



## Episode 878: Anarchism in Ireland: The History Nobody Knows

Guest: Kevin Flanagan

**WOODS:** I did a video not too long ago with a professor from University College Dublin called — I don't remember what the video was called, but it had to do with Irish anarchism. And he was insisting that for 2,000 years, Ireland had nothing that we would recognize as a state and he went on to describe it. But it was a short little video. Then I came across your material just very recently, and you've given quite a number of talks and you've researched this at great length, and I think you really are the go-to guy on it. So start off by giving me what would be your opening statement if you had two minutes to give me the overview of what Ireland was like in the sense of its legal system, how it was different from what we are accustomed to in the rest of the West.

**FLANAGAN:** Well, first of all, I actually did see that video that you'd done with Gerard Casey and since then have been in contact with Gerard Casey, and that was one of the important parts of my own journey, I think, of combining the awareness that I had about the early Irish history with my libertarian perspective. So if I am to sum it up in very brief terms, what I often say, particularly to Irish people when I speak about this, is that the Ireland that they know of today was not the Ireland that their ancestors enjoyed. The Ireland of their ancestors was completely different because it was a decentralized society. What that means is that there wasn't one nation or, let's say, one flag or one lawgiver or one government that had control of the entire country. Rather, it operated in this decentralized way where we had more than a hundred kind of socioeconomic hubs, which we called túath, and each túath was made up of a number of individual families.

What's interesting about the Irish system, and we actually see this mirrored in our modern constitution, was the idea of the family unit being the kind of central focal point for all our socioeconomic or legal matters. So each family was afforded the dignity and the respect by other families as being treated as a sovereign entity. Family affairs were conducted internally. They elected their own representative or chieftain, their spokesperson from among the eligible family members.

And the law that kind of was the kind of bedrock or the fabric that knit this whole society together was a law that we call today the brehon law. And these were principles that we are very familiar with today. This is what I think is one of the more fascinating aspects of it, that these principles, such as freedom of contract and fair trial and things like this, were present back then and they were a very important part of the legal system. But the sort of obligations or duties that one would have in society

came partially from their station in life – duties to your family, duties of father to son or to the elderly and so on – but also partly to your wider community, and these are duties that we know very well. They are, you could say, written on the heart, which is you don't cause harm, loss, or injury to your fellow man when you're going about your business.

Another crucial aspect that ties into all of this was the role of reputation. Reputation is something that's crucially important, which I think it has lost its meaning a lot in the modern world. Back then, we have the idea of you shake on something, it meant something. Your word was your bond. Your word was a really powerful thing. And people were given respect within society based on the amount of contribution, based on their level of actual respect that they had achieved from their peers.

This also played a role in the legal system, because those who were of higher status were held to a higher standard, which seems very logical and very natural. Those of a lower status were held to a lower standard. So to sum it up really briefly, a man of a higher rank would always be fined more than a man of a lower rank for a similar crime. And this makes sense. I mean, if you want to parallel it to the modern system, I wonder why we have politicians in Ireland, for example, who've made terrible decisions, yet they continue in their post, because they're not held to a higher standard; they're held actually, ironically, to seemingly a lower standard in society.

So this kind of interplay between family relationships, the rule of law, and one's reputation were really the driving factors behind this system that helped make it work in the absence of a state.

**WOODS:** Let's talk about a theme that is common in discussions among anarchocapitalists about what justice and what getting justice for someone would look like in a stateless society, and that involves restitution versus retribution. And I'm curious about exactly what role that played in the brehon law.

**FLANAGAN:** This is an excellent question, and it's one of my more favorite points about this. So just to put a little bit of historical context in here and legal context, when we think about the system today, when somebody commits a crime, I mean, let's say the uninitiated or those who haven't spent a lot of time studying law might be forgiven for assuming that a crime meant harm against an individual. But when we look at the legal definition of a crime, we realize that's not actually what's meant in a statist society. A crime is an offense against society as a whole, and then the state steps in as the injured party in a court case and basically uses the mechanisms of the state – the police force, enforcement mechanisms, debt collection, all of these things – in order to take compensation for the state, which should be rightly due to the victim.

Now, this concept, I mean, kind of I think when you lay it out and put it on paper, it does seem a bit baffling, but it was completely alien to the early Irish. You couldn't have a case without an injured party who was able to stand and put their hand up and say, Look, I have been wronged by this man and I want compensation.

