

Independent Law Review

Volume 1 Issue 4 • September/October 2004



In this issue

Public Sector Strikes:

Professor Carol Rasnic compares Irish and American law

Reservations to the Convention on the Elimination of all forms of
Discrimination against Women

Researching European Union law

Editor

Philip Burke, LLB,
Barrister at Law,
Head of Law Schools,
Griffith College Dublin
Dublin, Ireland.
Email: philip@gcd.ie

Deputy Editor & Research Co-ordinator

Fiona de Londras, BCL, LL.M (NUI),
Lecturer in Law,
Griffith College Dublin,
Dublin, Ireland.
Email: fiona.delondras@gcd.ie

Web Review Editor

Cian C Murphy,
Law Society,
University College Cork,
Cork, Ireland.
Email: cianmurf@eircom.net

The Independent Law Review is published by

Bellerophon Ltd,
South Circular Road,
Dublin 8, Ireland,
Tel: + 353 (0)1 416 3300,
Fax: + 353 (0)1 454 9265,
Email: ILR1@eircom.net

Advertising & Editorial

Célia Zwahlen,
Tel: + 353 (0)1 416 3300,
Fax: + 353 (0)1 454 9265,
Email: ILR1@eircom.net

Printed by

Print Needs,
Dublin, Ireland,
Tel: + 353 (0)1 295 8226

Issue 5 of the Independent Law Review
will be published in November 2004.

Contributing to the Independent Law Review?

Do you wish to

- suggest an article or interview;
- review a book or journal;
- submit a preview or report on a meeting;
- list an event in the Diary?

Contact: Célia Zwahlen on
Tel: + 353 (0)1 416 3300,
Fax: + 353 (0)1 454 9265,
Email: ILR1@eircom.net

Copyright: No part of this magazine may be reproduced without written permission from the Publishers. The comments of the contributors and reviewers are their own and not necessarily endorsed by the Publishers, Editor or Editorial Board. Accordingly the Publisher, Editor or Editorial Board accept no liability for the consequences of any such inaccurate or misleading data, opinion or statement. The Editor's decision is final and no correspondence will be entered into. The utmost care has been taken to ensure accuracy of detail, but the publishers cannot accept responsibility for errors or omissions. This publication should not be used as a substitute for legal advice.

Note: The work of the Editorial Board is wholly honorary and without any direct or indirect commercial or financial interest.

Contents

Volume 1 Issue 4 • September/October 2004

103 Editorial by Philip Burke, Dublin, & the Editorial Board

Features

104 Different Philosophies on the Right of Public Workers to Strike: Comparing Irish and American Laws

Carol Daugherty Rasnic, Virginia, The United States.

110 An Introduction to Using and Understanding the Law of the European Union

Fiona de Londras, Dublin, Ireland.

114 Ripples in a Whirlpool: Reservations to the Convention on the Elimination of all Forms of Discrimination Against Women

Suzanne Doyle, Dublin, Ireland.

Regulars

120 Book Reviews

Reviews of recent publications compiled by Mairead Enright,
Dublin, Ireland.

122 Web Review

Details of law related websites compiled by Cian Murphy, Cork, Ireland.

124 Recruitment

125 Diary

A detailed list of courses, meetings
and conferences in the legal calendar.

Lifestyle

126 Welcome to Heaven on Earth

Vanessa Landers, Dublin, Ireland.



Front cover illustration by
Bob Dewar, Fife, Scotland.

Time to Make an Unpopular Decision on Third-Level Fees

In the last year, the Department of Education and Science spent a total of €380 million on third level student support. Free third level fees cost €240 million in that period, the balance being spent on maintenance grants for qualifying students. Since Niamh Bhreathnach abolished third-level fees for full-time public sector students in 1995, there has been a growing chorus of opinion suggesting that her decision was ill-conceived. A recent Sunday newspaper editorial put it in the following strident terms, “the [Minister’s] action spoke more eloquently of the Labour Party’s desire to pander to its middle-class voters than any other cause that it championed” (*Sunday Business Post*, September 12th 2004). This criticism stems from the fact that the most significant beneficiaries of the decision are parents from the higher income groups who would be likely to fail a means based test for educational funding, leading the current minister to propose the re-introduction of fees in 2003. The Minister was acting in accord with majority expert opinion in doing so. For example, University College Dublin’s Professor Brigid Laffan (speaking at the MacGill Summer School, Co. Donegal in July of this year) described the decision to abolish third level education fees as “regressive” and “a mistake”. She said that the effect of the ‘Rainbow’ government’s decision was to hand one more subsidy to the Irish middle classes at the expense of lower income groups. Indeed, the Taoiseach admitted as much in the Dáil, stating that “the abolition of tuition fees did not achieve the stated aim of assisting those from lower socio-economic backgrounds” (Leader’s Questions, May 20th 2003).

The current situation is nothing short of an educational and economic time bomb.

Following the re-introduction of third level fees in the United Kingdom, a Londoner faced with a choice of taking a degree in, for example, Newcastle costing approximately €4,500, or in an Irish university where tuition is free, may well choose the latter. This problem could become particularly acute should the Irish universities be faced with the challenge of absorbing significant numbers of students from the accession states eager to avail of the generous Irish regime. The Irish third-level education system may well become characterised by the fact that while free fees are offered, fewer and fewer places will be available to Irish students each year.

This month’s OECD (Operation for Economic Cooperation and Development) Report on Higher Education in Ireland is unequivocal. Tuition fees should be re-introduced, with privately funded loan schemes developed to provide students with the greatest opportunity to partake in tertiary level education.

