

**ANGLOPHONE PRESUMPTIONS IN THE COURTROOMS OF WALES AND THE REPUBLIC OF IRELAND: SOME INITIAL THOUGHTS ON ACHIEVING LANGUAGE-NEUTRAL COURTROOMS**

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Abstract

In this article, we consider the legal protections afforded to Welsh in the United Kingdom, and Irish in the Republic of Ireland. We posit that existing legislation, while professing to position Welsh and Irish as variously “official” and “national” languages, in fact frames them as “other” linguistic choices, deviating from the linguistic default of English. We examine how this has occurred in both jurisdictions, in light of which we offer some initial thoughts as to how existing legislation and practice could be reframed in more linguistically neutral terms in both jurisdictions in order to prevent this “othering” of Welsh and Irish speakers.

Keywords: minority language rights; official languages; official languages legislation; othering; linguistic neutrality; Welsh; Irish.

PRESUMPCIONS ANGLÒFONES ALS TRIBUNALS DE GAL·LES I LA REPÚBLICA D’IRLANDA: ALGUNES IDEES INICIALS SOBRE LA CONSECUCIÓ DE TRIBUNALS LINGÜÍSTICAMENT NEUTRES**Resum**

En aquest article, considerem la protecció legal de què gaudeixen el gal·lès al Regne Unit i l’irlandès a la República d’Irlanda. Plantejem que la legislació existent, tot i que sosté que el gal·lès i l’irlandès són llengües “oficials” i “nacionals”, en realitat les emmarca com a “altres” opcions lingüístiques, apartades de l’opció lingüística predeterminada, l’anglès. Examinem què ha passat en ambdues jurisdiccions i, en vista d’això, oferim algunes idees inicials sobre com la legislació i les pràctiques existents es podrien reformular en termes més neutres lingüísticament en aquestes jurisdiccions per evitar que els parlants de gal·lès i irlandès siguin considerats com a “altres”.

Paraules clau: drets de les llengües minoritàries; llengües oficials; legislació de les llengües oficials; “altres”; neutralitat lingüística; gal·lès; irlandès.

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Article received: 18.07.2024. Reviews: 28.11.2024 and 24.01.2025. Final version accepted: 14.02.2025.

Recommended citation: Costello, Róisín Á, & Fflûr Huws, Catrin. (2025). Anglophone presumptions in the courtrooms of Wales and the Republic of Ireland: some initial thoughts on achieving language-neutral courtrooms. *Revista de Llengua i Dret, Journal of Language and Law*, 83, 169-187. <https://doi.org/10.58992/rld.i83.2025.4324>

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1 Introduction

Both Irish and Welsh are subject of official languages legislation which protects the rights of their speakers to use both languages in interactions with the state, and in certain settings. Irish is also recognised in the Constitution of Ireland (Costello, 2024a)¹ as the country's "national" and "first official" language. Despite such assurances,² barriers to meaningful linguistic parity continue to exist in both jurisdictions in the form of implicit anglophonic presumptions established through legislation, and through decisions of the courts.

In this article, we outline how, historically, the legal status of Welsh and Irish has facilitated the embedding of this presumption. We posit that the result of this legacy is that existing legislation and case law, while professing to position Welsh and Irish as variously "official" and "national" languages that enjoy equal recognition and protection, in fact frame both languages as "other" linguistic choices that deviate from the linguistic default of English.

As part of an ongoing research project focused on a comparative study of the rights of Irish and Welsh speakers in courtroom settings, we focus in this article on how the anglophonic presumption embedded in legal approaches to both languages manifests in courtrooms, where English remains the default language of court proceedings.

In this respect, we argue that the various models and approaches for the protection of both Welsh and Irish in courtroom settings result in an "othering" of Irish and Welsh speakers. We argue that this is, in large part, a result of approaches to facilitating the use of both languages which define Welsh and Irish as being permissible linguistic choices only where certain thresholds of "reasonableness" and similar standards are satisfied, and as languages for which special provision must be made. This implicitly frames both languages, and the choice to use them, as a deviation from the linguistic norm of English and risks perpetuating the historic view of both languages and their speakers as problematic "others" whose choices are subversive of "reasonableness" and the fair operation of the legal system.

While there is much work to be done to address these outcomes, which are linked to the history of linguistic thought and the politics of language in both jurisdictions, we focus in this article on two discrete matters. First, we examine where these presumptions are evident in the laws of both jurisdictions and assess their impact on the rights of language users in courtroom settings. Secondly, we offer some initial thoughts, resulting from our research, on ways that law and practice in both jurisdictions might support the development of language-neutral courtrooms – i.e., courtrooms in which the anglophonic presumption is substantially diminished or removed.

The two languages which form the focus of this article, and the underlying research project, have been chosen because they share a similar socio-political history, but have diverged in the manner in which they are legally protected in contemporary settings (e.g., through legislation or through a combination of constitutional and legislative mechanisms). As such, they offer a useful comparator with which to examine the successes and shortcomings of various models for the protection of minority languages, and in particular in jurisdictions with an anglophone majority.

In part 2 below, we briefly contextualise the historical exclusion of Welsh and Irish from the courts and explore how the framing of both languages and their speakers has historically excluded them from the courts of both jurisdictions. In part 3, we describe the current legal protections for Welsh and Irish, and

1 References to "Ireland" in this article should be read as references to the Republic of Ireland as a legal jurisdiction, rather than the island as a whole. A constitutionally and legally distinct system for the recognition of Irish language rights pertains in Northern Ireland.

2 And, in the case of Ireland, that Irish is the national *and* a joint official language in accordance with Article 8 of the Constitution of Ireland (Bunreacht na hÉireann).

sketch how these protections continue a historical trend of “othering” these languages. In part 4 we turn our attention to the theme of otherness and explain how the positioning of Welsh and Irish as “other” languages is perpetuated in courtroom settings. We conclude, in part 5, by offering some thoughts as to how this “other” status could be reframed to achieve language-neutral courtrooms and offer a tentative model of “reframing phases” that may assist in achieving this end.

