune should not be overlooked.

A pattern of unpredictability can also be discerned from our analysis of how Lord MacDermott would decide cases tried before him as a judge and as regards the extent to which his judicial views would accord with those of his peers. Like every other judge he was not 'right' 100 per cent of the time, in the sense that plenty of other judges disagreed with him just as he disagreed with them, but the law he administered and developed in his judgments is notable for the clarity of its delivery and the transparency of its reasoning. The same is true of his extra-judicial speeches and reports. He never concealed his thinking behind opaque writing, so his contemporaries could be left in absolutely no doubt about the rationale for his decisions and views. We hope that the foregoing pages have succeeded in showing that, thanks to that written perspicuity, there remains much to be learned by engaging with the fruits of Lord MacDermott's labours.

APPENDIX

Lord MacDermott's Reported Cases

Abbreviations: CA = Court of Appeal; CMAC = Courts-Martial Appeal Court; HC = High Court; HL = House of Lords; JCPC = Judicial Committee of the Privy Council

Part 1: Cases heard as a High Court judge, 1944–1947

	Date and law report	Court	Title of case	Primary area of law at issue	Contribution
1	17.1.45 [1945] NI 99	CA	*Baptist Union of Ireland (Northern) Corp Ltd v Inland Revenue Commissioners*	Charity law	Judgment
2	17.1.45 [1945] NI 155	HC	*Pigs Marketing Board (NI) Ltd v Inland Revenue Commissioners*	Taxation law	Judgment
3	9.3.45 [1946] NI 38	HC	*Robinson v Chambers*	Civil procedure law	Judgment
4	28.3.45 [1946] NI 1	HC	*In re B, An Infant*	Family law	Judgment
5	30.10.45 [1946] NI 63	HC	*Ministry of Agriculture v Turtle*	Criminal law	Judgment
6	7.12.45 [1946] NI 40	HC	*Goodwin v Leckey*	Insurance law	Judgment
7	6.3.46 [1946] NI 148	HC	*Robinson v Chambers (No 2)*	Defamation law	Judgment
8	15.11.46 [1947] NI 1	HC	*Fitzgerald v Great Northern Railway*	Tort law	Judgment
9	15.1.47 [1947] NI 50	CA	*Re Dunville*	Succession law	Judgment
10	2.2.47 [1947] NI 110	CA	*R v Stephenson*	Evidence law	Judgment
11	14.2.47 [1947] NI 8	HC	*Ross v McQueen*	Tort law	Judgment
12	18.4.47 [1947] NI 102	HC	*Shearer v Harland and Wolff Ltd*	Tort law	Judgment

Part 2: Cases heard as a Lord of Appeal, 1947–1951

	Date and law report	Court	Title of case	Primary area of law at issue	Contribution
1	25.7.47 [1947] AC 503	JCPC	*Attorney General for Alberta v Attorney General for Canada*	Constitutional law	Concurrence
2	28.7.47 [1948] AC 173	HL	*Winter Garden Theatre (London) Ltd v Millennium Productions Ltd*	Land law	Judgment
3	28.7.47 [1948] AC 140	HL	*Boy Andrew v St Rognvald*	Maritime law	Dissent
4	28.7.47 [1948] AC 79	HL	*Glasgow Corporation v Bruce or Nelson*	Tort law	Judgment
5	29.7.47 [1947] AC 565	JCPC	*Pointe Gourde Quarrying and Transport Co Ltd v Sub-Intendent of Crown Lands*	Land law	Judgment
6	30.7.47 [1948] AC 12	JCPC	*Sterios Thomopulos v John Mandila*	Partnership law	Concurrence
7	31.7.47 [1948] AC 1	JCPC	*Arieh Zvi Lipshitz v Hain Aron Valero*	Civil procedure law	Concurrence
8	14.10.47 [1948] AC 18	JCPC	*Desain v Viani*	Succession law	Concurrence
9	5.12.47 [1948] AC 234	HL	*Railway Assessment Authority v Great Western Railway*	Rating law	Concurrence
10	17.12.47 [1947] 1 All ER 871	HL	*Horton v Horton*	Family law	Concurrence
11	18.12.47 [1948] AC 210	JCPC	*Producers' Co-operative Distributing Society Ltd v Commissioner of Taxation*	Taxation law	Concurrence
12	19.12.47 [1948] AC 291	HL	*Palser v Grinling*	Land law	Concurrence
13	13.2.48 [1948] 1 All ER 308	HL	*Raleigh Cycle Co Ltd v H Miller & Co Ltd*	Patent law	Judgment
14	12.3.48 [1948] 1 All ER 616	HL	*Inland Revenue Commissioners v Ross and Coulter (Bladnoch Distillery Co Ltd)*	Taxation law	Dissent
15	12.3.48 [1948] 1 All ER 654	HL	*Inland Revenue Commissioners v Lord Saltoun*	Taxation law	Dissent
16	12.3.48 [1948] 1 All ER 660	HL	*Inland Revenue Commissioners v Barclay (Glasgow Binding Co Ltd)*	Taxation law	Concurrence
17	12.3.48 [1948] 1 All ER 663	HL	*Inland Revenue Commissioners v Barclay (Alexander McGavin & Co (Glasgow) Ltd)*	Taxation law	Concurrence
18	12.3.48 [1948] 1 All ER 665	HL	*Inland Revenue Commissioners v DP McDonald & Sons Ltd*	Taxation law	Concurrence
19	12.3.48 [1948] 1 All ER 669	HL	*Inland Revenue Commissioners v Russell (Peter Douglas & Co Ltd)*	Taxation law	Concurrence