Conventional wisdom suggests that Minister Dempsey’s proposal to re-introduce fees was politically premature. Seasoned political analysts have expressed wry admiration for the way the Taoiseach managed to distance himself and his government from what proved to be an unpopular proposal. However, the OECD’s recommendations have underlined the merit, and can only be described as a vindication, of Minister Dempsey’s initiative. They also serve to underline his cabinet colleagues’ craven failure to support him.



Philip P. Burke, Editor



It may be true that the law cannot make a man love me, but it can keep him from lynching me, and I think that’s pretty important.

Martin Luther King Jnr.

Editorial Board

Editor

Philip Burke, LLB (Lond), Barrister-at-Law (King’s Inns), Head of Law Schools, Griffith College Dublin.

Mr Burke is a graduate of the University of London. He went on to complete the Barrister at Law degree at the Honorable Society of King’s Inns, Dublin. He is a practising barrister and has taught various subjects for the University of London’s LLB degree. He is Head of The Professional Law School at Griffith College Dublin, and Joint Head of the College’s Undergraduate Law School. He has recently written a textbook with Val Corbett on the Law of Torts (Roundhall Thomson, 2003). Philip Burke is Editor of the Independent Law Review. Email: philip@gcd.ie

Deputy Editor

Fiona de Londras, BCL, LL.M.

Fiona de Londras is a graduate of University College Cork. In 2002 she was awarded the degree of Bachelor of Civil Laws with first class honours. In 2003 she was awarded the degree of Master of Laws, also with first class honours, for her thesis entitled *Genocidal Sexual Violence: Experiences, Perspectives*

and Legal Responses. She was College Scholar and Ronan Scholar from 2002 to 2003 in UCC. She is a Senior Lecturer in Law in Griffith College Dublin, lecturing in Land Law, Human Rights Law, and Legal Research, Writing and Communications. She is also a tutor in Criminal Law at Griffith College, and formerly at UCC and Trinity College Dublin. Ms de Londras’ research interests include criminal justice, international criminal law, human rights law, land law, and legal research and writing. She is Deputy Editor of the *Independent Law Review*. Email: fiona.delondras@gcd.ie

Book Review Editor

Máiréad Enright, BCL.

Máiréad Enright is a graduate of University College Cork. In 2003 she was awarded the degree of Bachelor of Civil Laws with first class honours, graduating second in her class. She is currently a candidate for the degree of Master of Arts in Medical Ethics and Law at the University of London, King’s College. She is a lecturer in law at Griffith College Dublin, lecturing in Contract Law, Constitutional Law and Judicial Review

and Legal Research, Writing and Communications. She is also a tutor in Constitutional Law and Jurisprudence at Griffith College. Ms. Enright’s research interests include medical law, child law, jurisprudence and moral philosophy. Email: mairead.enright@gcd.ie

Web Review Editor

Cian Murphy is currently completing a BCL in University College Cork. His interests include Constitutional and Information Technology law. He has worked in the offices of Henry PF Donegan & Son, Cork and has served as both Recording Secretary and Webmaster of the U.C.C. Law Society. Cian was a member of the Irish Schools Debating team that won the World Schools’ Debating Championship in Singapore in 2002. In 2003 he became the Irish and International Champion of the John Smith Memorial Mace debating competition on behalf of the Law Society, University College Cork. Cian is the Web Review Editor for the *Independent Law Review* and will contribute a review of interesting websites for our readers. Email: cianmurf@eircom.net

Different Philosophies on the Right of Public Workers to Strike: *Comparing Irish and American Laws*

Professor Carol D Rasnic,

Virginia Commonwealth University
Email: cdraz@comcast.net

“ Self interest of individual or organization may not be permitted to endanger the safety, health or public welfare of the State or any of its subdivisions... Such defiance, the more egregious when committed by employees in the public sector, is not to be tolerated”

*City of New York v. DeLury*¹

After more than thirty-five years, New York State Chief Justice Fuld’s words are still an accepted part of American law, which holds that the respectability of strikes by government workers is generally antithetical to public opinion. Thus, the occurrence of several public sector strikes in Ireland during the last few months is an anomaly indeed for the American legal mind. Not only does federal statutory law in the U.S.A. strictly forbid public workers from engaging in such industrial activity, but legislatures in the majority of American states have also adopted similar laws.

This article will explore the major distinctions between Irish and American law with regard to public workers’ rights to collectively bargain and to strike. Significantly, European domestic law is fundamentally more protective of the rights of workers *in general*, particularly at the state level. A prime example is the so-called employment-at-will rule applicable in most American states, which presumes that either party to an employment contract, has the right to terminate the relationship at any time, even without good cause.²

The more expansive rights enjoyed by Irish workers indicate the same broader permissiveness at the collective level, and further emphasise this greater deference to workers’ rights. The likely lesson to be drawn from this comparison is that one would prefer to be a public (and, to be sure, a private) worker in Europe than in the U.S.A.

The right to bargain collectively

Ireland

The Irish Constitution secures the right to form associations and unions.³ An even more fundamental right - the right to work - is also constitutionally protected.⁴

Public workers in Ireland are exempted from many employment statutes, but Donncha O’Connell states⁵ that the myriad regulations addressing civil servants’ rights generally vest them with more expansive protections than coverage under these legislative packages would give them. This is a position with which many labour law experts agree, and most cite the high level of unionisation of public workers as another factor that has reduced the need for broad statutory protections.⁶

This latter fact is consistent with the numbers of workers

opting to join unions overall.