2 The historic legal treatment of Welsh and Irish

Dominant institutional and economic actors and those who shape “authoritative discourses” – including individual figures of social and moral authority – establish, strengthen and maintain normative attitudes towards languages, linguistic styles and associated speech communities (Foucault, 1972; Pelillo-Hestermeyer, 2021, p. 185). Foucault and others have traced this pattern through politics and history, and it is borne out in many colonial and post-colonial settings. The same patterns are evident in the historic treatment of Welsh and Irish by English administrations, and in particular in legal settings, where there was a sustained effort in both jurisdictions to impose an anglophone system of justice in some measure from the fourteenth century (with the Statutes of Kilkenny in Ireland), and certainly from the early sixteenth century onwards in Wales.

Thus, the Act of Union 1536 in Wales, and the Administration of Justice (Language) Act (Ireland) 1737 in Ireland, required that the only language to be recognised by the courts was English. This anglophonic presumption was contrary to the lived reality of linguistic diversity, which included significant non-anglophone monolingualism in both jurisdictions.

However, the monolingual English linguistic norm that these institutionally directed provisions created was reinforced, over time, by the development of an accompanying authoritative social discourse which positioned non-anglophones as problematic subversives of the order promised by this anglophonic system.

In the Welsh case, for example, Williams (1961) has charted the development of a middle-class stratum of society in the eighteenth and nineteenth centuries which sought to consolidate its position by defining linguistic correctness, imposing linguistic uniformity (Dodd, 2019, pp. 16–28),³ and framing languages other than English as an impediment to progress (Williams & Hughes, 1977, pp. 38–41; Roberts, 1981; Coolahan, 1981), and an undesirable indicator of non-belonging (Wolf, 2014). In Ireland, patterns of immigration, famine, and the decline of the indigenous structures of Irish rule also caused a shift away from monolingual Irish communities towards predominantly English-speaking communities, in part as a result of the perceived need to integrate into more economically mobile and institutionally respected social groups, but also as a result of a social break which fractured the inheritance of Irish at a community level.

By the twentieth century, however, a growing movement for independence from empire and a nascent awareness of human rights combined to support a fledgling movement for language rights in both jurisdictions. It was during this period that organised movements began to emerge which sought to reposition Welsh and Irish as institutionally recognised languages – and languages which should be recognised by the state, and by its legal system. In Ireland, this was informed by prominent examples of miscarriages of justice (Kelleher, 2018), though efforts to force a recognition of Irish through litigating test cases were largely unsuccessful (Phelan, 2022).

In part as a response to such injustices, the revolutionary Dáil Courts, which operated in parallel to the official legal system in pre-independence Ireland, recognised the rights of Irish litigants, and the first documents of the Irish independence movement emphasised, not only a distinct national identity, but

3 During this period, the status of law in French and Latin was reduced in statutes.

also the unique linguistic identity of Ireland, acknowledged in the first constitution of the Irish Free State in 1922 (Costello, 2023). Two years later, the Courts of Justice Act 1924 provided for the appointment of Irish-speaking judges, and envisioned a limited role for the Irish language in the drafting of rules of court (Ní Raifeartaigh & Costello, 2024). Article 8 of the subsequent (and current) 1937 Constitution provides that Irish is the national and first official language of the Irish state, with *Sacs-Bhéarla* – literally, Saxon-English – as the other official language.

The right to speak Welsh in court developed slightly later than the right in Ireland, in 1942, following the Welsh Courts Act, which stated that “the Welsh language may be used in any court in Wales by any party or witness” who considered that “they would otherwise be at any disadvantage”. Despite this, it was only in 1967, when the Welsh Language Act 1967 was passed, that an unequivocal right to speak Welsh was recognised, unencumbered by a need to claim disadvantage in order to avail of it.

Further enhancement of statutory language rights occurred at the turn of the millennium, with both territories enacting further language legislation: the Welsh Language Act 1993 and the Welsh Language (Wales) Measure 2011 enhanced the situation of Welsh, and the Official Languages Act 2003 and the Official Languages (Amendment) Act 2021 were passed in Ireland.⁴

3 The legal status of Welsh and Irish

This, then, provides some context as to the historical arc of both languages, which were excluded from courtrooms and institutions of state before gaining re-entry and recognition in the twentieth century. Despite this journey towards recognition, there continues to be a tendency to position English as the presumptive language of law, with Welsh and Irish as acceptable “others” within the existing systems in both jurisdictions.

3.1 The legal status of Irish in Ireland

The primary source of Irish language rights in Irish law is Article 8 of the 1937 Constitution, which provides that the Irish language is the “national” and the “first official” language of the state, with English recognised as “a second official language”. Article 25.5.4 further provides that, where any conflict arises between the English and Irish texts of the Constitution, the national language (Irish) version prevails.

This constitutional recognition is given force, in part, through the Courts of Justice Act 1924, which required that any circuit or district court judge or peace commissioner “shall, so far as may be practicable having regard to all relevant circumstances”, possess sufficient knowledge of Irish to enable them to consider disputes before them without an interpreter. However, these provisions apply only to those areas “where the Irish language is in general use”.⁵ Further provisions permitted the use of Irish before the High Court and Court of Criminal Appeal, and permitted the amendment of the rules of court to allow the use of Irish in ss. 65–66 of the Courts of Justice Act 1924, as supplemented by s. 52(1) of the Courts (Supplemental Provisions) Act, 1961 (Costello, 2024b).

The result of the 1924 Act, read in light of the 1922 and later the 1937 Constitution, was to effect some practical accommodation of Irish speakers in courts. However, despite the clear framing of the position of the Irish language in the constitutional text, the presumption in the 1924 Act was that of a justice

4 This is complicated in the Irish case by its de jure constitutional status, which means that it cannot benefit from the protections of, for example, the European Charter for Regional or Minority Languages.

5 A Gaeltacht is an area of the country in which the state recognises that the Irish language is the predominant language of daily life.

system which would proceed in English. This was evident not least in the fact that the entitlement to an Irish-speaking judge applied only “in so far as practicable” and only in predominantly Irish-speaking areas of the country – effectively constraining any shift of the linguistic status quo at the national level. That approach has been reaffirmed by the courts in subsequent decisions interpreting the provisions of both the Constitution and the 1924 Act.

