

ANGLO-IRISH CONTRIBUTIONS TO THE
ESTABLISHMENT OF THE MEDICAL AND LEGAL
PROFESSIONS IN AUSTRALIA

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The Chairman of the Meeting was the President, Dr F. M. C. Forster.*

TODAY there is a real equivalence in scholarship, learning and expertise between your two professions: that was by no means true at the end of the eighteenth century and the period of the colonisation of the Australian continent. The medical profession, though always essential, only becomes scientific and socially fully acceptable with the great advances, especially the discovery of anaesthetics, in the middle-nineteenth century and although I can speak of the personal qualities of some of the early Irish-born and/or educated physicians and surgeons in New South Wales, Van Diemen's Land and the later colonies, I cannot discern or claim for them any specific pattern in their background though it will cause, no doubt, some humorous competitive discussion between the respective members of your two professions present when we recall that if there were a number of surgeons or surgeon's mates with the first fleet, it was many years before the first trained legal practitioners reached this continent and then as convicted or ingenious felons. Obviously it was an eighteenth century belief that a new society could exist without lawyers but it could not exist without doctors, even if, by our standards, the medical practitioners concerned were of no very high quality, however many social and other virtues they may have possessed. When lawyers did come at last they came with a traditional body of accepted learning and the knowledge that when it came to judicial decisions they were subject to review by able practitioners and judges at home. There were great lawyers in profusion in Ireland as in England in the eighteenth century; they belonged to a tradition still acceptable and dominant in our courts; there is little, except a desire to serve humanity, in common between the pre-nineteenth century medicos and our own generation.

It was the middle of the nineteenth century before medical schools, in our accustomed sense of the term, came to dominate the training and education of young practitioners and the first great British medical school was that of Edinburgh even if in due

course—at a considerable distance of time—Dublin came to be its most distinguished competitor. Those surgeons and surgeon's mates who came out with the early convict fleets or in the first half century had all been educated under an apprenticeship system, none had taken a primary degree at a university. Many like Henry Grattan Douglass proceeded to the degree of doctor of medicine at Dublin or Denis Conisden at St Andrews after many years of practice by licence from one of the Royal Colleges in the three kingdoms. In fact the normal eighteenth century medical practitioner commenced his career as an apprentice to some local doctor, went on to walk the hospitals and watch the senior practitioners of one of the capital cities—London, Dublin, Edinburgh—and then passed the examinations of the local college of physicians and surgeons or of one of the branches of the armed services. It was very much a personal type of education; the Edinburgh Medical School was the first to place any exact stamp upon its graduates and continued to dominate medical education, at least for the Celtic fringe of the British Isles, until well into the twentieth century.

It was not that theoretically Dublin University, where the senior medical chair dates from 1618, did not have a capacity for medical education, at least from the early years of the seventeenth century; a capacity which became real during the Commonwealth in 1652 but before 1700 only twenty-eight had graduated in medicine of whom fewer than half were recorded as undergraduates. Lest that be considered quite unusual it must be stressed that a high proportion of those proceeding to doctorates at the English and Scottish universities had also never been medical undergraduates though they might have practised for years with arts degrees to mark them out as university men.

The transformation of the Edinburgh Medical School into its dominant position in the British Isles was brought about by Scotsmen who had obtained their medical degrees at Leiden in the Netherlands. In due course it was mainly Edinburgh graduates, frequently of Irish extraction, and the example of Edinburgh which transformed the Dublin Medical School so that it kept pace with or led in the advances of nineteenth century science. Men like James Macartney the anatomist, the two Stokes, father and son, Whitley and William and Robert James Graves, all great clinical teachers, established its reputation and it must be remembered that in the Dublin hospitals they taught not merely Trinity undergraduates but also those attending private medical schools and qualifying through the Royal Colleges or the Apothecaries' Hall. The questions in the exams might vary but they were often set by the same people. Thus the first

Australian surgeon to be knighted, Sir Thomas Naghten Fitzgerald (1838-1908), though educated at the Ledwich School of Medicine, a private school in Dublin, pursued his clinical studies at Mercer's Hospital where many of his teachers were from the university.