In the Republic of Ireland and Northern Ireland combined, the Irish Congress of Trade Unions reported a total of 682,260 union members in 1996, a figure that had risen to 725,969 by 1999.⁷ Since then, union membership has grown another 20%.⁸ In contrast, private sector union membership has been in constant decline in the United States since its post-depression pinnacle in the late 1930’s and early 1940’s. In February 2003, only 13.2% of American private employees belonged to labour organisations.⁹

According to Anthony Kerr,¹⁰ the Industrial Relations Act 1990 governs both private and public workers with regard to the right to take industrial action during a labour dispute. In contrast, the two sectors are clearly separated under American federal and state laws.

Germane in Ireland is the Social Partnership Agreement 2003-2005; the sixth adoption of such an agreement between the national government and the social partners. The first such contract was in 1987, and the one currently in effect was endorsed by both the Irish Congress of Trade Unions (ICTU) and the Employers’ Confederation (IBEC). It contains a no-strike clause¹¹ on issues that relate to private sector pay and “related issues”, which presumably include pensions and premium wages for overtime work, arising during the currency of the agreement. The Agreement is inapplicable to strike activity by public workers for two reasons: first, this part of the Agreement expressly relates to the private sector only; and second, even if it affected public workers, the commitment not to strike is confined to pay-related matters. Moreover, it is no longer binding on the parties after the agreement has expired.¹²

An interesting parallel might be drawn between the bodies of law (American and Irish) dealing with how labour disputes are to be settled in the absence of a right to strike. Remembering that the Social Partnership Agreement no-strike commitment encompasses only private workers, the procedure is to refer the issue in dispute to the Labour Relations Committee. If there is no resolution at that stage, the case is referred by joint action of both parties to the Labour Court. In the event that there is no compliance with an order from this court, there commences a three-week “cooling-off” period, during which there can be no strike and the parties are to make concerted efforts to reach an agreement.¹³ American federal law has a similar provision, which is also applicable only to the private setting. The 1947 Taft-Hartley amendments to the 1935 Wagner Act provide for the President, through his Attorney General, to obtain a temporary restraining order during which intense negotiations (and mediation) supplant a strike. The burden of proof is on the government as the petitioning party to show that an actual or threatened strike or lockout would “endanger national health or [the] security” of the country, or a substantial section thereof. Also referred to in the vernacular¹⁴ as a “cooling-off” period, the length is notably longer, that is, eighty days (with two incremental stages for status reports after sixty days and again after seventy-five days).¹⁵

United States

The U.S. Congress has not dealt as favourably with organised labour in general as have most European legislatures. The right to form and join a labour union is enshrined in the Irish Constitution, but this same right is merely statutory in the U.S.A. Significantly, there was never a move to amend the United States Constitution¹⁶ to include this right (or even a right to work), and the legislated right was created long after the Constitution was ratified. The 1926 Railway Labour Act gave railroad workers the positive right to form unions and to bargain collectively with their employers.¹⁷ The remainder of the private sector waited until 1935 for this same right.¹⁸

Some historical background evidences just how parsimonious American courts were in recognising workers' rights to unionise, absent legislation.¹⁹ In 1806, before the Supreme Court addressed the issue of a right to associate and to bargain collectively, a court in Pennsylvania held unions to constitute criminal conspiracies. The entire staff (eight workers) of a small shoemaking business refused to return to work until they were granted a pay increase. The judge's instructions to the jury were as close to a directed verdict one might find—a genuine mandate to find all eight guilty of conspiring to diminish the employer's livelihood.

Less than forty years later, a more forward-thinking Massachusetts Supreme Court in a similar case rejected the notion that the workers' primary goal was to harm their employer. Rather, it was to improve their own material situations, and therefore clearly not tantamount to a criminal conspiracy.²⁰

The United States Supreme Court's first opportunity to announce its view on unions in general came in 1917. The West Virginia coal mining company in *Hitchman Coal and Coke v. Mitchell*²¹ required all new hires to promise never to join a union while employed there. The opposite of a closed shop,²² this type of agreement is referred to in American law as a "yellow dog contract"; one that virtually assures the employer that its business will remain completely non-union. However, later persuaded by a United Mine Workers organiser that union membership would benefit them substantially, several broke this commitment and became members of that union. Their first action, girded by the union's promise to pay strike benefits, was to strike in protest of low wages. The promised strike benefits were not delivered, so the workers quit the union and requested the company to permit them to return to work. In need of workers, the company reinstated all, and immediately sued the union in the tort of intentional interference with contractual relations. The Court held for the company, not only finding the union guilty, but also holding individual union members personally liable for damages.²³

Finally, in 1921,²⁴ the Supreme Court held unions to violate *per se* the federal antitrust laws²⁵ as a "combination in restraint of trade". This decision was legislatively overruled by the 1932 Norris-LaGuardia Act, which essentially exempted union concerted activity from the federal antitrust statutes.²⁶

The foregoing refers only to private sector workers. At the federal level, Congress was reticent with regard to public workers' bargaining rights. President Teddy Roosevelt had issued an executive order in 1906, dictating exactly the opposite.²⁷ This mandate expressly forbade federal workers

to belong to unions, a negative that remained absolute until 1912. In that year, the Lloyd LaFollette Act²⁸ was approved and gave the right to form unions to postal workers.

Not until 1962 were remaining federal employees permitted to form unions, and this was not by act of Congress, but rather via an executive order from then-President John F. Kennedy.²⁹ It took a lethargic Congress sixteen years to convert this measure into statutory form. The comprehensive 1978 Civil Service Reform Act included the Federal Labour Management Relations Act,³⁰ which empowers all federal employees to associate into unions for purposes of collective bargaining.