In *Ó’Foghludha v McClean* [1934] IR 469, 471, for example, Kennedy C. J. found that a claimant could file a pleading in Irish anywhere within the jurisdiction, on the condition it be accompanied by an English translation. This in itself would seem unproblematic from an access to justice perspective. However, then as now, there is no similarly universal requirement for a pleading filed in English to be accompanied by an Irish translation.⁶ The presumption is, therefore, that all parties are competent to proceed in English, but not in Irish.

Kennedy C. J. did remark in the course of this judgment that, while Irish was “the historic distinctive speech of the Irish people”, it was not “at that historical moment, universally spoken by the people”. There is, perhaps, some justification for his finding, and an indication that he foresaw a progressive build towards a more linguistically neutral approach in future.⁷ No such approach emerged in the subsequent half century.

Thus, in *Ó’Monacháin v An Taoiseach* [1986] ILRM 660, the Supreme Court found that the 1924 Act imposed only a qualified obligation, even in areas where Irish is generally spoken, to appoint a judge competent to hear claims in Irish. More recently, in *Ó’Cadhla v An tAire Dlí agus Cirt* [2019] IEHC 503, Ní Raifeartaigh J. found that there must be “some duty” on the part of the state to “make at least some effort” to assign a bilingual judge in cases where no countervailing interest would be frustrated by such an appointment, but again concluded that the obligation was limited. What is perhaps still more notable is that, despite the provisions of the Constitution, the 1924 Act made little provision for general and fundamental practicalities of language use in court. Thus, the matter of translation and interpretation rights, as well as the right to conduct one’s own case in Irish, was either left to the rules of court on a discretionary basis, or was not addressed at all.

As a result of this, Article 8 of the Constitution has functioned as the source of recurrent efforts to establish more general language rights for Irish speakers in court, including the right to give evidence in Irish (established in *Attorney General v Joyce and Walsh* [1929] IR 526, 581), to access the sources of national law in Irish (*Ó’Beoláin v Fahy* [2001] 2 IR 279; *Delap v Minister for Justice* [1990] IRSR 116; *MacAodháin v Coiste Rialacha na nUaschúirteanna* [2010] 2 IR 678; *Ó Murchú v An Taoiseach & Eile* [2010] IESC 26, and *Ó Cuinn v An Taoiseach & Chuid Eile* [2018] IEHC 816), to access the sources of European Union (EU) law in Irish (*Glann Mór Céibh Teoranta v Minister for Housing* [2022] IESC 40), to put one’s case to the court in Irish (*R (Ó’Coileáin) v Crotty* [1927] 61 ILTR 81), and, as noted, to an Irish-speaking judge (*Ó’Monacháin v An Taoiseach* [1986] ILRM 660; *Ó’Cadhla v An tAire Dlí agus Cirt* [2019] IEHC 503).

The position in respect of the translation of sources of law has advanced following the recognition of Irish as an official language of the EU in 2007. However, as the decision in *Glann Mór Céibh Teoranta v Minister for Housing* has illustrated, the obligation remains limited at the national level and there is no obligation to provide Irish translations of secondary law in the form of statutory instruments or ministerial regulations except insofar as those secondary laws give effect to EU law.⁸ The current position, then, is that all laws are available in English, with the same sources of law available in Irish only where a specific provision requires it.

6 See [Order 120, Rules 2 and 3](#), of the Rules of the Superior Courts.

7 See *An Stát (MacFhearraigh) v Breitheamh Dúiche Neilan T.S.* (1980–1998), p. 108.

8 See *Glann Mór Céibh Teoranta v Minister for Housing* [2022] IESC 40, pp. 80–81.

This seems a deliberately restrictive view of the intention of Article 25, in particular – not least given that the 1937 Constitution was drafted at a time when neither the state nor the citizen was as reliant on or subject to secondary legislation. To claim that no obligation of translation exists in respect of a body of national law which now occupies such a significant role in the modern regulatory state would seem to present a significant barrier in terms of access to justice for Irish speakers.

The question of the selection of Irish-speaking juries in Ireland also remains controversial. The position following the decision in *MacCárthaigh v Éire* [1999] 1 IR 186 and [1999] 1 IR 200 is that there is no right to an Irish-speaking jury due to the competing constitutional imperative of a representative jury. Chief Justice Liam Hamilton found in that case that, while there were undoubtedly communication obstacles for an individual required to put their case to the jury through an interpreter, “in today’s Ireland there is no better solution available”. Hamilton came to this conclusion, as Ó’Raifeartaigh J. noted in her judgment in *Ó’Cadhla* [2019] IEHC 503 46, despite evidence that the use of interpreters places the speaker using them at a disadvantage. More recently, the decisions in *DPP v Billings* [2019] IECA 149 and *DPP v HM and BO* [2021] IECA 315 further confirm the kind of complications and/or disadvantages that can accompany the use of interpretation in court.

In the face of such concerns, the Supreme Court nevertheless found the right to a representative jury meant the right to a representative *English-speaking* jury. As Parry has argued, this association is not borne out in other bilingual jurisdictions, notably Canada, where the courts have ruled that the right to a representative jury encompasses the right to a representative jury of one’s linguistic peers (Parry, 2015).

The result is a setting in which the presumption is that Irish speakers communicate with the court and other participants within the court as a linguistic “other” mediated through an interpreter, and that the courtroom – including the jury as participants in that setting – remains monolingually and presumptively anglophone. The other concern, to which we shall return below, is whether this othering – which seems to imply that all Irish or Welsh speakers also speak English and that any disadvantage they may suffer is therefore self-imposed and results from a refusal to engage with the systems of justice – exposes such speakers to an adverse presumption of bad faith by other courtroom participants.

3.1.1 *The Official Languages Acts 2003 and 2021*

In the twenty-first century, the primary additions to the landscape of language rights in Ireland were sections 8 and 10 of the Official Languages Act 2003, which codify the decisions of the courts delivered in the preceding century. Section 8 thus provides that a person may use either of the official languages in court, when offering evidence or in their pleadings, and obliges the court to ensure that each person is heard in the official language of their choice, and is not placed at a disadvantage by not being heard in the other official language. In seeking to ensure that this is the case, section 8 provides that the court “may cause such facilities to be made available, as it considers appropriate, for the simultaneous or consecutive interpretation of proceedings”.