The first outstanding medical practitioner from an Anglo-Irish background belongs to the earlier tradition. Thomas Jamison (1745-1811) who came with the first fleet qualified by apprenticeship through the Royal Navy but was, in fact, a distinguished arts graduate, a classical scholar of Trinity elected competitively in 1768 and proceeding M.A. in 1772 but never having what we would now call a registrable university qualification in medicine. However, if it is any consolation to his profession, he was, on paper at least, by far the best educated of those who came out in any category with the first fleet and according to Sir Edward Ford his article *General Observations on the Small Pox* published in *The Sydney Gazette* in 1804 marks the beginning of medical journalism in Australia. Other surgeons or surgeon's mates who sailed with the first fleet and with an Anglo-Irish background included Denis Conisden and John Harris, both of them ultimately with Scottish degrees, Harris from Edinburgh and Conisden from St Andrews. The latter made some specific contributions to science in his studies of the medicinal qualities of the eucalypts. The principal surgeon John White was Irish born but educated as a surgeon's mate in the navy. With the second fleet came D'Arcy Wentworth, a much more representative Anglo-Irishman, politically mature as well as with a business acumen and a flair, shared by others who remained, for acquiring wealth; but there is no way by which one can at that stage of the colony's existence make any generalisations about the respective groups in the medical profession. Wentworth had served an apprenticeship with Dr Alexander Patton, a family practitioner in the small town of Tanderagee not far from Wentworth's home and birthplace in the larger town of Portadown. In the Mitchell Library is a typical turn-of-the-century letter of good advice to the young apprentice walking the hospitals in London from his former and friendly Irish master. Though Wentworth spent his entire medical working life in the colony of New South Wales he made no conspicuous contribution to medical science even if he did support Conisden in his research activities and that, of course, brings me to the further point that if the standard of general medical practice and education in the home countries was by no means high, then it was the more unlikely that really able physicians would emigrate so far from home. Even though, for reasons of poverty in their native environment, there was a natural tendency for the abler members of the more ambitious of the celtic fringe to seek fame and fortune in the

Indian and colonial empires as a group it was the lawyers who were much the more distinguished. Their legal and educational background was sound, their social position assured but especially in post-union Ireland and always in poverty stricken Scotland there was too little work for the competent and ambitious for all to progress to the top, so the imperial and colonial service was full of good quality lawyers willing to take risks and ending up with high judicial posts. Irrelevantly but interestingly enough the early Bishops of the church of England in Australia were also men of high calibre because of the inadequacy of opportunities for promotion at home.

I mentioned earlier that it was many years before legal practitioners caught up with the number of the medical profession in the developing colonies: as a result there was a need for amateur lawyers in positions of technical responsibility. D'Arcy Wentworth is a typical example of those who became jacks-of-all-trades in the early colonial period and talking to lawyers and medicos together I must remind them that the doctor became Sydney's first police magistrate and has his place in legal history for imposing a fine on one of the colony's early judges, Jeffrey Hart Bent, who claimed that he was exempt from paying tolls at the gates on the road between Sydney and Parramatta and furthermore that "As Judge of the Supreme Court he was in no way amenable to any criminal jurisdiction in this Territory". Wentworth in fining him ruled that since he was not travelling in his judicial capacity this claim was untenable and this view was supported by the authorities in London. I suppose you could argue from evidence like this that though learned and well-qualified one can also be a fool whilst those without great learning may also be intelligent men of affairs. D'Arcy Wentworth, helped indeed by his powerful relative, Earl Fitzwilliam, belonged to the second group. In parentheses may I say that I have long felt that a most interesting topic for consideration by a historically minded person with medical training would be the effect of isolation and loneliness on group and individual reactions in a society like that established at the end of the world in the early colony of New South Wales. I have pointed out elsewhere that New South Wales was in many senses just as much a prison for the officers and government officials as ever it was for the convicts under daily direction and control who may well have been comparatively the happier without any deep sense of responsibility or forboding. Dissension between the non-convict classes in New South Wales seems almost pathological and must be associated with feared and fearful isolation.