Those states that permit state workers to form unions and to bargain collectively began to adopt such legislation before the 1978 Act. Wisconsin was the first such state, having passed its statute in 1959. Currently, thirty-six of the fifty states have laws permitting their public workers to associate into unions,³¹ and the remaining fourteen are states generally regarded as more conservative. For example, the Virginia General Assembly (state legislature) had long been silent on this issue, but in 1977, the Supreme Court of Virginia held that, absent legislation to the contrary, state workers did not have this right.³² Traditionally non-reactionary and reluctant to "make" law, Virginia's highest court refused to encroach upon the powers reserved for the legislature. To remove any doubt, the state lawmakers enacted a law in 1993 that expressly denied this right to state workers.³³ The General Assembly's subsequent response to the Supreme Court, then, merely confirmed what was existing law.

The right of public workers to strike

Ireland

Irish law contains no explicit positive right to strike. Thus, general common law principles of contract apply. Of particular interest to the American lawyer is that this concept of contract emanates not from the collective bargaining agreement, but rather from the employment contract. Since any refusal to work constitutes a breach of that agreement, the law in Ireland permits the non-breaching party to rescind the contract.

Nonetheless, Irish common law views this principle somewhat liberally in the context of industrial relations. In *Becton Dickinson Ltd. v. Lee*³⁴ the Supreme Court assessed the employment contract in strike situations as merely suspended for the duration of the strike, rather than as terminated. Although the Unfair Dismissals Act 1977 does not automatically render a dismissal unfair if it was in response to the employee's participation in industrial action,³⁵ the burden of proof is on the employer to prove that such a dismissal was fair, considering the circumstances. For example, as long as it was procedurally in accordance with both statutory law and any contractual provisions, the employee's gross misconduct (a concept that apparently does not include striking for economic³⁶ reasons), such as engaging in violent activity on the picket line, would justify termination of his employment.³⁷

The inference is that a worker cannot be dismissed solely because of his non-violent participation in a strike. Despite this, the Unfair Dismissals Act excludes "a person employed by or under the State,"³⁸ which implies that, for the public worker, the law is simplified so that straight contract

principles apply. Under *Becton Dickinson*, there is no termination of the employment relationship by virtue of strike activity, but the employment contract is only suspended.

It is important to keep in mind that Irish law, unlike its American counterpart, does not distinguish between the public and private sectors with regard to industrial action. All workers are bound by contract and tort law, and any sovereign immunity of the state from tort liability that might arguably have existed in 1922 when Ireland became *Saorstát Éireann* has been declared unconstitutional.³⁹ Immunity from liability of the strikers themselves for what is tantamount to a breach of the employment contract was codified in the Trade Disputes Act 1906. Irish barrister John Curran⁴⁰ terms a “right to strike” a misnomer, since it is in reality a negative, rather a positive right. That is, the law assures persons who engage in strike activity that they will not be subjected to legal action for breach of contract. The 1906 Act⁴¹ states that the only proviso for such protection is that the workers were acting “in contemplation or furtherance of a trade dispute.”

The Industrial Relations Act 1990 repealed the Trade Disputes Act, but most of the revision consists of aesthetic rather than substantive changes to the former law. Section 12 of the 1990 Act replaced section 3 of the earlier statute, continuing the same immunity for striking workers from liability for breach of contract. The same language; “in contemplation or furtherance of a trade dispute” is used verbatim.⁴² This would be, in some circumstances, in violation of American federal statutory laws. The 1935 Wagner Act makes it an unfair labour practice for an employer to discriminate against a worker for his having exercised a right guaranteed under section 7 of that statute. This essentially means that no worker might be treated differently because of his having joined a union and having engaged in concerted activity as a union member. As amended by the 1947 Taft-Hartley Act,⁴³ that section was augmented to include the worker’s right to refrain from union activity. The Irish immunity for striking workers when engaged in a “trade dispute” infers that the dispute is a collective one. To give union members immunity from liability for breach of contract could in some instances afford them more favourable treatment than non-union workers are entitled to receive. Suppose, for example, a single worker has refused to work because of an individual pay dispute with his employer. Would this constitute a statutory “trade dispute”? Arguably, it would not.

John Curran also is of the opinion that this “in contemplation of or furtherance of a trade dispute” provision is the basis for the statement by SIPTU (Service, Industrial, Professional, and Technical Workers Union) President Jack O’Connor statement that public sector strikes are not political in nature. He insists that they are not directed toward government policy, but rather are aimed at protecting workers’ terms and conditions of employment.⁴⁴

With employment safeguards and elaborate employment security for public workers, civil service positions are in generally regarded as very desirable.⁴⁵ As a consequence, in Ireland the state is the largest employer. This fact emphasises the need for public sector workers to take seriously their primary commitment to serve the public.

The United States

The law with respect to public workers’ strike activity is decidedly different under American law. Federal workers, even temporary ones such as university students with summer jobs, are required as a condition of employment to sign a statutory oath that they will engage in no strike activity while working for the federal government.⁴⁶ The broad language of this statute incorporates sympathy strike activity, even if the strikers are not currently parties to a labour dispute.

Violation of this provision has two consequences. First, it is punishable as a crime with penalties of fines of up to \$1,000 and/or imprisonment for up to one year.⁴⁷ Second, the violator automatically forfeits his job and is ineligible for re-employment by any agency of the U.S. government for a three-year period.⁴⁸ For example, if a computer analyst for the Federal Trade Commission participated in a sympathy strike during a labour dispute between the union representing maintenance workers for the FTC, his position with that agency is terminated, and he could not accept an offer of employment from the Internal Revenue Service during this three-year hiatus.