The first thing to recognise is that this practical facilitation of Irish in court provided under the above-mentioned sections is framed in a confusingly discretionary way and the court is not obliged to institute any particular mechanism to facilitate the use of Irish: exactly what facilities are to be provided and what constitutes “appropriate” is left open. Unlike the Welsh approach outlined below, there is therefore a notable absence of either policies or procedures. Unlike in Wales, there are no Practice Directions informing the superior, circuit and district courts how to approach or engage with linguistic diversity in the courtroom, nor is there a uniform approach in the rules of court.⁹

⁹ [Order 120 of the Rules of the Superior Courts](#), and [Order 3 of the District Court Rules](#).

This position is complicated further by s. 8(4), which obliges the state – where it is a party to the proceedings – to use the official language chosen by the other party. This would seem to be a simple facilitation of Irish. However, s. 8(5) goes on to provide that, where more than two parties (excluding the state) are involved in proceedings, the state shall use “such official language as appears to it to be reasonable, having regard to the circumstances”. It is hard to imagine a situation, in light of the approach of the Irish courts to date, in which it would be considered reasonable to choose Irish in circumstances where one or more non-state party seeking to use English would be obliged to incur the expense and delay involved in translating its own pleadings and submissions, hiring counsel competent in Irish and perhaps also relevant transcription services to facilitate a single party.

Indeed, s. 8(6) would seem to support such a reading by providing as follows:

In choosing to use a particular official language in any proceedings before a court, a person shall not be put by the court or a public body to any inconvenience or expense over and above that which would have been incurred had he or she chosen to use the other official language. (Official Languages Act 2003, s. 8(6))

What emerges from this analysis of the sources, albeit limited by restrictions of form, is of a system in which English is positioned as the “reasonable” and “practicable” choice of language, while Irish remains a language that may be facilitated where certain conditions are satisfied and at the specific instigation of the party seeking to use it.

3.2 The legal status of Welsh in the United Kingdom

Unlike Ireland, Wales is neither an independent state, nor a separate legal jurisdiction (it is a part of the legal jurisdiction of England and Wales); rather, it is a constituent part of the United Kingdom. The United Kingdom has no formal written constitution and no constitutional guarantee of any linguistic rights. Since 1999 – pursuant to the [Government of Wales Act 2006](#), Schedule 7, paragraph 20, and the [Wales Act 2017](#), Schedule 7A [190] – legislative power has been devolved to Wales, and the legislative competence of the Welsh Senedd includes the ability to legislate on matters pertaining, inter alia, to the Welsh language. Nevertheless, the administration of justice has not been devolved, and therefore the legislation pertaining to the use of Welsh in the courts is contained in a pre-devolution Act of the United Kingdom (UK) Parliament: the Welsh Language Act 1993 (1993 chapter 38).

Reiterating the provision contained in the Welsh Language Act 1967 (1967 chapter 66), the 1993 Act provides as follows:

In any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it, subject in the case of proceedings in a court other than a magistrates’ court to such prior notice as may be required by rules of court; and any necessary provision for interpretation shall be made accordingly. ([Welsh Language Act 1993](#), s. 22(1))

The long title of the Act notes its objective that “in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality”. Sections 23 and 24 allow for oaths and affirmations to be made bilingually, and for the provision, employment and remuneration of Welsh-English interpreters for court proceedings.¹⁰

¹⁰ The Act (since largely repealed) also required public bodies to prepare Welsh Language Schemes but, because the use of Welsh in courts is outside the Senedd’s legislative competence, the UK government’s HM Courts and Tribunals Service (HMCTS) continues to prepare five-yearly Welsh Language Schemes (see Wales Act 2017 Schedule 7A).

Numerous aspects of the Welsh Language Act 1993 merit further exploration. But for the purposes of this article we will comment briefly on only a few. First, s. 22 protects the right to speak Welsh, while the right to speak English is assumed and the text is silent in that regard. Although this is explicable given the exclusion of Welsh from the courts from 1536 to 1942, the wording (whether intentionally or not) frames Welsh as a deviation from English (Davies, 2014).

Second, the 1993 Act confines the right to speak Welsh in legal proceedings to proceedings within Wales. This was confirmed in *Williams v Cowell* [1998] EWCA Civ 1254, in which the Court of Appeal found that Welsh cannot be used in appeals heard outside Wales. Thus, if an appeal takes place at the de facto home location of the appellate courts in London, or in a local court in England, Welsh cannot be used. The presumptive norm of English as the language of court proceedings is thus further entrenched.

Finally, the 1993 Act specifies that notice must be given of an intention to speak Welsh – though notice need not be given of an intention to speak English. Again, the rationale behind this wording is understandable in that arrangements for the presence of a Welsh-speaking judge and/or interpreters will be required if a participant intends to speak Welsh. However, it also suggests that to use Welsh is to deviate from the procedural norms of anglophonic justice.

At this juncture, it is also appropriate to note that, as in Ireland, there is disparity in the treatment of English and non-English speaking juries. Section 10 of the Juries Act 1974 provides that a summons to sit on a jury will be discharged if it appears to the judge that a juror has “insufficient understanding of English” so as to cast “doubt as to his capacity to act effectively as a juror”. No equivalent provision is made in relation to an inability to understand Welsh. The result is that cases in Welsh cannot be heard before a Welsh-speaking jury. In 2007, Member of Parliament Hywel Williams brought a private member’s bill that sought to remedy this and allow for Welsh speaking juries – the bill was rejected on the basis that it obstructed the random selection of jurors.¹¹

3.2.1 *The Welsh Language (Wales) Measure 2011*

Following devolution, the legal status of Welsh improved and legislation enacted by the Senedd must now be made bilingually, with both texts having equal authority.¹² The Senedd also enacted the Welsh Language (Wales) Measure 2011, which aimed to update the 1993 Act vis-à-vis the duties incumbent on public bodies to provide bilingual services.¹³ Perhaps most fundamentally, however, the [Welsh Language \(Wales\) Measure 2011](#) also declared that “the Welsh language has official status in Wales”.