20	12.3.48 [1948] 1 All ER 672	HL	*Inland Revenue Commissioners v Lannon*	Taxation law	Concurrence
21	12.3.48 [1948] 1 All ER 676	HL	*Henry Simpson & Co v Inland Revenue Commissioners*	Taxation law	Concurrence
22	12.3.48 [1948] 1 All ER 677	HL	*James McVey Ltd v Inland Revenue Commissioners*	Taxation law	Concurrence
23	12.3.48 [1948] 1 All ER 682	HL	*Inland Revenue Commissioners v Barr*	Taxation law	Dissent
24	12.3.48 [1948] 1 All ER 688	HL	*Holt v Inland Revenue Commissioners*	Taxation law	Judgment
25	12.3.48 [1948] 1 All ER 689	HL	*William Longmore & Co Ltd v Inland Revenue Commissioners*	Taxation law	Concurrence
26	27.4.48 [1948] AC 405	JCPC	*English and Scottish Joint Co-operative Wholesale Society Ltd v Commissioner of Agricultural Income Tax, Assam*	Taxation law	Concurrence
27	23.7.48 [1948] AC 495	JCPC	*Union Trustees Company of Australia Ltd v Bartlam*	Taxation law	Concurrence
28	13.10.48 [1949] AC 24	JCPC	*DR Fraser & Co Ltd v Minister of National Revenue*	Taxation law	Concurrence
29	13.10.48 [1949] AC 134	JCPC	*Labour Relations Board of Saskatchewan v John East Iron Works Ltd*	Administrative law	Concurrence
30	13.10.48 [1949] AC 1	JCPC	*Perera (MG) v Peiris*	Defamation law	Concurrence
31	19.10.48 [1949] AC 36	JCPC	*International Harvester Company of Canada Ltd v Provincial Tax Commission*	Taxation law	Concurrence
32	22.11.48 [1949] AC 110	JCPC	*Attorney General for Saskatchewan v Attorney General for Canada*	Constitutional law	Concurrence
33	14.1.49 [1949] AC 253	JCPC	*Tumahole Bereng v The King*	Criminal law	Judgment
34	19.1.49 [1949] AC 293	HL	*Comptoir d'achat et de vente du Boerenbond Belge s/A v Luis de Ridder Limitada (The Julia)*	Contract law	Judgment
35	19.1.49 [1949] AC 326	HL	*Tyne Improvement Commissioners v Armement Anversois s/A (The Brado)*	Private international law	Dissent
36	20.1.49 [1949] AC 275	HL	*Galashiels Gas Co Ltd v O'Donnell or Millar*	Tort law	Judgment
37	20.1.49 153 EG 80	HL	*Mackintosh v Westwood*	Land law	Concurrence
38	20.1.49 [1949] AC 361	HL	*Inland Revenue Commissioners v Reid's Trustees*	Taxation law	Judgment

39	20.1.49 [1949] 1 All ER 261	HL	*Tootal Broadhurst Lee Co Ltd v Inland Revenue Commissioners*	Taxation law	Judgment
40	28.2.49 [1949] 1 All ER 588	HL	*Hogan v Bentinck West Hartley Collieries (Owners) Ltd*	Tort law	Dissent
41	11.4.49 [1949] AC 386	JCPC	*Yachuk v Oliver Blais Co Ltd*	Tort law	Concurrence
42	29.7.49 [1949] AC 530	HL	*Hill v William Hill (Park Lane) Ltd*	Contract law	Judgment
43	12.10.49 [1950] AC 1	JCPC	*Provincial Treasurer of Manitoba v William Wrigley Jr Co Ltd*	Taxation law	Concurrence
44	20.10.49 [1950] AC 24	HL	*Kahler v Midland Bank Ltd*	Contract law	Dissent
45	20.10.49 [1950] AC 57	HL	*Zivnostenska Banka National Corporation v Frankman*	Private international law	Judgment
46	26.10.49 [1950] AC 235	JCPC	*Commonwealth of Australia v Bank of New South Wales*	Constitutional law	Concurrence
47	1.12.49 [1949] 2 All ER 1044	HL	*Moodie v W & J Shepherd (Bookbinders) Ltd*	Company law	Judgment
48	14.12.49 [1950] AC 149	HL	*Inland Revenue Commissioners v John Dow Stuart Ltd*	Taxation law	Dissent
49	1.1.50 [1950] 2 All ER 261	HL	*EMI Ltd v Inland Revenue Commissioners*	Taxation law	Judgment
50	1.1.50 67 RPC 23	HL	*May & Baker Ltd v Boots Pure Drug Co Ltd*	Patent law	Judgment
51	1.1.50 [1950] 2 All ER 637	HL	*Railway Executive v Culkin*	Tort law	Dissent
52	1.1.50 [1950] 1 All ER 819	HL	*Winter v Cardiff Rural District Council*	Tort law	Judgment
53	21.3.50 [1950] AC 327	HL	*Boissevain v Weil*	Private international law	Judgment
54	21.3.50 [1950] AC 361	HL	*Jacobs v London County Council (No 2)*	Tort law	Concurrence
55	29.3.50 [1950] AC 401	HL	*Baker v Turner*	Land law	Judgment
56	18.4.50 [1950] AC 561	JCPC	*Piyaratana Unnanse v Wahareke Sonuttra Unnanse*	Civil procedure law	Concurrence
57	26.4.50 [1950] AC 493	JCPC	*HE Wijesuriya v Attorney General of Ceylon*	Land law	Concurrence
58	27.4.50 [1950] AC 508	HL	*Asher v Seaford Court Estates Ltd*	Land law	Dissent
59	3.5.50 [1950] AC 441	JCPC	*Basma v Weekes*	Land law	Concurrence

