

Northern/Irish Feminist Judgments Project

Drafting Workshop – University College Cork Law School: The Mothering Subject

Thursday 5th and Friday 6th February, 2015



The photograph is from [Rose Commiskey's exhibition, Against the Tide](#), which chronicles protests around women's reproductive rights in Ireland in the 1980s and 1990s.

Venue: Moot Court Room, UCC Law School, Áras na Laoi, UCC, Western Road, Cork
<http://www.ucc.ie/en/visitors/maps/>

Attendance is invitation only, but some proceedings will be recorded. If you would like to attend, please email irishfeministjudge@gmail.com.

This event has been organised by the Project Co-Directors and the University College Cork Law School:<http://www.ucc.ie/en/lawsite/>

For further information on the Project, see our website: www.feministjudging.ie

We acknowledge and appreciate the support of our friends and colleagues at:

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| Centre for Gender, Sexuality and the Law, Kent | Department of Law, LSE |
| Gender and Law @ Durham | Irish Women Lawyers Association |
| School of Law, Griffith College Dublin | School of Law, QUB |
| School of Law, UCC | School of Social Justice, UCD |
| Social and Legal Studies: An International Journal | Transitional Justice Institute, Ulster |

Thursday 5th February

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| 12:00-1.00 | Lunch & Registration |
| 1:00- 2:10 | Workshop Welcome Claire (UCC host), Julie, Aoife and Máiréad |
| 2:10-3:30 | Panel 1: Writers and Poets <ol style="list-style-type: none">1. William Wall2. Kathy D'Arcy3. Sarah Clancy |
| 3:30 - 3:45 | Break |
| 3:45 – 5:15 | Case Drafting <ul style="list-style-type: none">• <i>Attorney General v. X (1992) IESC 1</i> This case concerned the prevention of travel by the Attorney General of a child seeking an abortion abroad and the right to life of a woman whose life is at risk. Ruth Fletcher (Judge) Sheelagh McGuinness (Commentator)• <i>Report of the Tribunal of Inquiry into the "Kerry Babies" Case</i> This Inquiry centred on the state's response, particularly the Guards, to the death of infants in Ireland during the 1980s. Vicky Conway (Judge) Yvonne Daly (Commentator) |
| 5.15 pm | Close |
| 6:30pm | Workshop Dinner: No. 5 Fenn's Quay http://fennsquay.net/ |

Friday 6th February

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| 10.00-11.00am | Case Drafting: <ul style="list-style-type: none">• <i>Mhic Mhathúna v. Attorney General [1989] IR. 504</i> This case concerned the family under Irish Constitutional law and whether tax and social welfare payments to single parents infringed the protection of the marital family. Liam Thornton (Judge) Colm O Cinneide (Commentator) |
| 11.00-11.15 | Break |
| 11.15-1.00 pm | Panel 2: Subject of the State <ol style="list-style-type: none">1. Sandra McAvoy (Women's Studies, UCC) 'Why not give the power to the woman?'2. Joan McCarthy (Nursing, UCC) |

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| | <p><i>'Reproductive Justice in Ireland: A Feminist Analysis of the Savita Halappanavar Case'</i></p> <p>3. Heather Laird (English, UCC)</p> <p><i>'Law, Colonialism and Anti-Colonial Resistance in Ireland'</i></p> <p>4. Elizabeth Kiely (Applied Social Sciences, UCC) & Máire Leane (Applied Social Sciences, UCC)</p> <p><i>'The Visible yet Invisible Lone Mother in Irish Society, a Critical Commentary'</i></p> |
| 1.00-2.00 | Lunch |
| 2.00-4.00 | <p>Case Drafting:</p> <ul style="list-style-type: none"> <i>In the matter of Article 26 of the Constitution and in the matter of the Matrimonial Homes Bill [1994] 1 IR 305</i> <p>The case follows a reference by the Irish President to the Supreme Court on the constitutionality of the Matrimonial Homes Bill, whether the proposal for automatic joint ownership of marital homes infringes constitutional protections for the family and property ownership as well as the constitutional role of women within the Irish Constitution.</p> <p>Lucy-Ann Buckley (Judge) Louise Crowley (Commentator)</p> <ul style="list-style-type: none"> <i>Lobe v. Minister for Justice, Equality and Law Reform [2003] IESC 3</i> <p>This case centres on the right to citizenship and family under the Irish Constitution and the position of refugees under Irish law when they have a child who is considered an Irish citizen.</p> <p>Siobhán Mullally & Clíodhna Murphy (Judges) Hilka Becker(Commentator)</p> |
| 4.00-4.30 | Reflections and close |
| Workshop Discussants | Therese Murphy, Ursula Kilkelly, Deirdre Madden, Andy Hayward, Linda Connolly, Sylvia de Mars. Se-shauna Wheatle, Rosemary Hunter, Orla Lynskey, Anne Neylon |