In service of this aim, the 2011 Measure provides that Welsh shall be treated no less favourably than English,¹⁴ that individuals shall be free to choose to use either language in their interactions with the state,¹⁵ and that public bodies will promote and facilitate the use of Welsh.¹⁶ However, it is notable that Welsh is defined throughout by its relationship to English, clearly stating: “This Measure does not affect the status of the English language in Wales”. Hence, the effect is to confirm the rights and requirements already established by the earlier legislation.¹⁷

11 Commission on Justice in Wales. (2019). [Justice in Wales for the People of Wales](#), p. 433, para 11.5.

12 [Government of Wales Act 2006](#) s. 156, and Legislation (Wales) Act 2019 s. 5.

13 The 2011 Measure also created the role of the Welsh Language Commissioner (s. 2) to oversee the development of bilingual provision and investigate complaints regarding any alleged failure by public bodies to provide adequate bilingual services.

14 S. 1(2)(b).

15 S. 1(2)(e).

16 S. 1(2)(d).

17 [Welsh Language Acts 1967](#) and [1993](#), and [Government of Wales Acts 1998](#) and [2006](#).

In both territories, therefore, the scope to use Welsh or Irish has been defined by legislation, and boundaries have been erected around both languages in order to confine the outer perimeters of their reach. In both cases, English is undefined, and everything not specifically required to be in Welsh or Irish may freely be in English only.

3.2.2 The Practice Directions and Protocols

Unlike in Ireland, in Wales there is detailed provision in Practice Directions relating to the use of Welsh in courtrooms. Three Practice Directions have been issued by the Ministry of Justice in relation to Welsh: one for the civil courts, one for the criminal courts, and one on devolution issues.¹⁸ The judiciary has also issued a *Magistrates' Courts Protocol for listing cases where the Welsh language is used* (hereinafter, "the Protocol").¹⁹

The Practice Directions reinforce the anglophonic presumption evident in the 1993 Act. In particular, they require that parties or their legal representatives in proceedings *not* conducted in the magistrates' court to inform the court of their intention to use Welsh, either orally or in writing,²⁰ with the threat of a costs order against any party that fails to comply.²¹

All three Practice Directions also limit the capacity of a party to be heard before a Welsh-speaking judge to cases where this is "reasonably practicable" (as in the text of the Irish provisions).²² The question of what is deemed reasonably practicable appears to depend on individual judicial opinion and attitudes, as demonstrated in the case of *R (on behalf of Driver) v Rhondda Cynon Taf County Borough Council* [2020] EWHC 2071. In this case, an application was made by one of the parties to hear a case involving the use of Welsh and the interpretation of bilingual legislation before a Welsh-speaking judge. The application was rejected by the Court of Appeal, which indicated that, while the Court was required to interpret Welsh syntax, the Court's limited (and not defined) bilingual capacity did not impede its ability to consider and rule on the correct interpretation of bilingual legislation (Fflŵr Huws, 2024). Nor did the Court consider there was a need for expert evidence to explain the possible meanings of the disputed law. On the contrary, it was deemed sufficient to proceed on the basis of counsel's submissions. It is doubtful whether a court would consider it appropriate for a Welsh speaker who declined to explain the extent of their fluency in English to engage in a similar exercise.

Given this approach, it is encouraging to see a greater facilitation of use of Welsh demonstrated in the Protocol, which does not require notice of an intention to speak Welsh. Rather, parties are encouraged to give notice in order to facilitate the arrangements for the matter to proceed in Welsh on the day of the hearing; it is possible to simply start speaking Welsh with the progression of the matter through Welsh facilitated by a short adjournment to allow necessary measures to be put in place (paragraph 1 of the Protocol). Notably, however, the Protocol provides examples of the type of arrangements that could be made on the day of the hearing to allow the case to proceed without adjournment, as well as what further arrangements may be made following a case management hearing where notice of an intention to use Welsh has been given (paragraphs 4–5 of the Protocol).

18 Ministry of Justice (2017) Practice Direction – Devolution Issues. Retrieved 15 January 2024.

19 Courts and Tribunals Judiciary (2007). [Magistrates' Courts Protocol for listing cases where the Welsh language is used](#).

20 [Civil Practice Directions](#), paras 1.3–1.4.

21 [Civil Practice Directions](#), paras 1.6, 3K.2, 2K.7, 3K.5.

22 [Civil Practice Directions](#), para 4.1., and Criminal Practice Directions 2015 Division I, para 3K8.

While of course this approach does not place the Welsh speaker on a wholly equal footing with an English speaker, it is at least closer to a position of linguistic neutrality than the approach adopted in the other Practice Directions.

Elsewhere, the Protocol indicates that it is not the decision to speak Welsh that must be established at a case management hearing, but rather, the “language choice of defendants, parties and witnesses”; in other words, it is the choice to speak Welsh *or* English that is to be established (paragraphs 4–5 of the Protocol). There is thus no assumption in the Protocol that English is the presumptive language of the courtroom, nor that the use of Welsh represents a deviation from that linguistic norm. This framing gives a much clearer sense that Welsh and English are equal alternative choices.

The Protocol also displays a clearer understanding of how the use of Welsh can be facilitated on a regular and unexceptional basis – rather than on a “reasonable” basis – by ensuring that the judge or magistrate and the justice’s clerk are bilingual, and providing two-way interpretation and multiple interpreters in the courtroom.

3.2.3 *The HMCTS Welsh Language Scheme*

His Majesty’s Courts and Tribunals Service’s Welsh Language Scheme (hereinafter, HMCTS Welsh Language Scheme) also displays a more neutral framing of the choice between languages, presenting the choice as one involving monolingual or “bilingual” court services. The objective of the scheme is to ensure that the availability of a choice of language is publicised and promoted, and that an individual’s choice of language is identified and recorded as early as possible in the legal process so that individuals are not obliged to repeatedly affirm their wish to use Welsh (paragraph 2.1). In practice, this is an improvement on the Practice Directions, removing the burden on Welsh speakers to persist in reaffirming their intention to use Welsh at every opportunity.

However, the Scheme is not without its shortcomings. In particular, services in Welsh are provided as a form of additional support for those who would otherwise have difficulty in accessing justice or participating in the courtroom. This framing presents uneven linguistic capacity as something of a disability, presenting the use of Welsh as linked to an incapacity rather than a positive right – and as a permitted exception from the linguistic norm of English.