60	8.5.50 [1950] AC 536	JCPC	*Lever Bros and Unilever NV v HM Procurator General (The Unitas)*	Maritime law	Concurrence
61	10.5.50 [1950] AC 458	JCPC	*Sambasivam v Public Prosecutor, Federation of Malaya*	Criminal law	Judgment
62	23.6.50 [1950] 2 All ER 314	HL	*Goodlass Wall and Lead Industries Ltd v Atkinson*	Taxation law	Judgment
63	10.7.50 [1951] AC 13	JCPC	*Slazengers (Australia) Pty Ltd v Burnett*	Tort law	Concurrence
64	27.7.50 [1951] AC 53	JCPC	*Grace Bros Pty Ltd v Commonwealth of Australia*	Constitutional law	Concurrence
65	27.7.50 [1951] AC 34	JCPC	*Nelungaloo Pty Ltd v Commonwealth of Australia*	Constitutional law	Concurrence
66	16.10.50 [1951] AC 179	JCPC	*Canadian Federation of Agriculture v Attorney General for Quebec*	Constitutional law	Concurrence
67	30.10.50 [1951] AC 201	JCPC	*Bonython v Commonwealth of Australia*	Private international law	Concurrence
68	23.11.50 [1951] AC 251	HL	*Ministry of Health v Simpson*	Succession law	Concurrence
69	30.11.50 [1951] AC 278	HL	*Raleigh Cycle Co Ltd v H Miller & Co Ltd*	Patent law	Dissent
70	13.12.50 [1951] AC 297	HL	*Oppenheim v Tobacco Securities Trust Co Ltd*	Charity law	Dissent
71	13.12.50 [1951] AC 367	HL	*Paris v Stepney Borough Council*	Tort law	Judgment
72	14.12.50 [1951] AC 421	HL	*Inland Revenue Commissioners v Latilla-Campbell*	Taxation law	Judgment
73	14.12.50 [1951] AC 443	HL	*Potts' Executors v Inland Revenue Commissioners*	Taxation law	Judgment
74	14.12.50 [1951] AC 391	HL	*Preston-Jones v Preston-Jones*	Family law	Judgment
75	7.2.51 [1951] 1 All ER 457	HL	*Demetriades v Glasgow Corporation*	Administrative law	Judgment
76	7.2.51 [1951] AC 467	HL	*Hunter v Blackwood*	Land law	Concurrence
77	7.2.51 1951 SC (HL) 21	HL	*Nicol's Trustees v Sutherland*	Contract law	Dissent
78	1.3.51 [1951] AC 531	HL	*Hales v Bolton Leathers Ltd*	Tort law	Judgment
79	1.3.51 [1951] AC 555	HL	*Smith v London Transport Executive*	Administrative law	Judgment
80	6.3.51 [1951] AC 342	JCPC	*McDonnel v Neil*	Succession law	Judgment
81	8.5.51 [1951] AC 639	HL	*Harrison v National Coal Board*	Tort law	Judgment
82	9.5.51 [1951] AC 737	HL	*London Graving Dock Co Ltd v Horton*	Tort law	Judgment
83	9.5.51 [1951] AC 723	HL	*Crowther v Crowther*	Family law	Concurrence

Part 3: Cases heard as the Lord Chief Justice of Northern Ireland, 1951–1971 (and as a retired judge in Northern Ireland, 1971–1975)

	Date and law report	Court	Title of case	Primary area of law at issue	Contribution
1	26.4.51 [1951] NI 79	HC	*Petty v Lavelle*	Customs law	Judgment
2	1.5.51 [1951] NI 115	CA	*Harry Ferguson (Motors) Ltd v Commissioners of Inland Revenue*	Taxation law	Judgment
3	8.5.51 [1952] NI 24	CA	*Dixon v Forster and McMahon*	Customs law	Judgment
4	31.5.51 [1951] NI 97	CA	*Minister of Food v O'Rourke*	Criminal law	Judgment
5	30.10.51 [1952] NI 1	HC	*R (Buck) v Justices of the City of Londonderry*	Criminal law	Judgment
6	16.11.51 [1952] NI 33	HC	*McSteen v McCarthy*	Tort law	Judgment
7	29.2.52 [1952] NI 21	HC	*Connolly v Huddleston*	Tort law	Judgment
8	7.3.52 [1952] NI 16	HC	*R (Mooney) v County Court Judge of Down*	Licensing law	Judgment
9	9.5.52 [1952] NI 49	HC	*McCann v Belfast Corporation*	Civil procedure law	Judgment
10	9.5.52 [1952] NI 54	CA	*Robinson v Tyrone County Council*	Tort law	Judgment
11	12.6.52 [1952] NI 41	CA	*Antrim City Council v Harkness*	Administrative law	Judgment
12	18.7.52 [1954] NI 96	HC	*Patterson v Donnell*	Tort law	Judgment
13	31.7.52 [1952] NI 118	CA	*McCormick v Harland and Wolff Ltd*	Tort law	Reversed by CA
14	24.10.52 [1952] NI 91	HC	*R (Bowden) v Justices of the City of Belfast*	Criminal law	Judgment
15	1.12.52 [1953] NI 51	CA	*Russell v Thompson*	Criminal law	Judgment
16	12.12.52 [1952] NI 167	HC	*Diamond v Mullan*	Tort law	Judgment
17	12.1.53 [1953] NI 70	CA	*Fitzharris v Strain*	Customs law	Concurrence
18	15.1.53 [1952] NI 161	HC	*Minister of Agriculture v Mackle*	Customs law	Judgment
19	31.3.53 [1953] NI 32	CA	*Re Blackwood*	Succession law	Judgment
20	5.5.53 [1954] NI 170	CA	*Petty v Biggerstaff*	Customs law	Judgment
21	15.5.53 [1953] NI 160	CA	*Belfast Corporation v Kelso*	Administrative law	Concurrence
22	18.5.53 [1954] NI 41	CA	*Kelly v Farrow Ltd*	Tort law	Judgment
23	18.5.53 [1953] NI 151	CA	*Minister of Agriculture v Kelly*	Administrative law	Judgment
24	18.5.53 [1953] NI 131	CA	*Smith v Howdens*	Tort law	Judgment
25	29.6.53 [1953] NI 179	CA	*Ulster Transport Authority v James Brown & Sons Ltd*	Constitutional law	Judgment

