

Kelly, (John William) Basil

by A. R. Hart

Kelly, (John William) Basil (1920–2008), barrister, politician and judge, was born 10 May 1920 in Co. Monaghan, one of two children and the only son of Thomas William Kelly and Emily Frances Kelly (née Donaldson). After the family had been burnt out of their farm they moved to Belfast, settling in east Belfast, where Kelly's mother opened a bakery. Family circumstances were straitened at the time, Kelly receiving his initial education at Mersey Street primary school in the middle of a working-class area close to the shipyard before winning a scholarship to Methodist College, one of Belfast's leading schools. In 1938 he followed his sister to Trinity College Dublin where he studied law, graduating LLB and BA in 1942. During his undergraduate career he won a number of prizes in the law school, and played soccer for the university.

Kelly was called to the Northern Ireland bar in Trinity term 1944 and immediately commenced practice. Writing less than two years before he died, Kelly recalled that he had a hard start as he had no legal connections and was not an ex-serviceman. His clients came from catholic solicitors, and he built up a substantial practice representing plaintiffs in civil cases and defending clients in criminal cases. Despite this, he was passed over for silk in 1956, and it was not until 1958 that he was appointed a queen's counsel.

Kelly soon became one of Northern Ireland's most successful barristers, appearing for the defence in a number of high-profile murder cases, two of which (*Gallagher* and *Bratty*) established important principles of criminal law. He later became senior crown counsel for counties Tyrone and Armagh, and, as was common with ambitious barristers of the time, also embarked on a political career. In 1964 he was elected Unionist MP for the safe seat of Mid Down at a by-election, and was returned unopposed at each election thereafter until the prorogation of the Stormont parliament in March 1972. As a backbencher, Kelly generally confined his occasional interventions to legal topics, although in 1965 he attacked the way the decision was made to reject Magee College, Derry city, as the nucleus of a new university. In 1966 he moved a motion in parliament severely criticising the actions of the Revd Ian Paisley and his followers in abusing the governor of Northern Ireland and his wife as they attended the general assembly of the presbyterian church in Belfast, presciently warning that if protesters went too far and forfeited the respect and goodwill of the majority of people in the United Kingdom, that might lead to the abolition of the Northern Ireland parliament.

As he was a strong supporter of the reforming policies of the prime minister, Terence O'Neill (qv), and by now the leading Unionist lawyer on the backbenches, it was inevitable that when a vacancy occurred in March 1968 Kelly was appointed attorney

general. After a few months, increasing political instability meant that the workload of the attorney general dramatically increased. Whilst not a member of the cabinet, as the government's chief legal adviser Kelly was present at a great many cabinet meetings from September 1968 until the Stormont parliament was prorogued in 1972. His interventions in cabinet were few, and usually confined to purely legal issues, as when he advised the Northern Ireland government in October 1968 that the United Kingdom retained the ultimate power to legislate for Northern Ireland, at the same time commenting that Northern Ireland could not remain part of the United Kingdom and refuse to adopt universal adult suffrage.

Because the attorney general was also responsible for the oversight of criminal prosecutions, the marked increase in public order offences, initially due to rioting and contentious parades, followed by an enormous increase in the number of grave crimes including murder, firearm, and explosive offences, meant that Kelly had to cope with a great many more serious cases than his predecessors. Although he worked unceasingly, and is remembered as a very pleasant man to work for, the archaic structure of the system – still based on the nineteenth-century model of a tiny nucleus of permanent staff in Belfast and part-time crown solicitors in each county, all instructing a small number of counsel – was obvious. In the venomous and febrile political atmosphere of the time, he also came under attack by opposition politicians, who, pointing to his membership of the Orange order, alleged religious bias in his appointments and conduct of prosecutions. Kelly vigorously rebuffed these attacks, pointing out that more than fifty per cent of the crown prosecutors he had appointed had been catholic. Nevertheless, the government realised that changes had to be made, and in 1971 accepted the recommendation of a working party that an independent director of public prosecutions should be appointed to head a department of public prosecutions. Although he was displeased with the decision, believing that the working party had exceeded its terms of reference and that the wording of its report could be interpreted as reflecting upon the impartiality of his office, Kelly loyally piloted the resulting bill through parliament, although it just failed to reach the statute book before the government fell at the end of March 1972, becoming the first item of legislation to be passed under the new direct-rule provisions.

