Constitutions exist at the intersection of law and politics. They reflect fundamental aspects of their political communities: not just the moral values implicit in constitutional rights but also the identity of the people and the territory to which they belong. My scholarship explores what constitutions are and how they work.

Ireland: ongoing constitutional evolution

The standard account of the Irish constitution is that it was enacted in 1937 and establishes a tripartite separation of powers between Government, Oireachtas, and courts empowered to enforce constitutional rights. The constitution is seen as a rule-book for politics, amendable by referendum.

In The Constitution of Ireland: A Contextual Analysis (Hart 2018), I present a very different account. I show how the 1937 constitution wasn’t a foundational event but rather an important moment in an ongoing constitutional evolution. As important are the other rules, principles and practices that supplement and modify the constitutional text. This approach shows more clearly how the constitution really works and changes over time.

The constitution’s real separation of powers is a bipartite one, between the Government and the courts. This balance shifts over time as the courts recalibrate their willingness to overturn Government decisions. In 1974, the Supreme Court overturned the legislative ban on contraceptives. Nowadays, however, the Court defers much more to democratic choices on contested social issues, an attitude that results from legal and political concern that courts had become too powerful. This may change in the future but at present the deference of the courts empowers the Government. This makes it all the more important that legislators pay close attention to draft legislation and are willing to hold Government to account. Concerned citizens should be alert to the fact that the courts do not play the same role as in the past.

The constitution used to be distinguished by a nationalist vision of an all-Ireland state and reliance on Roman Catholic natural law theory. These strains have now been bled out by a mixture of formal amendment, judicial interpretation, and simply ignoring constitutional provisions that seem out of place, such as that valuing the role of women in the home.

For all these reasons, the Constitution leaves more decisions to the ordinary political process. This may explain its continued success, or at least longevity.

Constitutions and territory — In my other work, I explore how constitutions in general function, considering issues such as judges’ reliance on foreign cases and how constitutional systems guard against democratic decay.

At present, my focus is on territory. The Catalan independence movement has refocused attention on how constitutions respond to secessionist claims that deny the legitimacy of the constitution itself. I carried out an empirical study of all the constitutions in the world, showing that most rely on a silent pre-constitutional understanding of territory.

This silence can help constitutions respond flexibly to independence claims, as illustrated by the Scottish referendum and the Canadian Supreme Court’s approach to Quebec. However, 31% of countries declare their territorial integrity to be inviolable. In the Spanish case, this has heightened the political stakes of Catalonia’s demands.

I have presented the results of this research at conferences internationally and my article in The International Journal of Constitutional Law has been selected as the open-access article for that volume. I am now working on a monograph, engaging with federalism, secession and territorial disputes.

Oran Doyle received his LLB and PhD from Trinity and his LLM from Harvard. He joined the Law School in 2004, where he is currently an Associate Professor. Elected a Fellow of Trinity College Dublin in 2010, he has published widely on Irish constitutional law, legal theory and comparative constitutional law. His research addresses the problems that are common to constitutional systems across the world. This research informed his work as constitutional law advisor to the Citizens’ Assembly that considered the Eight Amendment to the Constitution.

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