26	28.7.53 [1954] NI 112	HC	*Artt v WG & T Greer*	Tort law	Judgment
27	23.9.53 [1954] NI 131	HC	*Quinn v Ministry of Commerce*	Tort law	Judgment
28	24.9.53 [1954] NI 144	HC	*R v McGoogan*	Criminal procedure	Judgment
29	26.11.53 [1954] NI 172	HC	*The Princess Victoria*	Administrative law	Judgment
30	21.12.53 [1954] NI 54	CA	*Commissioner of Valuation v McAllister*	Rating law	Judgment
31	21.12.53 [1954] NI 183	CA	*Newtownards Rural District Council v McCullough*	Administrative law	Judgment
32	22.2.54 [1954] NI 146	CA	*Atkinson v Stewart Partners Ltd*	Tort law	Judgment
33	31.3.54 [1955] NI 74	CA	*McGuigan v Pollock*	Tort law	Judgment
34	17.5.54 [1955] NI 58	HC	*Minister of Agriculture v Nugent*	Customs law	Judgment
35	9.11.54 [1955] NI 208	HC	*McAllister v Wilson*	Tort law	Judgment
36	12.11.54 [1955] NI 213	HC	*Brown v Belfast Corporation*	Tort law	Judgment
37	14.1.55 [1955] NI 1	HC	*Addison v Addison*	Family law	Judgment
38	18.1.55 [1955] NI 139	HC	*Minister of Agriculture v McGeough*	Civil procedure law	Judgment
39	25.1.55 [1955] NI 168	CA	*Drayson v Galbraith*	Administrative law	Judgment
40	27.1.55 [1955] NI 184	HC	*In re Kathleen McKee*	Succession law	Judgment
41	28.1.55 [1955] NI 112	CA	*Walsh v Curry*	Tort law	Judgment
42	18.2.55 [1956] NI 53	CA	*In re Townsend Street Belfast Presbyterian Endowment Trusts*	Charity law	Judgment
43	7.3.55 [1955] NI 224	HC	*Minister of Agriculture v Marmion*	Criminal law	Judgment
44	7.3.55 [1963] NI 29	CA	*Luke v Coulter (Note)*	Criminal law	Concurrence
45	22.4.55 [1956] NI 36	CA	*McCausland v Ministry of Commerce*	Administrative Law	Judgment
46	26.4.55 [1956] NI 31	CA	*Williamson v Honeyford*	Tort law	Judgment
47	15.5.55 [1956] NI 73	HC	*McLaughlin v McLaughlin*	Family law	Judgment
48	29.7.55 [1956] NI 84	CA	*Armstrong v Northern Ireland Hospitals Authority*	Employment law	Judgment
49	2.12.55 [1956] NI 171	HC	*Fox v Armagh Education Authority*	Tort law	Judgment
50	21.1.56 [1956] NI 15	CA	*R v Bailey*	Criminal law	Judgment
51	27.1.56 [1956] NI 119	HC	*Glass v Glass*	Family law	Judgment