Kelly now found himself out of office and parliament, and returned to the bar to rebuild his practice. It is a telling refutation of the allegations of bias made against him that on his return to the bar it was catholic solicitors who briefed him, and for many years afterwards he had an annual dinner with a number of catholic lawyers, one of whom was Patrick Duffy (qv), a leading member of the nationalist SDLP. Although as the incumbent attorney general Kelly might have expected a judicial appointment when a vacancy occurred in the summer of 1971 with the retirement of Baron MacDermott (qv) as lord chief justice (and the then Stormont prime minister urged Kelly's case), the appointment now lay with the Westminster government, which was determined to appoint a catholic. However, such was Kelly's ability that he did not have long to wait, and just over nine months after his return to the bar

he was appointed a high court judge on 11 January 1973, thereby embarking on a judicial career that lasted until his retirement twenty-two years later on 21 April 1995.

As a high court judge Kelly continued to display his appetite for hard work, showing himself to be an even-handed, pragmatic and invariably well-prepared judge, particularly when dealing with the demanding diet of high-profile criminal cases that inevitably came his way, both as a high court judge and later, when a lord justice of appeal, he took his turn to sit as a judge of first instance. Somewhat surprisingly perhaps, given his extensive practice as a criminal defence barrister, a number of his decisions in criminal cases were overturned on appeal – notably in one of the longest and largest, terrorist, non-jury cases heard in Northern Ireland – although he was not alone in that experience, as two other judges who subsequently served as lord chief justice had decisions overturned in similar terrorist cases. Kelly could be lenient when passing sentence, although this was to bring about a significant reverse when his sentence of a woman soldier for the manslaughter of her lover's wife was increased from five years to nine. On 6 January 1984 he was promoted a lord justice of appeal and knighted. He later confessed that he then 'sat down and for the first time in my life learnt some law'. During the remaining eleven years of his judicial career he continued to work very long hours, producing a steady flow of well-researched and elegantly written judgments, and he did not find the prospect of retirement on reaching the mandatory retirement age attractive.

Because of the high-profile criminal cases Kelly heard as a judge, he lived under a particularly high degree of threat from terrorists, and at least one plot to murder him was foiled. Off the bench he took a keen interest in legal education, serving as chairman of the Council of Legal Education (Northern Ireland) for several years, and he was also the first chairman of the Judicial Studies Board for Northern Ireland. Kelly was sworn of the Northern Ireland privy council as attorney general, and of the privy council when appointed a lord justice of appeal in 1984. He was a bencher of the Inn of Court of Northern Ireland, of Gray's Inn and of the Middle Temple.

In his private life Kelly could be charming, although he could display a waspish, and at times wounding, wit. He and his wife Pamela (née Colthurst) were a strikingly elegant and stylish couple who shared an interest in art and music. On his retirement they moved to England to be near her daughter and her family. He died 5 December 2008 at his home in Gerrards Cross in Buckinghamshire. A full-length portrait by Tom Halifax of Kelly in his robes as a lord justice of appeal hangs in the Inn of Court in the Royal Courts of Justice in Belfast.

Records of the Inn of Court of Northern Ireland; NI(HC) 59 1554; NI(HC) 84 1181–2; PRONI: Cabinet records, 23 Oct. 1968 (CAB/4/1409), 20 Nov. 1968 (CAB/4/1418), 23 Feb. 1971 (CAB/4/1585); *Independent*, 12 Dec. 2008; *Times*, 18 Dec. 2008; A.

R. Hart, *A history of the Bar and Inn of Court of Northern Ireland* (2013); information from Methodist College, Belfast, and from TCD; private information and personal knowledge

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