Abstracts for Interdisciplinary Panel

Presenter: Dr Heather Laird, English Department UCC

'Law, Colonialism and Anti-Colonial Resistance in Ireland'

Official law was one of the main mediums for the implementation of English rule in Ireland. During the eighteenth century, the penal laws inscribed colonial power relations into a legal system controlled by a setter-dominated magistracy. The statutes that comprised the penal code sought to stem the economic, political and cultural power of Catholics in Ireland, reducing the majority of the Irish population to the status of legal non-entities. Earlier policies, such as 'surrender and regrant', likewise demonstrate the importance that was placed on legal issues, particularly in regard to property ownership, in the colonial consolidation of Ireland. The Irish chiefs who, from the 1540s to the early seventeenth century, entered into 'surrender and regrant' agreements were required to give up their

rights and lands as defined by Gaelic custom and receive them back from the crown in a form of absolute ownership more compatible with English property law.

In my paper, I will argue that resistance to an official legal system associated with the conquest of the country created a space for the establishment of alternative legal concepts and structures that monitored and regulated the behaviour of rural communities. Law in Ireland, therefore, was not only a medium for the implementation of English rule; it was also a fundamental component of anti-colonial resistance, with the concept of an alternative system of control capable of supplanting the official legal system functioning as one of the most sustained threats to successive colonial administrations. Moreover, the failure of the official legal system in Ireland to establish Rule of Law ensured that the debates surrounding the translation of the Brehon Law manuscripts in the latter half of the nineteenth century had a marked contemporary resonance. These debates dealt with issues ranged from ownership of land to the rights of women.

Presenters: Elizabeth Kiely (Applied Social Sciences, UCC) & Máire Leanne (Applied Social Sciences, UCC)

Title: 'The Visible yet Invisible Lone Mother in Irish Society, a Critical Commentary'

This commentary will provide a critical review of Irish legislative and policy responses to lone mothers from 1970 to the current day. The background to this review are the profound changes, which has occurred in Ireland over the past four decades, which have fundamentally altered the context within in which women mother and have increased their choices in this regard. Traditional structures of gender inequality have been challenged and women have acquired a range of rights, in relation to fertility control, labour market access and pay, welfare provision, property rights, divorce, etc. These developments result in an increasingly varied range, of socially and culturally sanctioned options, from which women can choose how to organise their personal and working lives. Demographic information indicates that women are experiencing motherhood, in a variety of legal, domestic and relational contexts. For instance, the non-marital birth rate in Ireland has risen from 2.7% in 1970 to 33.7% in 2011 (Connolly, 2015: 28).

This commentary will focus specifically on social protection for lone parent families, while also considering the general statutory infrastructure of childcare and family leave entitlements with particular reference to the experiences of women as lone mothers. The review will be informed by feminist social policy and feminist scholarship on motherhood. It will be demonstrated how particular conceptualisations of motherhood have resulted in policies which continue to privatise the burdens of childcare and fail to explore the potential for fathers and the wider community to assume greater responsibility for the care and nurturance of children (Leane, 2008). An approach to law and policy making, which moves beyond the narrow lens of the work/home binary and the logic of contemporary capitalism, will be advocated (Stephens, 2004; Lister, 2002). Furthermore it will be argued that for the purpose of law and policy making, consideration should be given to shifting the conceptualization of mothering away from identity and towards activity (Maher, 2004 & 2005). This is for two key reasons; it challenges understandings of childcare as the private responsibility of individual women and it deconstructs essentialising and moralising binaries between different types of mothers (i.e. partnered mothers/lone mothers, mothers in the

formal labour market /mothers who work and care at home etc,) which work to sustain their differential governance and regulation.