52	8.2.56 [1957] NI 96	HC	*In re Frampton*	Succession law	Judgment
53	5.3.56 [1957] NI 70	CA	*McConnell v Lynch Robinson*	Tort law	Judgment
54	29.3.56 [1956] NI 127	CA	*McClelland v Northern Ireland General Health Services Board*	Employment law	Reversed by HL
55	31.7.56 [1956] NI 151	CA	*In re McConnell*	Succession law	Judgment
56	23.11.56 [1957] NI 64	CA	*Edgar v Wallace*	Family law	Judgment
57	23.11.56 [1956] NI 163	CA	*Minister of Agriculture v Healey*	Administrative law	Judgment
58	20.12.56 [1957] NI 130	CA	*In re Local Registration of Title (Ireland) Act 1891*	Land law	Judgment
59	14.1.57 [1957] NI 1	CA	*R v Hodgett*	Criminal law	Concurrence
60	2.2.57 [1957] NI 25	CA	*Trustees of St MacNissi's College v Commissioner of Valuation*	Taxation law	Judgment
61	5.3.57 [1957] NI 10	CA	*McNeill v McNeill*	Succession law	Judgment
62	28.3.57 [1957] NI 74	HC	*In re McWhinney*	Succession law	Judgment
63	29.3.57 [1958] NI 17	CA	*Conlon v Murray*	Land law	Judgment
64	17.4.57 [1957] NI 145	CA	*Minister of Agriculture v Carragher*	Customs law	Judgment
65	19.5.57 [1957] NI 122	CA	*Porter v Boomer*	Taxation law	Judgment
66	14.6.57 [1957] NI 77	CA	*HM Postmaster General v Londonderry Rural District Council*	Tort law	Judgment
67	26.7.57 [1957] NI 156	HC	*In re Murphy*	Land law	Judgment
68	5.11.57 [1957] NI 150	CA	*Minister of Agriculture v Carragher (No 2)*	Customs law	Judgment
69	18.12.57 [1960] NI 1	HC	*R (Antrim County Council) v Ministry of Health and Local Government*	Administrative law	Upheld by CA
70	3.3.58 [1958] NI 44	CA	*City Brick and Terra Cotta Co Ltd v Belfast Corporation*	Administrative law	Judgment
71	3.3.58 [1958] NI 13	CA	*Sherrard v Woods*	Criminal law	Judgment
72	10.3.58 [1958] NI 28	CA	*In re Scarlett*	Succession law	Judgment
73	25.4.58 [1958] NI 135	CA	*R v Taylor*	Criminal law	Judgment
74	15.5.58 [1958] NI 78	CA	*Ulster Farmers' Mart Co Ltd v Scottish Cooperative Society*	Tort law	Reversed in part by HL
75	16.6.58 [1959] NI 109	CA	*Cavanagh v Ulster Weaving Co Ltd*	Employers' liability	Dissent; HL upheld dissent

76	11.12.58 [1959] NI 37	CA	*Mahon v Clingen*	Criminal law	Judgment
77	18.3.59 [1959] NI 98	CA	*McGimpsey v O'Hare*	Licensing law	Judgment
78	26.3.59 [1959] NI 62	CA	*OD Cars Ltd v Belfast Corporation*	Administrative law	Reversed by HL
79	1.5.59 [1959] NI 161	HC	*Rainey v North Down Rural District Council*	Land law	Judgment
80	19.5.59 [1960] NI 198	CA	*Belfast Collar Co Ltd v Commissioner of Valuation*	Taxation law	Judgment
81	25.5.59 [1959] NI 171	CA	*Montgomery v Loney*	Criminal law	Judgment
82	28.5.59 [1959] NI 1	CA	*Simpson v McKenna*	Criminal law	Judgment
83	9.6.59 [1959] NI 147	CA	*White v Trainor*	Criminal law	Dissent
84	16.9.59 [1960] NI 54	CA	*Newry Urban District Council v Collins*	Administrative law	Judgment
85	16.11.59 [1960] NI 45	CA	*Irvine v McNulty*	Criminal law	Judgment
86	11.12.59 [1960] NI 181	HC	*Andrews v Dunn & Co Ltd*	Tort law	Judgment
87	11.12.59 [1960] NI 181	HC	*Andrews v Dunn & Co Ltd: Belfast Ropework Co Ltd (Third Party)*	Civil procedure law	Judgment
88	18.12.59 [1960] NI 163	CA	*Minister of Agriculture v Ulster Transport Authority*	Customs law	Judgment
89	12.2.60 [1960] NI 141	CA	*Mageean v Valuation Commissioner*	Taxation law	Judgment
90	14.2.60 [1962] NI 24	CA	*Great Northern Railway Board v Minister of Home Affairs*	Civil procedure law	Judgment
91	19.2.60 [1960] NI 185	CA	*Portadown Borough Council v Moore*	Administrative law	Judgment
92	3.3.60 [1960] NI 122	HC	*Wells v Wells*	Family law	Judgment
93	16.3.60 [1961] NI 102	CA	*McCann v Attorney General for Northern Ireland*	Constitutional law	Upheld by HL
94	22.4.60 [1960] NI 177	HC	*Noble v Noble*	Family law	Judgment
95	30.6.60 [1961] NI 1	CA	*Fulton v Kee*	Succession law	Judgment
96	7.10.60 [1961] NI 65	CA	*Minister of Agriculture for Northern Ireland v McGeough*	Customs Law	Judgment
97	28.11.60 [1961] NI 176	CA	*National Assistance Board v McEneaney*	Welfare law	Judgment
98	2.12.60 [1961] NI 26	CA	*Gallagher v N McDowell Ltd*	Tort law	Judgment
99	2.12.60 [1962] NI 32	CA	*Walker v Commissioner of Valuation*	Rating law	Judgment
100	8.12.60 [1961] NI 167	HC	*R (Burns) v Tyrone County Court Judge*	Evidence law	Judgment