A memorable example was the Professional Air Traffic Controllers Organisation (PATCO) labour dispute in 1981, shortly after the beginning of the late President Ronald Reagan’s first term in office. The relevant automatic job termination provision and the criminal sanction statute had largely been dormant, but Reagan was livid when PATCO President Robert Poli participated in a strike by union members at the Norfolk, Virginia Airport. The president announced their immediate discharge, and replaced them with retired controllers and other fully qualified persons. Additionally, he determined that the criminal penalties should be imposed. In order to forego the necessity of a trial by jury, he simply directed Attorney General Ed Meese to present the government’s case to a federal district court in Washington, D.C. and to seek a temporary restraining order (TRO). Ignoring the TRO granted by that court made strikers guilty of contempt of court, and Poli and his colleagues were imprisoned on this basis.⁴⁹

With respect to the individual states, the vast majority have enacted statutes making strike activity by public workers unlawful. Only eight states permit strikes by state workers, and most of these qualify this right as being one restricted to non-essential employees.⁵⁰ Mention should be made of the state of California. Often an aberration among the American states, only in California has the highest court determined that public sector strikes are constitutional, unusual because the right was granted by judicial fiat, rather than by legislation.⁵¹

Penalties in the forty-two states in which public worker strikes are unlawful vary from state to state, but the Virginia law is illustrative. The reader will recall that Virginia is one of fourteen states in which state workers are not entitled even to associate with a union for the purpose of collective bargaining. The relevant statute regarding strikes involves the participation by “two or more” state workers. There are no criminal penalties, but violation results in their loss of their positions with the state and renders them ineligible for any work for the Commonwealth of Virginia⁵² for a twelve-month period.⁵³

Interestingly, the term used in the Virginia statute is not “strike”, but “work stoppage,” apparently a concept with a

somewhat greater breadth. For example, in the mid-1980's, a decision was implemented by Henrico County (Richmond) public school teachers, who were well aware that the law forbade them from striking. They began a so-called "work-to-the-contract" concerted action. This translated into their working strictly the exact hours school was in session, and refusing to perform incidental duties that were part of the schools' expectations, such as advising after-school groups such as French or drama clubs, and serving school bus duty before and after the official class time began. Assistant (state) Attorney General Patrick Lacy took the position that, although not a full-fledged strike, this refusal amounted to a partial work stoppage under the statute. As soon as his opinion was announced to the media, all teachers resumed their prior activities of participating in these additional duties, and the state took no action against them.

A nutshell summary of American law is that federal workers and workers in the majority of states have statutory rights to associate with a union and to bargain collectively. Neither federal workers nor public workers in forty-two of the fifty states may lawfully participate in industrial activity such as a strike.

Some Recent Industrial Action by Irish Public Workers

An Post

An Post's differences with the government surfaced in late March 2004, and the Communication Workers' Union (CWU) immediately called for industrial action. Perhaps the more complicated dispute was over the postal office board's planned transfer to workers of fifteen percent of the outstanding stock in the state-owned company. Workers referred to this as an unfulfilled "commitment," while management termed it a "suggestion," so it is unclear whether it is binding or non-binding in nature. The Communications Minister negated this plan because the savings involved were lower than had been predicted. Rather than the expected sum of thirty-four million euro, only 7.2 million euro -about one-fifth of that projection- was actually saved. Ahern's statement to the *Dáil* was that he and the government remained "fully committed" to the stock transfer, but added that the proviso in the agreement was that the anticipated savings would be a prerequisite. Ernst and Young, the accounting firm commissioned by the Minister, concluded that management's figure (7.2 million euro) was actually "too optimistic." Indeed, the actual figure for the year 2003 was in the loss column in the amount of 46 million euro.⁵⁴

Additionally, 508 workers had been suspended, with *An Post* announcing plans to dismiss ninety-eight sorters and delivery staff. Management contended that the employment contracts provided for such removal without notification. Nonetheless, CWU demanded reinstatement. Government officials rather forcefully convinced *An Post* to meet with the Labour Relations Council in order to make an effort to settle the dispute.⁵⁵ Meanwhile, mail continued to stockpile, as the strike spread from Dublin where it began to the rest of Ireland.

The two parties' differences were exacerbated. CWU presented the government with a document prepared by a firm of accountants, in which management was soundly criticised for having spent 226 million euro during the prior five years on new mail centres and unnecessary acquisitions, using cash reserves instead of borrowing in an effort to meet

the promises to workers.⁵⁶

On April 1, *An Post* announced that all post boxes that had been sealed to preclude mailing were to be reopened after a peace deal had tentatively been reached. Those who called the agreement "fragile" turned out to be prophetic. Now in dispute was the interpretation of the terms of the settlement agreement, in particular, the commitment for *An Post* to reinstate terminated workers. After the two-week strike, postal workers nonetheless agreed to return to work and to resolve remaining differences as soon as possible.⁵⁷ The CWC executive committee unanimously accepted the LRC's plan that *An Post* management pay a three-percent increase due and use cost savings to begin implementing the fifteen percent stock promise.⁵⁸

Less than one week later, the resumption of normal mail services was announced to be closer to three weeks than the three days previously stated to the media. Unprocessed mail lay waiting while the LRC continued to work with both sides. Union demands for overtime pay and objections to management's hire of casual workers to assist in the backlog compounded the talks.⁵⁹ The consensus of the parties and the LRC was that these two unresolved issues would be referred to the Labour Court, absent a settlement that evening.