In contrast to the quality of the Dublin Medical School which only became famous in the second quarter of the nineteenth century and in-

ternationally recognised as competing with Edinburgh in the 1850's and thereafter, the Dublin School of Law had always enjoyed a high reputation partly, of course, because of its setting in the capital of a very litigious country with a large and well educated landlord governing class. Furthermore in the eighteenth century the college was just across the road from the seat of the Dublin Parliament and inside the college the historical society, founded by Edmund Burke in 1747, now the oldest university debating society in the world, kept together graduates and under-graduates who participated freely in the parliamentary, legal and ecclesiastical world with special privileges for the members within Parliament House itself. In the history of Trinity College, Dublin there are many graduates, Lecky the Historian perhaps is the best known but including many who came to these shores, whose loyalty in after life was to the "Hist" rather than to the college and university. When we come to the so-called chain reaction of T.C.D. graduates to mid-nineteenth century Victoria we will find that the chain was perhaps more of "Hist" men than of Trinity men even if all of the first class belonged to the latter. Thus the greatest of all the early academic figures at the University of Melbourne, Professor W. E. Hearn, that rarest of figures an academic Q.C., was Secretary of the College Historical Society in 1847-8 when Edward Graves Mayne, the first Registrar of the university was Auditor — the title given to the senior officer of the Society to this day. The best reason I can discover for Governor Sir Richard MacDonnell (Auditor 1835-6) an earlier Chief Justice of Gambia, inviting Richard Torrens (of Torrens Title fame) to form a ministry in South Australia is that they were members of the Society together and both graduated at the same commencements in 1835. It is true that blood relationships had their share in influencing emigration to the various Australian colonies but college friendships seem to have been equally significant and it must be stressed that after 1793 and the acceptance on terms of near equality of Roman Catholic students into the college there was real intermingling between the historically divided Irish religious groups. This produced an interesting cast of mind politically. The struggle for complete Catholic emancipation meant that for generations a group by nature conservative was closely allied with those politically liberal with consequent intellectual effects clearly evidenced in many who came not only to Victoria but also to the other Australian colonies. It was such a spirit that led Lecky in his famous speech at the Trinity Tercentenary Celebrations in 1892 — where your University of Melbourne was represented by the great classical scholar Professor T. G. Tucker* — to assert: "Of all our Irish institutions I believe Trinity College Dublin is that which has divided us least and excited beyond its border the largest measure of genuine good will" and earlier in the speech he described it as "The University of a

nation and not merely of a party or of a sect. More than sixty years before the English universities its degrees were thrown open to Roman Catholics and before that date Roman Catholics were admitted by connivance amongst its students." So I warn you that neither by name or education can you necessarily establish the religious background of our Anglo-Irish. Writing in the Australian Dictionary of Biography Jill Eastwood amusingly describes Sir Henry Wrixon (Auditor of the "Hist" 1861-2) as "A fascinating mixture of radical and conservative" and that would be a fair way to describe the general intellectual background of those of Anglo-Irish origin who came out in the first century of colonial existence.

You are very well aware of the fact that for the governing classes in the British Isles in the eighteenth and nineteenth centuries there were for younger sons three primary occupations—the army, the law, the church: for all of which a cultural rather than a specialised education was demanded and expected, so that despite the dominance of the legal and clerical professions in the universities, specialised professional societies did not compete with the more generalised outlook of a debating society like the Historical. It is only towards the end of the nineteenth century that separatist groups like those in divinity and medicine found their technical societies to be of growing importance and to this day any law students' society tends not to be college based but organised for all groups undergoing professional legal training. The reputation of embryo lawyers was made in the "Hist" or in the "Philosophical", the second traditional T.C.D. society, but not in any specific legal society—if students wished to compete narrowly with their fellows they did so in societies outside the college walls. This very fact profoundly affected the outlook of budding lawyers, whether for home or overseas, and ensured that they would not be narrowly conservative or out of touch with the spirit of the times or with changing socio-economic development.