So our system today, we use prisons as a means of dealing with "criminal behavior," but really what we're doing when we use prisons nonchalantly like this – I mean,

maybe there is a place for prisons in general, but using them for very non-violent offenses, let's say political offenses for maybe speeding or littering or not having a television license, as happens in Ireland, these sort of offenses, they wouldn't be compatible in a normal sense of criminal law.

So in the Irish system, the way it worked was if somebody was aggrieved, they felt to be aggrieved. When somebody does something wrong to you in any part of your life, it's generally something that you feel in your gut. It's not a nice feeling. You've just been betrayed. You've just been wronged. So this was kind of a, let's say, symbolic of a wrong that was within the community – not to the community, but somebody within the community has been wronged.

So what they did in Ireland was they consulted the advice of a learned class of scholars who were known as the brehons. The word "brehon" simply is the Irish word for a judge, so it was what you might call a kritarchy. We had sort of a learned class of people who spent a lot of time, up to 20 years, who were studying the customs and the principles that were established by the people – and this is crucial. They were not being established by the king or the higher ranks; it was established by the people. And your role as a brehon was simply to find a remedy that would restore that imbalance, that would restore that feeling of hardship, that feeling of wrongdoing being held by the victim.

And they found that the easiest way to do this was to give a financial compensation. And this could be for all manner of offenses, whether it was injury by accident or by design. And even – and there's a whole debate around whether this was appropriate or not, but even in the case of death, if you had accidentally or willfully killed a member of another family, well, then the family members were the rightful victims to claim the loss that you had incurred to their unit. And this was again calculated financially. So you could imagine somebody who had committed such a crime being in debt for much of their life to pay off, to restore, let's say, this family to the position they were in before the offense took place.

**WOODS:** I bet there would be some people who would wonder if, under a system like that where it was a financial compensation that someone had to do to make things right, wouldn't the rich person who was a sadist just go around plucking people's eyes out or something, just figuring he could pay the penalty? Would you deal with that partly through this method you were mentioning before, that people of higher means or people who were higher up on the scale would have more severe penalties? How do you deal with that?

**FLANAGAN:** Absolutely, that's exactly how they'd have done it. The penalty for the offense for someone of higher rank was found in such a way that it would become a deterrent for them to behave in such a way. But let it not be mistaken that I really am not speaking about a utopian system here. I mean, it wasn't perfect. There was obviously problems with power struggles. There was obviously problems with corruption as well. But all in all, the self-regulating nature of the legal system was such that it kept that to mostly a minimum and it was like family feuds and stuff like that that happened.

But to put it into context, after the fall of the Roman Empire during the Christian era of Ireland, Ireland was colloquially named as the land of the saints and the scholars. This was at a time when we didn't have a state. This was at a time when we today might refer to it as an anarchic system.

But to maybe give an example of – because you're hitting on a really important point here: well, what if those who are wealthy, powerfully wealthy in society, how would the law not kind of be unjust to those who are less fortunate or less well off? One example of this was a custom that we had called troscad. Troscad could be translated to mean fasting for justice, and it was hunger striking. And what's I find an interesting parallel with this in the modern times, you might remember the H-block hunger strikers in Northern Ireland in the '80s. I mean, the hunger strike as a means of kind of like – how would I say? – an individual's way of campaigning for personal justice is a very ancient custom in Ireland.

And how it worked in relation to the poor people versus the wealthy people is that a poor person would fast from dawn till dusk outside the home of a wealthy person. And this was felt to compel the wealthy person to justice, and if they ignored the hunger strike – and just to bear in mind, they went home when it got dark and they had some food when they went home, but it was more of a symbolic, let's say, function of the legal process. If you were a wealthy person and you ignored that, then the rate of your fine would increase threefold. Not only that, and this is probably – this next feature I'm about to mention is probably where we're lacking the most today that would be hard to bring back such a system – was that you also had the social pressure of your community, who would be appalled that you would ignore somebody who was fasting on your doorstep. They'd be so appalled that they'd be less inclined to do business with you in the marketplace and they might not want to sell you food from their shop. So that was a bigger kind of enforcement mechanism that wasn't state-based or wasn't centralized, but required sort of a communal or a social aspect of consciousness that we as a society condemned certain types of behavior.

**WOODS:** I'm curious to know about exactly what happened to this system, and that's what I'm going to ask you after we thank our sponsor.

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All right, so you've described a system that's very interesting, that almost sounds like it's straight out of a Murray Rothbard book, in a way. And yet today, if I go to Ireland that's not what I find. So something happened at some point. What was that thing, and when was it?