As expected by most followers, the case reached the Labour Court. Chairman Kevin Duffy made what he referred to as a "quick-fire" recommendation for the hire of two hundred casual workers for a six-week period and for increase in overtime pay for regular workers. *An Post* claimed that without such additional help it was losing as much as six hundred thousand Euro per week. Reportedly the backlog would require handling up to 1.8 million items each day. Gerald Flynn's report in the *Irish Independent* echoed the impatience of the populace: "The stand-off reflects the poor state of industrial relations within *An Post* and the high dependence of many staff on overtime earnings to maintain their spending habits".⁶⁰

By the end of April, *An Post* reported that the strike had cost six million euro to the company. Chief executive Donal Curtin announced that an application for a 15% increase in the price of stamps from the current 48 cents to 55 cents would be necessary and that a voluntary severance package would be offered in an attempt to reduce its work force.⁶¹ The price increase for stamps was seen by much of the disgruntled public who had borne the brunt of the strike as patently inequitable. Neither management nor the union engendered much praise from those who had been adversely affected.

The response of CWA was to announce the likelihood of another strike before the year's end unless the entire Transformation through Partnership package negotiated four years prior to the current dispute were implemented. Union leader Sean McDonagh called this the "company's decision."⁶² The union called for an inquiry by the *Oireachtas* into management practices, demanding an explanation from *An Post* of how a predicted 1 million Euro profit could have metamorphosed into a 43 million Euro loss.⁶³ The already strained relations between the management and workers further soured when 1500 postmasters and postmistresses, all members of the Irish Postmasters' Union (IPU), threatened a civil disobedience response to *An Post's* announced plan to close all post offices on Saturdays preceding bank holidays. IPU obtained a temporary restraining order from a High Court, effectively forbidding any such closures.⁶⁴

There were no statistics on how much the strike cost businesses, particularly smaller ones. One might send those messages normally mailed through the post electronically or by fax, but these alternatives are not possible for packages. An example of difficulties created by the work stoppage includes a retail company's need for supplies, or even merchandise. The high cost of using a courier in such instances might be prohibitive for the smaller business.

In the U.S.A., the U.S. Post Office is owned by the federal government, but privately managed. Nonetheless, the federal ownership legally precludes any workers from engaging in strike activity.

Bus and rail systems and Aer Rianta

Almost contemporaneously with the postal dispute came the announcement by National Bus and Rail Union (NBRU) of a planned strike to coincide with St. Patrick's Day, one of the heaviest travel times in Ireland. The cited cause was the failure of Minister for Transport to comply with the Transport Forum consensus. The government's spokesperson insisted that any strike activity would be unjustified, adding that the Department had engaged in negotiations with the union during the prior three weeks. That same day the Service, Industrial, Professional and Technical Workers' Union (SIPTU) reported a near certain airport strike, also naming Mr. Brennan as the instigator.⁶⁵

The airport dispute involved job security assurances and terms and conditions of employment. Mr. Brennan rejected *Aer Rianta's* request that Phil Flynn, formerly a union leader and currently an industrial relations crisis negotiator, intervene and attempt to break the deadlock. The government's rationale was its position that any such use of a third party would interfere with work by the LRC, which had begun when the dispute first loomed in January.⁶⁶

Claiming that private bus licenses were now "cheaper than a dog license," NBRU General Secretary Liam Tobin criticised the granting of some 425 such licenses. He insisted there was no logic underlying this move, one he deemed to be a sinister attempt to privatise public transportation.⁶⁷ A large employers group represented by Tom Noonan insisted that a strike would alienate the very people who depend on the services that trade unions say they want to protect. They extolled the virtues of competition, which he said, "delivers efficiency, service improvements and reduced costs."⁶⁸ American economists would concur, pointing to the break-up of the American Telephone & Telegraph monopoly on supplying telephone services and the consequent lowering of customers' fees.

At the last minute, SIPTU ordered bus, rail and airport workers to cancel the plan for a 24-hour work stoppage beginning March 18th. This move resulted from a written commitment by the Taoiseach that workers' pay and conditions of employment would not deteriorate and that the government would work assiduously to resolve outstanding issues.⁶⁹ The reasoning of the heads of SIPTU was that discussions with the government were making progress, and a facilitator had been named; workers' fears of redundancy dismissals appeared to be exaggerated, and threats of strike action in the future in the event the government's efforts did not prove productive could well prove the trump card in the union's hand. Despite this decision, the mistrust generated by Minister Brennan's procrastination and his failure to see that legislation has

been introduced for transport regulation render the situation a tenuous one.⁷⁰

Perhaps transportation workers' tempers were still inflamed in June 2004, when the Department of Transport permitted private companies to run two new Dublin routes, but the expected threats to take industrial action loomed again. Government officials explained the decision as a necessary one since Dublin Bus had declined to offer the two needed routes. Imbedded in the ongoing dispute is the rivalry between the two unions, NBTU and SIPTU. The strike threats came from the former, rather than the latter. At the time this article was written, NBRU planned a vote by its 3,000 members in early July 2004, on whether to strike in protest of Mr. Brennan's continuation of licensing private bus companies. A union spokesman reported that it was probable that the work stoppage would indeed occur, with rollover strikes in the beginning, and a total strike shortly thereafter.⁷¹

The outlook for Ireland's 2004 tourist season was not optimistic. Many of those who had tentatively planned trips to Ireland and who would have relied on public transport probably took the occasion to re-think travel plans and to journey elsewhere. The benefits to striking workers, which might outweigh a probably monumental loss of business, are not evident. Since the only American federally owned transportation system, the rail program (Amtrak), is privately operated, a comparison is difficult. Having been both owned and operated by the government for many years, the concern has emerged of likely bankrupt status since its partial privatisation. It is submitted that the *Dáil* might do well to ponder whether management of bus and rail services are tasks that the government can efficiently perform. In the event that a competitive private service can better fulfil the function of *Bus Éireann*, perhaps such competition will serve the people in Ireland well. The costs, inconveniences, and loss of tourism that have been or will be direct by-products of Ireland's postal and transportation sector labour disputes emanate from the lawful right to take industrial action enjoyed by these employees.

