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Professor Aileen Kavanagh

Professor of Constitutional Governance (2018)

→ “When we think of the branches of government – legislature, executive and judiciary – we think of the separation of powers and of the three working in isolation, or being actively competitive with each other, but I argue that in well-functioning democracies, the branches of government work *collaboratively*. I identify collaboration as a value that has been overlooked but which offers a relational understanding of constitutional dynamics and illustrates how the relations operate in practice.”

Professor Aileen Kavanagh, recently appointed to Trinity’s first ever Chair of Constitutional Governance in the School of Law, is explaining her forthcoming book *The Collaborative Constitution*, to be published later this year by Cambridge University Press. She started work on this book a number of years ago “before Trump and before Boris Johnson attempted to prorogue parliament, and before democratic disintegration in Hungary and Poland” but all of these events have fed into her research and make her book particularly timely.

“Trump didn’t violate written laws; he violated unwritten norms of how a president should behave and that put the US constitution into crisis. The norms of engagement between the three branches are the hidden wiring, the connective tissue, if you like, that is vital to any constitution’s functioning. Lots of countries, including Turkey, Brazil and Poland have constitutions which are exemplary on paper but in practice they aren’t delivering because that wiring isn’t working; the connectivity is ruptured.”

She hopes that by putting focus on the unwritten norms and emphasizing that collaboration between the three branches is at least as important as competition, “I can draw attention to the foundational nature of these dynamics and call for scholarly attention to them and for care from the various political and legal actors. In order to learn from crises, you have to understand what went wrong. What went wrong in the US

was that Trump flouted the norms of expected Presidential behaviour. This is more about constitutional culture than constitutional text.”

A native of Dublin, she studied law in UCD and was on Erasmus in Germany in 1989 when the Berlin Wall came down. She remembers the early 1990s “as a time of huge optimism, particularly in constitutional law. Very prestigious American lawyers would arrive to draft constitutions for Poland and other Eastern European countries. There was all this confidence in the broadening out of democratic values; whereas now we’re in a period of democratic regression, sometimes called backsliding.”

She did a Masters in Politics before doing her doctorate in the University of Oxford in constitutional theory. After ten years lecturing in the University of Leicester, she returned to Oxford as Professor of Constitutional Law. She sees the new Trinity Chair in Constitutional Governance as a unique opportunity: “In creating this Chair in constitutional *governance* rather than just constitutional *law*, Trinity is signalling a commitment to support broader contextual understandings about how the law functions within the political system and society as a whole. Ireland is an excellent place in which to do this broader, interdisciplinary work because the Irish constitution is amended by referendum. This means that constitutional development aligns to some extent with developments in society.”



She took up her new role in December 2019 and had a few months to get to know the campus before it went into lockdown. “I absolutely loved it. Even though Oxford is a beautiful University town, there is nothing quite like Trinity’s Front Square, which is the centre of the whole university. The Trinity Long Room Hub is an exciting addition to College and I’m excited about it reopening in-person and exploring opportunities for interdisciplinary research with other Schools. I’m also aware that I’m joining the Law School at a time when it is growing and expanding its ambitions and horizons. It’s exciting to be part of that. In my field, Constitutional Law, Trinity has the largest concentration of constitutional lawyers of any University in Ireland. It is an honour to be part of that scholarly community, to contribute to it, but also to learn from it. Having worked outside of Ireland for 20 years, I’m catching up on some of the Irish developments. Trinity is an excellent place to do this.”

She is Director of the new Trinity Centre of Constitutional Governance, or TriCon. “We just managed to set up TriCon before lockdown and we want it to put Trinity and Ireland on the global map in terms of research excellence in the field. We’ve opened up some research strands including, for instance, on the status of Northern Ireland post-Brexit and the possibility and implications of a united Ireland. We’re forging links with Queen’s University Belfast and other UK universities around the world.” TriCon has now joined with the School of Politics to become a Jean Monnet Centre of

Excellence on Constitutional Governance in Europe, funded for the next three years by the Erasmus+ programme to focus on “norms of democracy across Europe”.

She loves “cinema, theatre, art galleries, dinner with friends” and is looking forward to getting back to all that post-lockdown, and to introducing her children, aged 10 and 15, to the richness of Dublin’s social and cultural life.

Her mission in Trinity for the next few years is to establish TriCon as a centre of excellence and to build further research links with Europe. “Since Brexit, Ireland is the only English-speaking and only common law system left in the EU. The Irish experience with amending the constitution through referendum, supplemented by Citizens’ Assemblies and constitutional conventions, is attracting international attention as a successful model of democratic constitutional engagement. We are the only country in the world that legalised gay marriage by a popular referendum. It is easy to take for granted that we have this ongoing popular input into our Constitution, and that social change happens when we vote for it, and that ahead of the vote, there’s a national debate about what kind of country we want to be. But in fact that doesn’t happen elsewhere and it’s something other countries are getting interested in because thus far Ireland is bucking the global trend towards populism, authoritarianism and democratic decay. I think that in terms of constitutional law this is Ireland’s time, and Trinity’s time, and I’m excited to be part of it.”