**FLANAGAN:** This is an excellent question, and I'm afraid you're opening a can of worms here. But you're right, Rothbard mentions this, and I know David Friedman talks about this and others. But the law was never voluntarily left – when I say "the law," I mean the old law, the brehon law. The people never gave up that law in place of a better system. It was systematically over a period of several hundred years, step by step, piece by piece replaced by the colonial legal system of England, the English common law. And just to give you a bit of context on this, I mean, the English – well, at the time it wasn't the English; it was the Anglo-Normans – invaded in the latter half of the 1100s, and the complete conquest you could say was completed in the 17th century.

So there's many hundreds of years of history here, but just to kind of skim over these, in 1366, the then king of England issued a piece of legislation in Ireland called the Statute of Kilkenny. And the reason that he issued that was because the English settlers, the lords and nobles who had been commissioned by the crown to come to Ireland and settle in previously Irish family lands and take ownership and become the lords of these places, they had begun to speak the Irish language. They had begun to wear their hair like the Irish, nice and long and wild. They rode their horses with no saddles like the Irish did. But the most important thing and the reason for this law was that the English settlers had started to go to the brehon law for dispute resolution.

So I give this as an example to show two things: one, that the legal system, the cultural native system was a threat to the common law system of England, and most importantly, that the English people who came here, they felt that themselves and they saw the benefit in this law and began to move over to this other system. And through a series of different policies of the crown throughout history, they had a system called surrender and regrant, where the Irish chieftain would surrender to the crown and he would have his lands granted back to him under an English title. So this was happening for several hundreds of years. It wasn't really until the Battle of Kinsale, which was the last stand of the Irish chieftains where they were defeated and then left Ireland, that we were left with no way of, let's say, the old legal system being supported and it just kind of died out. There was no way to get justice in the old system anymore, and we were replaced with the English common law courts, which we have to this day.

When I was researching this many years ago, I came across an interesting quote from a barrister, an Irish barrister, who said that the Irish reverence for law doesn't stand from a sympathy with crime or wrongdoing in general, but rather the Irish, who have a very long memory, know that the law in Ireland today is not Irish law. However just it may be – and it was once most unjust – it does not command respect as a native institution nowadays. So I mean, I think that in modern Irish – the Irish has this reputation, the fighting Irish, we are seen to be maybe a bit of a rowdy bunch, I don't know. But this I think stems from the awareness of the struggle that has gone on in the country, maybe never coming to terms with that as a people, but also because we know in our hearts that this legal system is not really our legal system.

So I often say to Irish people, don't – like, not all hope is lost, that we do see some traits of the brehon law still in Irish society today, not in the legal system or the institutions of the state, but very much in the personality of the people themselves. The fact that the Irish are seen to be the land of a thousand welcomes and very friendly, well, under our native legal system, it was illegal not to be friendly or it was illegal not to engage in real hospitality, so this could be something left over.

One other feature I could mention on this: the Irish system, because we had this sort of social incentive to suppress crime, if somebody came into our community and was robbed or mugged and nobody knew who the offender was, well, then the whole community became liable to put that victim into the place they were in before the offense happened.

A couple of years ago we had a football match here in Dublin, Ireland versus Austria in an international football match. Two Austrian fans who were seeing some sites, went

to the Guinness factory and so on, they got mugged and their wallets got stolen and their tickets for the football match got stolen. When the Irish fans heard about this, they immediately responded – nobody had to tell them what to do, they didn't need to have a centralized committee or government or any executive board telling them what to do – they felt in their hearts that the right thing to do would be to do a whip around, everybody did a collection. They got their money back for the people who had been robbed, and they got in touch with the Football Association of Ireland and got them replacement tickets. It was in the newspaper; it was a nice news story that day.

And I use this as an example to say there's elements of this imperative towards justice is actually in all of us and we still see kind of remnants left over in Ireland today despite the fact – I mean, it wasn't just the crown. It was the crown and the Vatican – really had a hugely detrimental role in the development of this country's institutions.

**WOODS:** All right, now let me ask I guess what a lot of people are probably thinking. This is a great history lesson and a lot of us didn't know anything about it, but is that all it is, or is there anything we can genuinely learn from it that might make our own lives better today?

**FLANAGAN:** That's another great question. I –

**WOODS:** I'm good at that, by the way. That's why I'm here.

**FLANAGAN:** [laughing] Yeah, I noticed. I do look at it from two perspectives, actually. I do on one hand see it as a nice kind of niche piece of history that is interesting to visitors to Ireland and Irish people alike, but I wouldn't be motivated to be putting in the sort of work that I am putting into it unless I felt that there was some sort of practical payoff for today's society. There are a couple of features – I mean, I think changing our attitude in the courts from retribution to restitution would be one of them. Maybe a greater focus on reputation-based outcomes to disputes, that's another one.