In addition to the transport and communications sectors, Irish law does not prohibit national and secondary school teachers from striking, and teachers are heavily unionised. Recent counts had the Irish National Teachers Organisation (INTO) as the largest and most powerful teachers' union, with 25,000 members; followed by the Association of Secondary Teachers of Ireland (ASTI), with 17,000 members; and Teachers United of Ireland (TUC), with 13,000 members.⁷² Two of these groups have threatened industrial action as a response to labour disputes over pay. The ASTI demanded a 30 percent pay increase, and one such walkout by this union actually closed schools. Moreover, the same union boycotted State exams,⁷³ a move that understandably angered and alienated parents and students.

None of these work stoppages would have been possible in the United States (with the exception of the teachers' strike, which would be lawful in a minority of even the eight states that permit public sector strikes in general). Arguably, the curtailment of public employees' rights in this regard is warranted by reason of the greater right of the general public to receive basic services, and their services would be regarded as essential, and thus, teachers' strike activity would be prohibited in those states which permit it only for "non-essential" employees.

Conclusion

From one perspective, the logic of public sector strikes is somewhat arcane. Each person is part of the citizenry, including civil servants. Public sector wages are paid through tax monies, which are paid in part by public workers. A striking public worker in essence is taking industrial action against himself. A more direct argument opposing the permissibility of industrial action by public workers is that the price they pay for the employment security associated with government work is a trade-off of sorts. In exchange for the benefits enjoyed by public workers, they sacrifice some rights that belong to their private sector counterparts.

Unlike American law, Irish law treats the civil servant the same as the private sector employee for purposes of industrial

action. The public worker in Ireland is permitted by law to engage in collective work stoppages with impunity: the same activity is patently unlawful under federal and (usually) state statutes in the U.S.A.

Sir Winston Churchill once said that England and America were “two countries separated only by a common language,” and the same might be said about Ireland and America. One needs only to think of “bonnet” versus “hood,” “boot” versus “trunk,” “pavement” versus “sidewalk,” “guide dog” versus “seeing eye dog”, or “ring” versus “call” to realise what the great statesman meant. A corollary to Churchill’s statement might be that, with regard to rights of public workers, Ireland and the U.S.A. are two common law countries separated both by common law and statutory law.