101	19.1.61 [1961] NI 192	CA	*Lombank Ltd v Kennedy and Whitelaw*	Contract law	Judgment
102	30.1.61 [1961] NI 135	CA	*Mulholland v McCrea*	Tort law	Judgment
103	16.2.61 [1961] NI 184	CA	*Magherafelt Rural District Council v Nelson*	Housing law	Judgment
104	16.2.61 [1962] NI 6	CA	*Duffy v Ministry of Labour and National Insurance*	Constitutional law	Judgment
105	24.4.61 [1962] NI 3	CA	*Ross v Tower Upholstery Ltd*	Civil procedure law	Judgment
106	18.5.61 [1962] NI 54	HC	*In re C (An Infant)*	Family law	Judgment
107	29.5.61 [1962] NI 50	HC	*In re Loughconnolly Primary School*	Administrative law	Judgment
108	5.6.61 [1963] NI 1	CA	*Bill v Short Brothers & Harland Ltd*	Tort law	Dissent; HL upheld dissent
109	28.6.61 [1962] NI 152	HC	*Fitzpatrick v Moore*	Tort law	Judgment
110	18.7.61 [1962] NI 78	CA	*R v Bratty*	Criminal law	Upheld by HL
111	19.3.62 [1962] NI 190	CA	*Holland & Ors v Lynn*	Rating law	Judgment
112	19.3.62 [1963] NI 23	CA	*Walker v Rountree*	Criminal law	Judgment
113	19.3.62 [1963] NI 41	CA	*McIlwrath v Harland & Wolff Ltd*	Tort law	Judgment
114	12.6.62 [1963] NI 11	CA	*Bradley v McGivern*	Criminal law	Judgment
115	29.6.62 [1963] NI 49	CA	*Boyd v Lee Guinness Ltd*	Company law	Dissent
116	30.11.62 [1963] NI 65	CA	*Devine v Cementation Co Ltd*	Civil procedure law	Judgment
117	30.11.62 [1963] NI 78	CA	*Belfast Corporation v Daly*	Administrative law	Judgment
118	25.1.63 [1964] NI 22	CA	*Irwin v White, Tomkins & Courage Ltd*	Tort law	Dissent; HL upheld dissent
119	15.3.63 [1963] NI 64	HC	*In re the Estate of Jane McDowell, Deceased (Note)*	Succession law	Judgment
120	28.3.63 [1965] NI 7	HC	*R (Nicholl) v Recorder of Belfast*	Administrative law	Judgment
121	17.4.63 [1963] NI 194	CA	*Buchanan v Moore*	Criminal law	Judgment
122	30.4.63 [1964] NI 17	CA	*Lavelle v A Robinson & Co Ltd*	Costs	Judgment
123	10.6.63 [1964] NI 72	CA	*Hedley v Sparrow*	Criminal law	Judgment
124	18.2.64 [1965] NI 1	CA	*Spears v Wilson*	Criminal law	Judgment
125	24.2.64 [1964] NI 90	HC	*R (Londonderry Corporation) v The Industrial Court (Northern Ireland)*	Employment law	Upheld by CA
126	3.3.64 [1965] NI 73	HC	*J & WF Burrows Ltd v Belfast Corporation*	Criminal law	Judgment

127	26.3.64 [1964] NI 77	CA	*Spears v Barrett*	Gaming law	Judgment
128	1.5.64 [1965] NI 113	CA	*Buchanan v McKinney*	Criminal law	Judgment
129	12.6.64 [1966] NI 1	CA	*Toome Eel Fishery (Northern Ireland) Ltd v Cardwell*	Fishing rights	Judgment
130	25.6.64 [1965] NI 187	CA	*McCallum v G Madill & Sons Ltd*	Tort law	Judgment
131	25.9.64 [1965] NI 52	CA	*R v Williams and Wilson*	Criminal law	Judgment
132	2.12.64 [1965] NI 67	HC	*In re an application by HM Attorney General for Northern Ireland for a writ of certiorari*	Criminal procedure law	Judgment
133	27.1.65 [1965] NI 138	CMAC	*R v Murphy*	Criminal law	Judgment
134	8.3.65 [1966] NI 31	CA	*Cowan v Hale*	Taxation law	Judgment
135	26.3.65 [1966] NI 85	HC	*Waddell & Anr v Norton & Anr*	Civil procedure law	Judgment
136	30.3.65 [1965] NI 151	CA	*Sherrard v Jacob*	Criminal law	Judgment
137	16.6.65 [1966] NI 93	CA	*Elwood (Inspector of Taxes) v Utitz*	Taxation law	Judgment
137	26.10.65 [1966] NI 128	CA	*In re Alexander, a bankrupt*	Bankruptcy law	Judgment
139	4.11.65 [1966] NI 171	CA	*Platt v Kerr*	Criminal procedure law	Judgment
140	17.12.65 [1967] NI 1	CA	*Cavendish Furniture Co Ltd & Anr v Chalfant & Or*	Land law	Judgment
141	31.1.66 [1966] NI 178	CA	*Cyril Lord Carpets Ltd v Commissioners of Inland Revenue*	Taxation law	Judgment
142	14.2.66 [1968] NI 193	CA	*R v Corr*	Criminal law	Judgment
143	7.3.66 [1967] NI 40	CA	*Commissioner of Valuation for Northern Ireland v Thomas McMullan & Co Ltd*	Valuation law	Judgment
144	15.4.66 [1967] NI 54	CA	*F B McKee & Co Ltd v Allen*	Rating law	Judgment
145	25.4.66 [1967] NI 62	CA	*James P Corry & Co Ltd v Clarke*	Tort law	Judgment
146	29.6.66 [1967] NI 137	CA	*Begley v Jeffrey*	Customs law	Judgment
147	23.11.66 [1967] NI 101	HC	*R (HM Attorney General for Northern Ireland) v Recorder of Belfast*	Licensing law	Judgment
148	27.1.67 [1968] NI 96	HC	*In re the Estate of Bulloch, Deceased*	Succession law	Judgment
149	15.3.67 [1968] NI 1	HC	*Hope v Hope*	Family law	Judgment
150	19.4.67 [1968] NI 74	CA	*Herdman v Commissioners of Inland Revenue*	Taxation law	Judgment