When Henry Grattan Douglass, member of the Royal Irish Academy as well as M.D. came to New South Wales in 1821 it was with D'Arcy Wentworth, an instinctive Liberal, that he immediately established a friendship. Like Wentworth he had served in the army, acquired friends in high places and despite a more distinguished medical reputation also tended to give up medical practice as his dominating concern in order to take an active part in public life; like Wentworth also accepting office as a magistrate, in his case at Parramatta, as well as becoming a Commissioner in the Court of Requests. There are many reasons for mentioning Douglass, the first Secretary of our earliest scientific society, the Philosophic Society of Australia, one of the Founding Fathers of the University of Sydney,

but I introduce him at this point to quote his guarantee to "support those liberal and independent principles in which I was born, in which I was educated and which have grown with my growth and strengthened with my strength". This was a claim which a high proportion of the Anglo-Irish in your respective professions could have actively made—outstanding among them Chief Justice George Higinbotham in whom, as in the majority, there were major inconsistencies both radical and conservative. To give you more idea of Henry Grattan Douglass's many activities although only in New South Wales for one-third of his life—from 1821-8 and from 1848-65—he was also a leading light in the Benevolent Society, in the Agricultural Society and in his final years with three other Anglo-Irish: John Hubert Plunkett, Sir Roger Therry and Bartholemew O'Brien, two lawyers and one medical man, a member of Sydney University's governing body—the Senate.

It was from one point of view a radical move in 1862 when your University of Melbourne was finally getting down to the proper organisation of its medical school that a five-year course should be required, since Dublin was at that time the only British University to ask for more than four years: it was 1892 before the majority of British Universities followed suit. How much that decision was the personal whim of Sir Anthony Brownless I do not know: his own training was in London hospitals and his degree from St Andrews but he had only the one example to work from and that was Anglo-Irish.

If Wentworth and Douglass were the most politically alert of the early medical practitioners a similar position among lawyers must be given to John Hubert Plunkett and to Edward Brewster who came out in 1832 and 1839 respectively but representing very different traditions within the Anglo-Irish conspectus. I have already stressed that whilst the legal profession might have been of a higher standard than the medical in the United Kingdom in the early years of Australian settlement nevertheless when lawyers at last came to New South Wales they were of no very exalted quality until the arrival of Chief Justice Forbes in 1824 and even he was poorly served by the Barristers and Solicitors who appeared in or prepared work for the Courts. It was another eight years before Plunkett arrived, yet Sir Victor Windeyer can describe him as "The first law officer of the Crown in the colony who was fully competent for his duties". Like Douglass and Wentworth he had had early political interests working closely with the Irish nationalist leader, Daniel O'Connell, and organizing his electoral success in Connaught in 1830. Essentially then he was a liberal in his outlook, the product of the first generation of those who had benefited from the various stages of Catholic emancipation. Brewster for his

part belonged to the Protestant Anglo-Irish tradition with an uncle who became Irish Lord Chancellor, yet as a lawyer he was consistently on the side of simplicity and innovation. Brewster established the first Court of Quarter Sessions in Melbourne in 1839 but his claim to fame lies not in his judicial but in his political and public career as a representative of Port Phillip in the Legislative Assembly in Sydney and as a strong advocate of the unification of the legal profession, something not yet achieved in all the Australian States and still a matter of frequent public discussion nearly a century and a half later. As an M.L.A. he successfully introduced measures to simplify legal procedures and to reduce expense but failed in his main ambition to unite Barristers and Solicitors into one single profession. Disappointed, he returned to Europe, gave up the law and was ordained though maintaining his legal interests sufficiently to proceed both Bachelor and Doctor of Laws many years later. I suppose it is a peculiarity of our twentieth century attitude to professionalism that while there is little surprise when a person with a legal education pursues some avocation for which a general education is required nevertheless we are surprised when a medical graduate gives up his professional career except perhaps to enter the political arena. In the early years of Australian existence medical and legal were each general educations and certainly in these colonies even more medical men than lawyers forsook their supposedly chosen careers—here in Victoria Sir Francis Murphy, for fifteen years the first Speaker of your Legislative Assembly, is a good example. He barely practised at all after his appointment as a colonial surgeon though he did show his empathy with the profession which he had entered with a medical education of Cork, Trinity College Dublin and then London by marrying the daughter of a naval surgeon turned pastoralist and magistrate in his area. Another example, not of the Anglo-Irish tradition, would be the first Australian Baronet, Sir Charles Nicholson, Legislative Councillor in two States, second Provost (or as it is now termed, Chancellor) and great benefactor of the University of Sydney.