3.2.4 *The Equal Treatment Bench Book*

The *Equal Treatment Bench Book* (hereinafter, “the Book”) provides guidance for judges to “increase awareness and understanding of the different circumstances of people appearing in courts and tribunals”.²³ While the Book notes the official status of Welsh (p. 12), the language and framing of the Book is far less neutral than the other documents examined above. It states that “Welsh speakers are entitled as of right to use their first language or their language of choice before courts and tribunals in their native Country” (p. 164). Thus, not an entirely accurate representation of s. 22 of the Welsh Language Act 1993, which states that an individual who speaks Welsh as a later-acquired language may also use the language in court, and a person does not need to have been born in Wales to be entitled to use Welsh in legal proceedings. Indeed, this framing of Welsh in the Book is striking for how explicitly it frames Welsh speakers as an “other” group belonging to an “other” country.

Indeed, though the Book makes judges aware of matters that may not be immediately apparent to the non-Welsh-speaker (e.g., politeness indicators, terms that may not map directly into each other, the use of Welsh idioms in English, and inconsistent fluency across domains), many aspects of the Book characterise the

23 Courts and Tribunals Judiciary. (2024). [Equal Treatment Bench Book](#).

use of Welsh and Welsh speakers as a problem, suggesting that Welsh speakers are less able to participate in proceedings than English speakers, with references to the “native” status of Welsh conjuring up the implication of a specifically colonial other.

4 Framing Welsh and Irish as “other” languages

The examples provided above demonstrate a shared tendency in both jurisdictions to frame English as the default or “normal” language of the courtroom, while Welsh and Irish are presented as deviations from the linguistic status quo, as languages that depart from the reasonable and expected choice (Danet, 1980).

Much has been written on the subject of “othering” in different contexts, particularly as regards sex/gender (de Beauvoir, 1997[1949]) and race (Said, 1994). We do not propose in this article to assimilate those debates and apply them to the question of language. Rather, we use the broader concept of “otherness” to denote the manner in which the framing of default linguistic choices can cause other, non-default linguistic choices to be regarded as alien identifiers of groups not integrated into, or – whether through voluntary or involuntary processes – separated from the broader social community to which they belong (Gallaher et al., 2009).

This conception of “othering” through linguistic framing can be used to present a language community as “other”. Costello, for example, has written about how the exclusion of Irish from courtrooms until 1924 positioned Irish speakers as extra-legal actors who were forced into a binary choice between erasing their identities as Irish speakers in order to assimilate into the English-speaking community and be recognised by the courts, or retaining their linguistic identity at the cost of legal recognition and access to justice (Costello, 2021).

While it is acknowledged that Welsh and Irish are the “others” most recognised among non-English languages, by virtue of the protections outlined above and their autochthonous status, nevertheless they continue to be defined as “other” in a way that perpetuates what Sonnis-Bell (2018) describes as a “power dynamic, in which the Self is the dominant and hegemonic ‘in-power’ entity, while the Other is the alternate minority” (Sonniss-Bell, 2018, pp. 1–7).

In the context of the two jurisdictions examined in this article, we argue that the historic treatment of Welsh and Irish has contributed to a lingering view of both languages, and the choice to use them, as representative of a resistance to – or a desire to subvert – the existing linguistic and legal order.

It is evident that, even where a language is officially recognised as a language of the state, its de facto status may not reflect its de jure standing if its use in practice is regarded as an act of political resistance or objection to the state’s control. In the historical context where Irish was framed as a crucial identifier to differentiate the Irish population from the rest of Great Britain and to agitate for independence, this is particularly evident (Hyde, 1892; Costello, 2021).

In Wales also, even after the passage of the Welsh Language Act 1967, Lord Parker’s judgment in *R v Merthyr Tydfil Justices ex parte Jenkins* [1967] 1 All ER 636 provides an insight into the prevailing attitudes towards Welsh:

This applicant is the treasurer of the Welsh Speaking Society and he had with him and sitting next to him the secretary of that society; it is quite clear that the court or the public gallery was full of members of that society and, to put it quite bluntly, it became evident to the justices [...] that the court was being used as a platform for propaganda. (*R v Merthyr Tydfil Justices ex parte Jenkins* [1967] 2 QB 21 (23))

This is taken up by Widgery J. in his judgment, with the following observation:

I think it is quite clear that the proper language for court proceedings in Wales is the English language. It is to my mind a complete misapprehension to believe that anybody at any time has a right to require that the proceedings be conducted in Welsh. (*R. v. Merthyr Tydfil Justices ex parte Jenkins* [1967] 1 All ER 636)

While no such statements are available in the Irish context post-independence, in the case of *Mac Giolla Bhríde v Mac Gamhna*, then Chief Justice O'Brien L. J., considering whether the law might recognise characters written in the traditional Irish rather than Latin alphabet, found the following:

The characters were not the characters of the language which the Crown and Legislature recognise as the language of the United Kingdom for all legal and official and public purposes. Parliament conducts its debates in English, and legislates in English. The enacting body expresses itself, and the enactment which contains the relevant provision is expressed, in English. [...] It is, in my opinion, clear that the letters must be of the English type. Any other decision would lead to interminable confusion. (*Mac Giolla Bhríde v Mac Gamhna* [1906] 2 IR 181)

While we may hope that such attitudes no longer prevail in either jurisdiction, and while the de jure status of both Welsh and Irish now offer a firm refutation of such views, traces of this historic attitude remain in the framing of the use of both languages and, in particular, through the recourse of the courts in Wales and Ireland to concepts of “reasonableness”.

4.1 Language use as an issue of reasonableness

As Ní Raifeartaigh J. explains in *Ó'Cadhlá v An tAire Dlí agus Cirt* [2019] IEHC 503, there remains a certain reluctance regarding the use of Irish in courtrooms, and courts are more inclined to find in favour of the right to involve intermediaries in the form of translators and interpreters to mediate between the court and its participants, than the right to integrated engagement by Irish speakers on their own terms – and through their own language. The judgment in *R (on behalf of Driver) v Rhondda Cynon Tâf County Borough Council* [2020] EWCA Civ 1759 betrays a similar reluctance on the part of the Welsh courts.

The result in both jurisdictions – where Welsh and Irish are subject to limitations depending on whether it is reasonably practicable to allow their use – is that this so-called “reasonableness” becomes a proxy justifying the non-use, or the restricted use, of Welsh or Irish on the basis that the only “reasonable” use of the language is through an interlocutor (as in *Ó'Cadhlá* [2019] IEHC 503) and that it would be “unreasonable” to expect bilingual proceedings.