151	25.4.67 [1968] NI 21	CA	*Belfast Association for Employment of Industrious Blind v Commissioner of Valuation for Northern Ireland*	Charity law	Dissent
152	9.6.67 [1969] NI 139	HC	*British Egg Marketing Board v Gillespie*	Civil procedure law	Judgment
153	9.6.67 [1968] NI 7	HC	*Holden v Holden*	Family law	Judgment
154	29.6.67 [1968] NI 104	CA	*Commissioner of Valuation for Northern Ireland v Lurgan Borough Council*	Charity law	Judgment
155	15.9.67 [1969] NI 78	HC	*Stewart v Murdoch*	Succession law	Judgment
156	12.1.68 [1969] NI 91	CA	*Mallett v McMonagle*	Tort law	Upheld by HL
157	12.1.68 [1969] NI 54	CA	*Mullan v Lamrock and Ministry of Agriculture*	Tort law	Judgment
158	18.1.68 [1968] NI 163	CA	*Monarch Electric Ltd v McIntyre*	Employment law	Judgment
159	30.1.68 [1968] NI 58	CA	*Hill v Cunningham*	Tort law	Judgment
160	29.3.68 [1969] NI 116	CA	*McGimpsey v Carlin*	Criminal law	Judgment
161	23.4.68 [1969] NI 3	CA	*Trustees of the City of Belfast Young Men's Christian Association v Commissioner of Valuation for Northern Ireland*	Charity law	Judgment
162	6.5.68 [1971] NI 174	CA	*Trustees of the Congregation of Poor Clares of the Immaculate Conception v Commissioner of Valuation (Note)*	Rating law	Judgment
163	31.5.68 [1970] NI 89	CA	*Commissioner of Valuation for Northern Ireland v Fermanagh Protestant Board of Education*	Charity law	Upheld by HL in part
164	28.6.68 [1970] NI 68	CA	*J M Reilly Ltd v Belfast Corporation*	Contract law	Judgment
165	28.6.68 [1969] NI 189	CA	*Shute v Hunt*	Criminal law	Judgment
166	13.11.68 [1970] NI 8	CA	*R v Patterson*	Criminal law	Judgment
167	29.11.68 [1970] NI 11	CA	*Forde v McEldowney*	Administrative law	Dissent; not upheld by HL
168	4.12.68 [1969] NI 169	CA	*Smith v Harland & Wolff Ltd*	Employment law	Judgment
169	24.2.69 [1969] NI 204	CA	*Northern Ireland Carriers Ltd v Thompson*	Employment law	Judgment
170	21.3.69 [1970] NI 173	CA	*R (Shields) v Down Justices*	Civil procedure law	Judgment
171	27.3.69 [1970] NI 1	CA	*Hunter v Gray*	Criminal law	Judgment

172	6.10.69 [1971] NI 238	CA	*McCullough v Glass*	Criminal law	Judgment
173	12.12.69 [1971] NI 73	CA	*Neill v Short Bros & Harland Ltd*	Tort law	Judgment
174	18.12.69 [1970] NI 236	CA	*Marks & Ors v Wellman Machines Ltd*	Employment law	Judgment
175	26.1.70 [1971] NI 40	CA	*Arthurs v Attorney General for Northern Ireland*	Criminal law	Upheld by HL
176	6.2.70 [1970] NI 257	CA	*Bairnswear Ltd v Armagh County Council*	Criminal injury law	Judgment
177	1.5.70 [1970] 5 NIJB 1	CA	*Gracey v Weaver*	Criminal law	Judgment
178	1.5.70 [1970] NI 231	CA	*Ministry of Home Affairs v Guiney*	Criminal injury law	Judgment
179	22.6.70 [1971] NI 13	CA	*Devlin v Armstrong*	Criminal law	Judgment
180	24.9.70 [1971] NI 68	HC	*In re the Goods of Patrick Black*	Succession law	Judgment
181	2.10.70 [1971] NI 211	CA	*Charles Donnelly & Sons Ltd v Belfast Corporation*	Criminal law	Judgment
182	7.10.70 [1970] 10 NIJB 2	CA	*Kennedy v Spratt*	Sentencing law	Upheld by HL
183	20.10.70 [1970] 10 NIJB 4	HC	*Hart v Cresswell*	Land law	Judgment
184	20.11.70 [1971] NI 250	CA	*McCarroll v Hicking Pentecost & Co (NI) Ltd*	Employment law	Judgment
185	27.10.70 [1979] NI 172	CA	*Martin v Ministry of Home Affairs*	Criminal injury law	Judgment
186	12.2.71 [1971] NI 114	CA	*Commissioner of Valuation v Trustees of the Redemptorist Order*	Charity law	Judgment
187	19.3.71 [1971] NI 224	CA	*R v Downey*	Criminal law	Judgment
188	26.3.71 [1971] NI 193	CA	*R v Murphy, Lillis and Burns*	Criminal law	Judgment
189	26.5.71 [1972] NI 59	CA	*McFarlane v McFarlane*	Family law	Judgment
190	4.6.71 [1972] NI 80	CA	*R v Fegan*	Criminal law	Judgment
191	30.6.72 [1974] NI 44	HC	*Heron v Ulster Bank Ltd*	Succession law	Judgment
192	19.3.74 [1974] NI 83	HC	*In re Hughes*	Land law	Judgment
193	14.10.74 [1974] NI 226	HC	*In re McKeown*	Bankruptcy law	Judgment
194	23.6.75 [1975] NI 139	HC	*McKeown v McKeown*	Family law	Judgment