In the first colonial century there tended to be a sharp division between barristers, all called in one of the Inns of Courts of the United Kingdom, and solicitors many of them locally trained just as there was once a social distinction between physicians and surgeons; it was after Brewster's time that this social distinction was reduced. I may add that it has been asserted that Dublin was the first university to recognise the proper status of a surgeon when it separated the chair from that of anatomy in 1849, but as you may know all medical graduates at Dublin and many other universities now graduate with three primary degrees in medicine, surgery and obstetrics and in the

nineteenth century graduation implied immediate registration for practice. This was not the case in law. I have mentioned that students walking the hospitals whether graduates, undergraduates or non-university students were all likely to encounter the same teachers. In the case of law the Inns of Court and particularly the King's or Queen's Inn in Dublin allowed the greater part of the teaching to be done by the staff of the university so many attended university lectures who were not registered undergraduates—a practice which continued up to my own time but which has created great problems for those working on the Australian Dictionary of Biography when frequently a family legend that an ancestor went to Trinity cannot be substantiated from the college books and yet may be, in a sense, quite true. It was common practice for law students proceeding to the Bar in the early nineteenth century also to become members of one of the London Inns of Court to ensure wider opportunities of practice but in any case the requirements of the Inns had to be complied with over and above any university degree acquired even if some thought those additional requirements were limited to the eating of a fixed number of dinners.

If Brewster failed in his ambitious attempts to alter colonial legal practices, a much more pedestrian yet useful contribution was made by another Irish barrister, Thomas Callaghan, who came to New South Wales in 1840 and published a compendium, "Callaghan's Acts", setting out the legal statutes in force in the Australian colonies arranged according to subject matter. As you all know law is largely based on precedent and a good legal library is essential for any active practitioner and so much the more for judicial officers or schools of legal education. There was an inevitable shortage of basic legal texts not only in the offices of solicitors and barristers but also at the disposal of judges so Callaghan's compilation was of the utmost value in a developing legal and commercial system. Those of us in the twentieth century who have been concerned with developments in legal education know the enormous costs involved in the establishment of an adequate law library. Medical libraries quickly become out-of-date; legal libraries continuously accumulate. Callaghan profoundly affected the development of the legal profession to the benefit of all but in fairness it must be said that the overwhelming majority of judgments in the early years of a fully fledged judicial administration which have come down to us were of a consistently high order even if some such as those of Sir Redmond Barry were criticised as turgid and long-winded.

Inevitably the education and character of the judges colour and influence the entire legal system to a degree which is not normally

achieved by leading members of the medical profession. Obviously a major scientific discovery may affect the practice of very many doctors but there may be little personal rapport prior to or after the innovation. It is far different with the law. The complexion and attitude of the superior courts will affect the whole ethos of those involved in and with the legal profession and the fact that so many early solicitors, barristers and judges in New South Wales, more especially Victoria but less obviously in Van Diemen's Land were of Anglo-Irish background did give a specific Anglo-Celtic tone to our early legal history. There are many sarcastic comments from early English travellers about the predominance of Irish brogues in the courts but there is also more favourable comment on the general hilarity and cheerfulness with which Bench and Bar associated in the best Irish (and sometimes alcoholic) tradition. The law was a stern master but was frequently tempered with humour as well as mercy. So far as Melbourne or Port Phillip was concerned both the first Chairman of Quarter Sessions and two of the first three resident Supreme Court judges were T.C.D. graduates—one of them, Jeffcott, a former legal adviser at Dublin Castle.

Although Sir Charles Gavan Duffy, progenitor of so many distinguished Australian lawyers, originally intended to practise as a lawyer when he came to Victoria from leadership in the United Ireland movement and membership of the Westminster Parliament, his local compatriots forced him into politics and a career which brought him the Premiership, the Speakership and a Knighthood. None the less, through his family and his friends who came out with or after him, or who had been called to the Bar with him but had migrated earlier to Australia, he profoundly influenced the legal profession in Victoria. Among these were Robert Walsh, Attorney-General in his own Ministry, who had preceded him to Victoria, Hibbert Newton, called to the Bar on the same day, Sir Bryan O'Loughlen, fellow United Irishman and later Premier; or earlier acquaintances like Crown Prosecutor Joseph Henry Dunne, County Court Judge Townshend McDermott, Solicitor General of Victoria, Robert Le Poer Trench, Attorney-General, or Samuel Henry Bindon, Minister of Justice, and a host of others equally Roman Catholic or Church of Ireland. They were all, as were some of the judges I will comment on hereafter, contemporaries of the Young Ireland movement and of *The Nation* periodical; the last serious Irish attempt to create a single Irish nation breaking down the Catholic-Protestant antipathy and trying to imbue all with a liberal Anglo-Irish outlook rather than that of Celtic particularism. These views were emphatically those of Gavan Duffy and particularly those of his friend Moses