But one hugely important one and I'm sure your listeners of your show will love is we didn't have a centralized body of judges. Like, we didn't have a panel of Supreme Court judges who got put into that position because they favored the current political establishment or anything like that. In fact, the judges were very independent. It was like they had their own trade or their own craft. So one argument that I would make for today's society that could greatly improve what we're doing is to have judicial market opening. Today if you commit an offense, you're brought before a judge. You have no idea who this judge is. You don't know if he's a good man, a bad man, or what his predisposition is towards you or your background or your race or anything like that. You're just put in front of a man, he's wearing a black dress, and he's going to tell you what to do.

But in Ireland, a defendant – actually, I should point out it wasn't the victim; it was the defendant – picked who the judge would be over a given situation. This created an incentive in judges not to have the most political favor, but actually to be the best at interpreting the principles of the society, of the community that were made by those people, customary law, in a way that was conducive to finding the proper

remedy. So if you wanted to be a wealthy judge, if you wanted to get a lot of business, then you had to develop a reputation where you were the fairest, you were impartial, you were unbiased, and you were best at interpreting those laws.

**WOODS:** Hold on a minute. Let me jump in there. Are you telling me that the defendant could choose the judge, then wouldn't that give us a judge who would tend to be biased in favor of defendants?

**FLANAGAN:** Yeah, well, if the judge happened to be — The reason why the defendant picked the judge is because it was like another feature of fairness, if you want. Like, I'm going to accuse you of stealing from me and you're going to say, Well, I'm going to pick this judge over here because I know he has a good reputation. But the judge also stood to suffer a loss if he gave an incorrect or an unfair or an inaccurate judgment. So if you and I had a dispute, which I hope we never will, but if we did we could go and consult a brehon. He would have to put up a portion of the amount being disputed, which was about a third of the amount. So he actually stood to lose financially, first of all, reputationally, second of all, and if he did lose his reputation, then he's losing his business. So even in the case where the defendant picked the judge, the judge still had an incentive to be fair. Where this comes in as most interesting is if you were a foreigner to my túath, to my economic hub, and we had a dispute, even as an outsider, you still had the right to pick who would be the judge to oversee the case.

**WOODS:** All right, so the problem with the current system is the judges are decided on the basis of politics, and some judges are too lenient, some people might say, and some judges are too harsh because they want to be able to — some of them are elected; they want to run on "I'm tough on crime." But it's really more than that. It's that the whole system is aimed toward retribution, rather than restitution — which, by the way, is why I think the discussion in the United States about so-called private prisons misses the whole point.

I mean, it's not that we want to privatize every single thing the state does. The state does a lot of bad things. I don't want a super efficient private version of what the state does. And it's the same thing, by the way, with safety at the airports. People say we want to privatize the security agency at the airports. But I don't want private people carrying out government orders either. I want the orders themselves to be issued privately by airlines that are assessing the costs and benefits of having certain policies they impose on their passengers.

Is that the way you see things, what I just described? That it's not so much that today the problem is that the judges are too harsh or the judges are too lenient; it's that they're enforcing a system that's all screwy, in the same way that at the airports it's not that we have a government agency running the security. Even if I had a private agency running the security, it's the whole system that's screwy. I want private agents to also be making the rules themselves, not just enforcing government rules. See my point?

**FLANAGAN:** Of course, yeah. I mean, I hear what you're saying. I think from my limited analysis of all of this, in looking at the past and looking at today, I think one of the things that's happened is we have strayed very far from principle and a lot of what

we do is kind of — I don't want to say — play acting, if you want? Like we have the illusion of a working and functioning justice system. We have the illusion of security. But when you scratch at the surface of that, we find a mess underneath.

And I think one of the biggest problems for this is accountability. I mean, we talked about the courts as being available to anybody. You can get your justice in the courts. But it's not entirely true if you don't have the time or the resources to take a TSA agent to court who has done something untoward when you were going through security. I mean, a lot of times people are being precluded from finding justice simply under the circumstances of it.

But if we kind of combined or had this attitude of reputation, where reputation is not sort of an abstract idea, it's more concrete — I mean, I often say that the only thing worse than a hierarchy is not recognizing a hierarchy of rights and duties and obligation when they actually exist. So I think that's part of the problem. If you have a bad judge or if you have a bad TSA operative, what do you do? What can you do about it? And your hands I think feel tied a lot of the time.