This is particularly frustrating in light of the difficulties – flagged explicitly by the Irish courts – which bedevil courtroom translation. Much research has been conducted on the nature of interpretation, and the way in which the interpreter changes the dynamic of court proceedings (Ng, 2021; Aguilar Solano, 2012). Yet in Wales and Ireland, the use of an official language continues to depend on the involvement of interpreters, whether in consecutive or simultaneous modes.

Where simultaneous interpretation is used, as in Wales, the speaker is overridden by the interpreter, and the listeners do not actually hear them speak at all, thus leading to a potential diminution of the emotive power and immediacy of the statements made. In contrast, where consecutive interpretation is used, as in Ireland, listeners are likely to disengage from the speaker – leading to an effective erasure, similar to that resulting from simultaneous interpretation – and may also be influenced by the tone, body language or other non-verbal cues of the interpreter, which may or may not accurately reflect the credibility, or authenticity of the speaker, and their message.

Crucially, the impact of an interpreter's presence does not affect all participants in the court process equally. The bilingual Welsh or Irish speaker will be presumed to understand what is said in English, and therefore they will be spoken to directly in English but will themselves be mediated by the interpreter. HMCTS Welsh Language Scheme specifies that the usual practice will be for interpretation to operate on a one-way basis – translating Welsh into English. It is less common for two-way to occur, though this may be permitted if the Welsh speaker would otherwise be at a disadvantage.²⁴

The bilingual speaker is thus unable to communicate directly but is also seen to be insisting on using an interpreter, despite being regarded as not “needing” do so. They may thus be judged negatively for their linguistic choice, and it is possible that their motivation to do so is viewed as political or as indicative of dishonesty or evasiveness.

In Ireland, where the procedural measures governing interpretation are more ad hoc than in Wales, this risk may be still greater, as no procedural presumption or model can be pointed to in order to explain to listeners why a particular approach is being employed or has been adopted.

The result is that, though all citizens have the right to use Welsh or Irish in court, the bilingual speaker may be perceived as being obstructive and may be judged more negatively by listeners as a result ([Adamopoulos v Olympic Airways SA](#) [1991] 25 NSWLR 75). This disadvantage is heightened by the advantage experienced by monolingual speakers, who speak directly to the court without an intermediary.

The difficulties which this can present were examined by Ní Raifeartaigh J. in *Ó'Cadhlá v An tAire Dlí agus Cirt* [2019] IEHC 503 [44], wherein the judge notes that, in a trial without a jury and with a bilingual judge, “there would be no question of unequal treatment” because the judge would directly understand the evidence and testimony. Whereas if the judge spoke only English, and thus heard only the side of the case put in English directly and the other in a mediated form, the risk of prejudice would be considerably higher.

This mediation between “what comes out of the lips of the witness and what goes in the ears of the decision-maker is a significant event in the communication process” (*Ó'Cadhlá v An tAire Dlí agus Cirt* [2019] IEHC 503 [46]) and, Ní Raifeartaigh J. notes, involves a risk of distortion, and a potential loss of emotion, meaning, nuance and authenticity.

In both jurisdictions, the availability of interpreters has been presented as both the practically achievable and thus “reasonable” means of integrating speakers of the “other” language in a courtroom setting. However, where this purported integration occurs only through the use of interpreters, rather than engaging in a substantive integration of linguistic diversity into the legal system (of which interpretation is but one part), the risk is that speakers of the “other” language can participate in the courtroom setting only as welcome linguistic aliens – speakers who cannot be heard directly, and who must rely on a member of the default linguistic group to relay their input to other participants who are members of the default linguistic group.

5 Conclusion: some suggestions for reframing

Having described how Welsh and Irish are currently framed as “other” languages in the context of systems that are presumptively anglophone, we conclude with some thoughts on how to reframe the linguistic presumptions that operate in Irish and Welsh courts. We suggest a stepped and interlinked series of measures, which could be accomplished through three “reframing phases”.

24 HMCTS. (2023). [Cynllun Iaith Gymraeg \(Welsh Language Scheme\) 2023 to 26](#).

In Ireland, the central issues are the framing of “reasonableness”, as well as the absence of any policies and practices that provide guidance for the courts on how to meaningfully and consistently implement the protections afforded by law. Wales shares this concern over the defining power of “reasonableness” but, in contrast to Ireland, there already exist policies and practices that provide guidance for the courts on how to meaningfully and consistently implement the protections afforded by Welsh law – however, those documents too frequently frame Welsh as subordinate or alternative to English.

5.1 Defining and framing official status

A first requirement for reframing is defining official status in a manner that integrates a presumption of equality between the languages as a starting point.

In the Welsh context, official status needs to be more clearly defined by addressing the specific scope of the term. If Welsh is an official language that enjoys parity with English, can official documents and pronouncements (which can be composed exclusively in English) also be composed exclusively in Welsh? And if so, is there a minimum or maximum threshold for the quantity of materials that can be produced in one language only? As we have examined, the limitation on the translation of secondary legislation in Ireland presents a particular problem which any change in Welsh law would do well to learn from.

In Ireland, official status would seem to be immutable, given its inclusion in the Constitution. Measures that would institute a kind of positive discrimination in favour of Irish and Irish speakers are unlikely to be tenable, given the need to integrate diverse linguistic identities into peacebuilding efforts on the island of Ireland, making the elevation of one linguistic group politically challenging to maintain. That being said, there may be work to be done on how the constitutional recognition of Irish can be translated into concrete legislative commitments that support the embodiment of equality between Irish and English, in line with Article 8 of the Irish Constitution. Commitments to translating secondary legislation, for example, would seem an obvious starting point. While it is not realistic to provide guarantees without the institutional and personnel architecture to ensure that Irish can be spoken in court in the same manner as English, without binding commitments to develop that infrastructure and personnel capacity the use of Irish will always be framed as “unreasonable” – not because of the quality of the language itself, but because of the inequality of commitment to enabling its use and the lack of resources available to support that.