Wilson Gray who came out with him on the same ship having previously travelled with him on the European continent. By necessity perhaps Gray made greater effort at the Bar than Gavan Duffy was allowed, but he was attracted into politics by his passion for land reform and became so disappointed with his Young Ireland leader's outlook on the subject that although an M.L.A. he left the colony after a little over five years' residence for New Zealand where he became a judge.

Dublin was small enough for everyone to know everyone or at any rate to know about them. The Queen's Colleges from which later legal and more frequently medical graduates came were a product of this feeling for national unity on a liberal basis even if they were later to develop as centres of division under the condemnation of the Roman Catholic Church. Many who came to Australia came not just because of economic circumstances but also, like Gavan Duffy, in political despair at the intransigent nature of Irish politics—such emigrants we have to this very day.

What I am trying to suggest is that there was a common intellectual background to all these mid-nineteenth century lawyers whether of Roman Catholic or Protestant ancestry: whether of naturally unionist or home rule outlook—many on both sides were radicals but few were revolutionaries though not averse to active participation in public demonstrations as was evidenced even by a future Chief Justice Sir William Stawell who had a much more boisterous youthful life than his early friend and future Supreme Court colleague Sir Redmond Barry. It is interesting to record that prior to coming separately to Australia Stawell, Barry and another T.C.D. lawyer James Moore, later a distinguished Melbourne banker, had taken walking tours together on the European continent. Barry, an intimate friend of Isaac Butt the future nationalist leader, was the first of the three to arrive and as you all know in the establishment of the University, the foundation of the State Library and his support of every cultural activity made by far the greatest contribution perhaps of any man to the establishment of the State of Victoria as we know it even if he were defeated by his friend and junior for the Chief Justiceship.

Barry and Stawell were the first two Chancellors of Melbourne University; Hearn, another Trinity man—the fourth—all were lawyers and in the Supreme Court Sir Robert Molesworth was a third T.C.D. judge while in later years George Higinbotham was to be another Chief Justice and Sir Henry John Wrixon (auditor of the "Hist" 1861-2) was an outstanding Attorney-General. Hardly had Sir Valentine Fleming retired as a long time and legally respected Chief Justice of Tasmania than George Higinbotham's younger school-

fellow from the small Royal School of Dungannon, Sir Frederick Darley, became Chief Justice of New South Wales—a remarkable coincidence. Then there were the Jeffcott brothers, both knighted, one an earlier Victorian judge, the other the only judge in modern times to be tried for murder (he killed a man in a duel) in South Australia; just as Molesworth in Victoria was the first Australian judge to be involved in divorce proceedings. These Irish lawyers were certainly not conformist—it was an Irish lawyer who was the co-respondent in the Molesworth divorce case—and if Hearn firmly established legal education in Victoria, William Barlow did the same for South Australia and gave as Registrar (auditor "Hist" 1856-57) an organisation to the University of Adelaide which was to serve it for the first century of its existence.

There are innumerable others of Anglo-Irish background, at many levels, who contributed to the Anglo-Irish tradition in medicine and in law in this country. We can only generalise that they normally contributed to the gaiety of nations as well as to the establishment of our national cultural and scientific life. Every nation is reputed to have its own characteristics and the Anglo-Irish were in general argumentative, outgoing, cheerful in the face of adversity and very adaptive to their new environment. From the day he landed in this country, Redmond Barry never looked back, for him the new land was to develop the culture it had inherited from the old world. But it was to be an Australian culture built upon firm and historic foundations and the Anglo-Irish product of a meeting of cultures was well adapted to the creation of just such a new world.

FOOTNOTES

- * Strangely enough Sydney, where the Dublin tradition was never so strong as in Melbourne, was the university to be represented by a T.C.D. graduate—Peter Faucett—a Supreme Court Judge who was a member of Senate.