Part 4: Cases heard as an *ad hoc* Law Lord, 1951–1973

	Date and law report	Court	Title of case	Primary area of law at issue	Contribution
1	25.2.52 [1952] AC 362	HL	*Earl Fitzwilliam's Wentworth Estates Co Ltd v Minister of Housing and Local Government*	Land law	Judgment
2	24.11.52 [1953] AC 164	JCPC	*Kwasi v Larbi*	Arbitration law	Concurrence
3	25.1.54 1954 SC (HL) 43	HL	*Anderson v Lambie*	Land law	Concurrence
4	25.1.54 [1954] 1 WLR 282	HL	*Inland Revenue Commissioners v Williams (Dunblane) Ltd*	Taxation law	Judgment
5	25.1.54 [1954] AC 257	HL	*Sneddon v Lord Advocate*	Taxation law	Judgment
6	27.7.54 [1955] AC 93	JCPC	*Wong Pooh Yin v Public Prosecutor*	Criminal law	Judgment
7	11.3.55 [1955] AC 667	HL	*Madras Electric Supply Corp Ltd v Boarland (Inspector of Taxes)*	Taxation law	Judgment
8	7.11.55 [1956] AC 104	HL	*Bonsor v Musicians' Union*	Employment law	Judgment
9	8.12.55 [1955] 1 WLR 1329	HL	*Bambridge v Inland Revenue Commissioners*	Taxation law	Concurrence
10	19.12.55 [1956] AC 421	HL	*Attorney General v Parsons*	Land law	Judgment
11	21.6.56 [1957] AC 334	HL	*Southern Railway of Peru Ltd v Owen (Inspector of Taxes)*	Taxation law	Dissent
12	19.7.56 [1956] 1 WLR 1002	HL	*Walsh v Lord Advocate*	Administrative law	Judgment
13	25.7.56 [1957] AC 403	HL	*West Suffolk County Council v W Rought Ltd*	Taxation law	Concurrence
14	14.1.57 [1957] AC 176	JCPC	*Abeyawardene v West*	Succession law	Concurrence
15	25.6.58 [1959] AC 293	HL	*National Deposit Friendly Society Trustees v Skegness Urban District Council*	Charity law	Judgment
16	13.2.61 [1962] 1 WLR 241	HL	*Amp Inc v Hellermann Ltd*	Patent law	Judgment
17	19.12.61 [1962] AC 496	HL	*Rye v Rye*	Land law	Judgment
18	18.10.62 [1964] AC 1019	HL	*Sparrow v Fairey Aviation Co Ltd*	Tort law	Dissent
19	20.12.62 [1963] 1 WLR 69	HL	*British Commonwealth International Newsfilm Agency Ltd v Mahany (Inspector of Taxes)*	Taxation law	Judgment
20	13.3.63 [1964] AC 173	HL	*Inland Revenue Commissioners v Lord Rennell*	Taxation law	Dissent
21	21.12.65 [1967] 1 AC 259	JCPC	*Liyanage v The Queen*	Constitutional law	Concurrence

22	18.5.66 [1966] 1 WLR 1015	HL	*Central and District Properties Ltd v Inland Revenue Commissioners*	Taxation law	Judgment
23	18.5.66 [1967] 2 AC 1	HL	*Toohey v Woolwich Justices*	Criminal procedure law	Judgment
24	1.2.67 [1967] 2 AC 224	HL	*Churchill v Walton*	Criminal law	Concurrence
25	15.3.67 [1971] AC 282	HL	*Athanassiadis v Government of Greece*	Criminal law	Concurrence
26	15.3.68 [1968] AC 1097	HL	*Davies Jenkins & Co Ltd v Davies (Inspector of Taxes)*	Taxation law	Judgment
27	27.5.68 [1969] 1 AC 320	JCPC	*Thompson v Stamp Duties Commissioner*	Taxation law	Concurrence
28	27.6.58 [1968] 1 WLR 1718	JCPC	*Ishak v Thowfeek*	Trust law	Concurrence
29	19.12.67 [1968] 1 WLR 53	HL	*Crickitt v Kursaal Casino Ltd (No 2)*	Contract law	Concurrence
30	19.12.67 [1968] 1 WLR 205	HL	*Lord Advocate v Reliant Tool Co*	Taxation law	Judgment
31	25.7.68 [1970] AC 379	JCPC	*Ningkan v Government of Malaysia*	Constitutional law	Judgment
32	19.2.69 [1970] AC 668	HL	*J v C*	Family law	Judgment
33	21.10.69 [1971] AC 481	HL	*S (Infant) v Manchester City Recorder*	Criminal law	Judgment
34	6.11.69 [1971] AC 198	HL	*Atkinson v US Government*	Criminal law	Concurrence
35	23.7.70 [1972] AC 24	HL	*S v S; W v Official Solicitor*	Family law	Judgment
36	2.11.70 [1971] 1 WLR 191	JCPC	*McClelland v Taxation Commissioner of the Commonwealth of Australia*	Taxation law	Dissent
37	24.3.71 [1971] AC 682	HL	*Re W (An Infant)*	Family law	Judgment
38	16.2.72 [1972] AC 601	HL	*Dingle v Turner*	Charity law	Judgment
39	25.7.73 [1974] AC 370	HL	*DPP v Ray*	Criminal law	Judgment
40	25.7.73 [1974] AC 357	HL	*DPP v Turner*	Criminal law	Judgment
41	25.7.73 [1973] 1 WLR 1295	HL	*Williams v Beasley*	Tort law	Concurrence