I mean, one of the other points that you made about prison, as well, and this is an objection that I get quite often, is, Well, you know, are we going to be using prisons, private or otherwise, as a way of kind of altering behavior, or is it — I think we need to ask the question of what are we trying to achieve through these processes of justice and the courts and so on. If it is punishment, well, then, we're not doing a bad job. We are doing a very good job of punishing people for things that are kind of, maybe we could find better alternatives for.

But there's also the question of: is it appropriate to put a monetary tag on offenses, whether it's a breach of duty, whether it's an accidental or willful harm? Is that appropriate? And my response to that is, well, it's not very different than using the prisons. The only difference is when we put someone in prison, we're saying to the victim, "Your harm, the harm that you suffered is equal to this much time versus this much money."

So I don't think there's an easy, straightforward answer to these issues that we're discussing here, but I do believe very strongly that the way things were done in the past, although not perfect, can maybe remind us of the principles that underpin the justice system — the first principles, should I say — and having conversations like this will begin to shift our consciousness towards those sorts of outcomes, and we as individuals and as a people will begin to expect more from what we can do with justice, what we can do with the courts, and so on.

**WOODS:** Tell me about the online course that you teach in Irish history. It looks very interesting.

**FLANAGAN:** Yeah, this is a project that took me quite a while to actually put together, but it was partly as a need that I recognized for people to have access to this information. I mean, we're not educated about this in the schools in Ireland, for example. Irish people might know that such a system existed, but knows very little about it. So I wanted to kind of present that to people in a modern format: videos, online course. Today it's easier to digest than reading a book. It has 40 lessons that



cover different aspects of Irish society. It's about four hours long. And it's up on Udemy, so once you have access to it, you'll have unlimited access. You can go through it in your own time. Anybody who is listening to the show, if you'd like to get access to it for a discount, you can use the coupon code TOMWOODS in all capital letters and you can get a discount for that as well.

**WOODS:** Oh, okay. Well, look, I'm going to write that down because I'm going to put it on the show notes page, which is [TomWoods.com/878](https://TomWoods.com/878), and I'll put that information, the link to the course and that nice code. And tell us also about your website, because that's full of interesting material as well.

**FLANAGAN:** Yeah, the website, I mean, as you know, I'm studying to do a master's right now in Prague, and it's taking my time away from putting as much time as I would like into this project. But the website is up and it has a lot of interesting blogs, and it has a library there with PDFs and books from other people, historical books. So it's really just to serve as, as I call it, a digital high school for early Irish law and culture and just another resource for people to kind of get the information out there, to get them to maybe start thinking about the ideas and talking about the ideas with their friends.

**WOODS:** Well, I'm really glad to have had a chance to talk to you about this, and I told you from the beginning I don't want to answer every single conceivable question because I want people to look at your stuff. I want people to research this further. You've done great work on it. And I'll tell you something: as somebody who does a lot of public speaking, Kevin's a good public speaker and he doesn't read — heaven forbid — he does not read from notes, thank goodness. He's just up there talking, and the words that come out of his mouth are articulate, easy on the ears. And as you know, I'm not one who just gives out public speaking compliments unsolicited. If somebody asks me, I'll say, "Hey, yeah, you did a good job," and that's about it [laughing]. But I really enjoy — because I think I probably watched five of your videos. I don't generally do that [laughing].

**FLANAGAN:** I have a big smile here on my face. Thanks so much for the compliment.

**WOODS:** Oh, that's great.

**FLANAGAN:** It means a lot coming from you.

**WOODS:** Are you going to go back to Ireland after you're done in Prague?

**FLANAGAN:** I haven't decided yet. I like it here a lot, so we'll wait and see. But I'll be back and forth throughout the year, throughout the summer.

**WOODS:** Now, on the other hand, maybe if there were major, major, revolutionary legal reforms in Ireland, you might think about that a bit more [laughing].

**FLANAGAN:** I think that's part of the problem, is that there hasn't been any and it doesn't look like there's going to be any that seal on that to kind of encourage me to stay away. I get too frustrated thinking about Irish politics, to be honest.

**WOODS:** Yeah, I totally understand. Believe me, do I understand what that sentiment is all about. All right, thanks so much again. The resources for everybody are all up, if you don't remember them, they're linked at [TomWoods.com/878](http://TomWoods.com/878). Best of luck in your work, Kevin. Appreciate it.

**FLANAGAN:** Thank you very much, Tom, and thanks for having me on.