References

- Connolly, L. (2015) *The 'Irish' Family*, Routledge, London.
- Leane, M. (2008) 'Caring for the Celtic Cubs: Discursive Constructions of Mothers and Mothering in the Irish Childcare Debate', *Journal of the Association of Research on Mothering*, 10 (1): 243-255.
- Lister, R. (2002) 'The Dilemmas of Pendulum Politics: Balancing Paid Work, Care and Citizenship', *Economy and Society*, 31 (4): 520-532.
- Maher, J. (2005) 'A Mother by Trade: Australian Women Reflecting Mothering as Activity, Not Identity', *Australian Feminist Studies*, 20 (46): 17-29.
- Maher, J. (2004) 'Skills, Not Attributes: Rethinking Mothering as Work', *Journal of the Association of Research on Mothering*, 6 (2): 7-16.

Presenter: Joan McCarthy *Reproductive Justice in Ireland: A Feminist Analysis of the Savita Halappanavar Case*

(This paper is an excerpt from a chapter in *Ethical, Legal and Policy Debates in Irish Healthcare: Confronting Complexities*, Mary Donnelly and Claire Murray (eds), forthcoming from Manchester University Press)

Abstract

This paper considers the case of Savita Halappanavar whose 17 week pregnancy ended in miscarriage and her death in University College Hospital Galway (UCHG) on the 28th October 2012. The case provides evidence of: a profound unease with women's reproductive capacity; the influence of Catholic norms on healthcare practice, and; the denigration of women's moral authority, agency and professional credibility (sometimes by women themselves). It is one example, among many, in recent times where these kinds of factors have led to the abuse and deprecation of women in Ireland.[i] My reading of this situation adopts Margaret Urban Walker's feminist ethics perspective which draws attention to 'differences of social and institutional position, perspective, and power that determine which voices and whose interests and experiences are audible and authoritative in ethics as elsewhere'. (Walker 2009: 5)

[i] See O. Walsh (2013) Report on Symphysiotomy in Ireland 1944-1984. Available at: <http://health.gov.ie/blog/publications/report-on-symphysiotomy-in-ireland-1944-1984-professor-oonagh-walsh/>. Downloaded on 20 November 2014.

and McAleese (2013) Report of the Inter-Departmental Committee to establish the facts of State involvement with the Magdalen Laundries. Available at: <http://www.justice.ie/en/JELR/Pages/MagdalenRpt2013>. Downloaded on 20 November 2014.

Presenter: Sandra McAvoy, Women's Studies, UCC 'Why not give the power to the woman?'

Abstract: In summer 2014 the Concluding Observations of the UN Human Rights Committee's report on Ireland raised particular concerns about abortion and called for a revision of the legal and constitutional position 'to provide for additional exceptions in cases of rape, incest, serious risks to the health of the mother, or fatal foetal abnormality.'

Committee chairman, Sir Nigel Rodley's, statement that a woman who was pregnant as a result of rape could be treated as a 'vessel and nothing more' was shown to be accurate when, days later, the Miss Y case came to light. It involved forced pregnancy, forced hydration, and what appeared to be a coerced caesarean section. In December 2014, a pregnant clinically brain dead woman was kept on life support for more than three weeks because of a lack of clarity about the impact of article 40.3.3 on her case.

Rodley named the 'the institutional belief system', as a factor inhibiting Ireland's progress towards human rights for women. This paper draws on Irish sources to highlight aspects of historical thinking about ownership of women's bodies and about their *duty* to reproduce, regardless of the consequences for them.