5.2 Textual reframing

Changing the official status of Welsh and Irish would be challenging, and an effort that would require a long-term shift. In Wales, the official status of Welsh is bound up with Wales’s constitutional position as part of a wider jurisdiction and state. Meaningful changes to official status are likely to require the will of the Westminster Parliament to act. Such changes as are likely to occur will, consequently, most probably be achieved within the context of primary and secondary legislation. In Ireland, changes to the official languages legislation to, for example, alter the commitment to translation of secondary legislation would also require a political will that is not immediately apparent.

What, therefore, is the scope for the textual reframing of Welsh and Irish within the existing legislation? As discussed above, both territories define Irish and Welsh as languages recognised alongside English (albeit in the Irish case it is more accurate to say that English is recognised alongside Irish). Working within the existing framing, minor textual changes could be accomplished that would, at a minimum, reframe the choice between languages in more neutral ways.

In the Welsh case, s. 22 of the 1993 Act provides as follows:

In any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it, subject in the case of proceedings in a court other than a magistrates' court to such prior notice as may be required by rules of court; and any necessary provision for interpretation shall be made accordingly.

This could be reframed to read:

In any legal proceedings in Wales [*originating in Wales or having a connection with Wales*] the Welsh [*or English*] language may be spoken [*used*] by any party, witness or other person who desires to use it [*either or both languages*], subject in the case of proceedings in a court other than a magistrates' court to such prior notice as may be required by rules of court [*regarding which language(s) the party, witness or other party intends to use*]; and any necessary provision for interpretation shall be made accordingly.

These changes reframe the relationship between the two languages by diminishing any presumption in favour of one over another, framing Welsh as a presumptively equal choice, and remedying the imbalance that currently exists regarding the use of Welsh in cases that occur in England. Welsh would thus be reframed as a language of the legal system on an equal footing with English, rather than a linguistic deviation from the norm facilitated only in limited areas.

We now turn our attention to sub-legislative or policy and process texts. Here again, in the Welsh context, the language used to frame linguistic rights could be reimagined with Welsh and English as equal alternatives, rather than the framing of Welsh as a language available in addition to English where a party is unable to participate in the presumptive language of the courts.

Thus, the requirement in the Practice Directions that a case may be heard before a Welsh-speaking judge where "reasonably practicable" has the potential to stymie the use of Welsh, not only due to the subjective nature of the term "reasonably practicable", but also because of the latent presumption in the framing of the phrase that it is unreasonable to hear cases in Welsh in the absence of certain conditions.

The wording of the *Equal Treatment Bench Book* in Wales is perhaps the most problematic example examined in this work, and one that requires a more comprehensive reframing to eliminate references to concepts of "native" and "first language", which imply both a hierarchy of speakers entitled to use Welsh before the courts and an attitude of colonial benevolence to the use of the language. The Magistrates' Courts Protocol and HMCTS Welsh Language Scheme generally frame the status of Welsh and English in more linguistically neutral terms and provide an appropriate template for how to frame two languages as equal alternatives in the case of amendments effecting such a change.

In Ireland, a similar redrafting of the language of "reasonably practicable" contained in the 1924 Act would also be welcome. Arguably, that language now serves more as a limit on the obligation of the government to actively engage in capacity building among the professions and the bench. A repeal of the relevant provisions would of course be counterproductive, and any amendment committing the state to linguistic quotas it could not hope to fulfil with any immediate effect would be equally unhelpful.

An amendment of the existing language would therefore need to accept that it may not always be possible to staff a bilingual court, but should commit the state to building the capacity to achieve that end on a proportionate and progressive basis. Measures might include, for example, subsidised training and language learning for members of the legal profession; the creation of a centralised team of court services interpretation staff, and the creation of physical infrastructure for bilingual proceedings in court through the integration of interpreters' booths. More fundamentally, the amendment should also reframe the language used to remove the implicit presumption that legal proceedings take place in English, and that any departure from that default language is reasonable only in extraordinary circumstances.

As with the Welsh Language Act 1993, any notice requirements for the use of Irish might also be framed more neutrally, by requiring all participants to give notice of their intended language use, rather than threatening only those who intend to use Irish or Welsh with sanctions for failing to reaffirm such an intention. There is no reason this could not be accomplished through the filing of a notice (provided by the Rules of Court or a Practice Direction) at the point at which a motion is issued, on the return date given for a matter entered on the judge's list, or by putting the judge on notice when a date for hearing is sought.

In addition, in Ireland, the creation of Practice Directions or even an equivalent to the *Equal Treatment Bench Book* would be welcome to provide consistency and clarity on how to interact with Irish speakers, and how to consider and rule on requests to use Irish in proceedings. Although this again depends on the will of administrators to effect change, it is more feasible in that these instruments are updated periodically, and effective reframing can be introduced within this framework of periodic review, without the need to rely on political priorities.

It must be noted, of course, that a more radical approach in both jurisdictions would be the introduction of measures containing some element of positive discrimination in order to more immediately redress the imbalance experienced by Welsh and Irish speakers in courtrooms. While instinctively appealing, such an approach would nevertheless require significant legal and political changes and is, we believe, an issue that merits being treated as a distinct proposal to be afforded more complete attention in the future.

5.3 Soft reforms – improving visibility through reframing

The third phase of reframing that we propose would involve adopting “soft” reforms to make Welsh and Irish as visible as English. In the Irish context, three reforms could assist in this respect. The first would be the creation of judicial guidelines for use by interpreters in courtroom settings. Such guidelines could orient the judiciary to the challenges and requirements of coherent, reliable and neutral interpretation in proceedings. Hand in hand with this should go a requirement for the courts service to actively engage in thinking about voice-to-text and hybrid hearing models that could better facilitate bilingual proceedings.

In adopting these reforms, the third change should be the regulation of court interpreters. At present, Ireland does not regulate interpreters, and courtroom interpreters receive no specific training. The risks of this practice have been illustrated, if not in the context of the Irish language, then certainly in the context of courtroom translation in general, in the case of *DPP v HM* [2021] IECA 240.

In Wales, the need for softer reforms is less immediately apparent, as HMCTS Welsh Language Unit has been very proactive in ensuring that services are routinely available in Welsh without having to make specific and repeated requests. As with Ireland, however, much depends on the attitudes of individuals and their willingness, and sometimes even determination to ensure that Welsh is not secondary to English in access to and delivery of justice.

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