Endnotes

1. *City of New York v. DeLury*, 23 N.Y.2d 174, 295 N.Y.S.2d 901 (1968).
2. The first state to adopt this rule was Tennessee. See *Payne v. Western & A.R.R.*, 81 Tenn. 507, 519-520 (1884), *overruled on other grounds*, *Hutton v. Watters*, 132 Tenn. 527, 179 S.W. 134 (1915).
3. *Bunreacht na hÉireann*, Article 40.6.1 (iii).
4. *ibid.* Article 40.3.
5. Faculty of Law, National University of Ireland Galway, in private correspondence with the author.
6. Michael Forde, *Employment Law* (The Round Hall Press, Dublin, 1992), p. 288.
7. Cathy Maguire, *Trade Union Membership and the Law* (Round Hall, Sweet & Maxwell, Dublin, 1999), p., note 4.
8. Electronic mail from Legal-Island Employment Law.
9. “Labor and Employment”, *World Encyclopedia – 2004 Yearbook*, p. 253 (World Book, Inc., Chicago, 2004).
10. In private correspondence with the author. Anthony Kerr is a member of the Faculty of Law University College Dublin and an expert on employment law
11. s.1 Industrial Relations Act 1990
12. Note that this is also typical of no-strike clauses in private sector collective bargaining agreement in the U.S.A. Thus, most economic strikes occur during negotiation of a new agreement.
13. *supra* n11 section 1.10(ii) and (iii). The author is grateful to Donncha O’Connell of the Faculty of Law National University of Ireland Galway for this information. Ireland’s representative on the European Union Network of Independent Experts on Human Rights, Mr. O’Connell drafted that body’s latest report, published in January, 2004. His section on collective bargaining rights in Ireland, pp. 60-61 of this report, is a concise coverage of the current status of Irish law in this regard.
14. *i.e.*, not in the language of the statute
15. 29 U.S.C. sections 206-207.
16. Adopted in 1787.
17. 45 U.S.C. sections 151 *et seq.* (last amended 2003). This statute was amended in 1936 to extend its coverage to the airline industry.
18. The Wagner Act, 29 U.S.C. section 7 (1935).
19. *Commonwealth v. Pullis*, Philadelphia Mayors Court, 2 Commons and Gilmore (1806).
20. *Commonwealth v. Hunt*, 4 Metcalf III, 38 Am. Dec. 346 (1942).
21. 245 U.S. 229 (1917).
22. Closed shops have been illegal nationwide since the 1947 Taft-Hartley Act.
23. This personal liability of union members was negated by section 301(b) of the Taft-Hartley Act, 29 U.S.C sections 1 *et seq.*
24. 254 U.S. 443 (1921).
25. Sherman Antitrust Act (1890), 26 Stat. 209, 15 U.S.C. sections 1-7, as amended (1970).
26. 47 Stat. 70 (1932), 29 U.S.C. sections 101-115, as amended (1970).
27. Our first President Roosevelt was the legendary “Rough Rider” who “carried a big stick.” This refers to his customary use of his presidential powers to the fullest extent possible.
28. 39 U.S.C. sections 1200 *et seq.*
29. Executive Order 10988 (1962).
30. Pub.L. 95-454, codified in 5 U.S.C. sections 17101 *et seq.* (1978)
31. David P. Twomey, *Labor and Employment Law* (9th ed., 1994) at 361.
32. *Commonwealth of Virginia v. Arlington County*, 232 S.E.2d 30 (Va. 1977).
33. Va. Code Ann. Section 40.1-57.2 (1993).
34. [1973] IR 1
35. *cf s.* 5(2)
36. The author uses the term “economic strike” as used in American labour law, *i.e.*, a strike based on reasons relating to wages, hours, and/or terms and conditions of employment.
37. The author thanks John Curran of the Irish Bar for this summary of contract law in Ireland as it relates to strike activity.
8. Section 2(1)(d)-(j), Unfair Dismissals Act 1977.
39. Forde, *supra* n6, at 291, n. 11
40. In private correspondence with the author.
41. s.4
42. ss. 11, 12, and 13, Industrial Relations Act 1990.
43. Taft-Hartley Act, section 8(a)(3).
44. *supra* n37. An excellent summary of Irish law affecting trade unions is Kerr and Whyte, *Irish Trade Union Law* (1985). Kerr has written another informative source, *Trade Unions and the Industrial Relations Acts of Ireland* (1991).
45. Forde, *supra* n6, p. 288.
46. 5 U.S.C. section 3333.
47. 18 U.S.C. section 1918.
48. 5 U.S.C. section 188 p-r.
49. *Professional Air Traffic Controllers Organization v. FLRA*, 110 LRRM 2676 (D.C.Cir. 1982).
50. Twomey, *supra* n30.
51. *County Sanitation District No. 2 of Los Angeles County*, 38 Cal. 564 (1985)
52. Virginia is one of four American states officially called a Commonwealth. The remaining three are Kentucky, Massachusetts, and Pennsylvania.
53. Va. Code Ann. Section 40.1-55.
54. Gerald Flynn, “An Post bows to pressure as workers demand jobs back,” *Irish Independent*, March 24, 2004, at 1, col. 3-5.
55. *ibid*
56. Richard Curran, “Union refutes state of An Post finances,” *Irish Independent*, March 29, 2004, at 19 (Business Section), col. 5-7.
57. Gerald Flynn, “Post peace—but deal is already in trouble,” *Irish Independent*, April 2, 2004, at 1, col. 1-3.
58. *ibid*.
59. Gerald Flynn, “Delays in delivery expected as postal talks stall,” *Irish Independent*, April 7, 2004, at 6, col. 1-2.
60. Gerald Flynn, “Interim peace deal in An Post row, but main issues remain,” *Irish Independent*, April 8, 2004, at 5, col. 1-3.
61. Jim Aughney, “An Post sees 32 loss after tax as costs up 7 pc,” *Irish Independent*, April 30, col. 4-8.
62. Gerald Flynn, “Union leader warns of new strike threat,” *Irish Independent*, April 30, 2004, at 7, col.5.
63. Gerald Flynn, “Workers call for inquiry into previous ‘mismanagement,’” *Irish Independent*, April 30, 2004, at 7, col. 1-4.
64. Breda Heffernan, “Post office workers threaten action on Saturday openings,” *Irish Independent*, May 26, 2004, at 11, col. 5-6.
65. Eugene Moloney, “Nationwide shutdown of bus and rail looms for Thursday,” *Irish Independent*, March 13, 2004, at 1, col. 3-6.
66. Helen Bruce, “Brennan rejects mediation plan to avert airport strike,” *Irish Independent*, March 13, 2004, at 8, col. 1-5.
67. Gerald Flynn, “Luas not worth the disruption, says union boss,” *Irish Independent*, March 13, 2004, t 8, col. 1-4.
68. Ben Quinn, “Employers call for rethink over transport strike,” *Irish Independent*, March 13, 2004, at 8, col. 6-7.
69. Gerald Flynn, “Strike chaos averted after last-minute union order,” *Irish Independent*, March 18, 2004, at 1, col. 1-4.
70. Gerald Flynn, “Top brass pulled rank to avert chaos today,” *Irish Independent*, March 18, 2004, at 7, col. 1-2.
71. Gerald Flynn, “Bus union to hold strike ballot in route licence row,” *Irish Independent*, June 14, 2004, at 4, col. 3-5.
72. Sean Flynn, “A readers’ guide to the conferences,” *The Irish Times*, April 13, 2004, at 10, col. 2-6.
73. Joe Coy, “Frozen-out majority needs to step in from the cold,” *The Irish Times*, April 13, 2004, at 11, col. 1-6.

An Introduction to Using and Understanding the Law of the European Union

Fiona de Londras,

BCL, LL.M (NUI), Lecturer in Law, The Law School,
Griffith College Dublin.
Email: fiona.delondras@gcd.ie

Introduction to the European Union

The idea of a united, and therefore economically and militarily stronger, Europe can be traced back to Charlemagne. However, as with the development of human rights law, it was the Second World War that ultimately provided the catalyst for the formation of two distinct schools of thought on the future of the European continent.

Altiero Spinelli, the Italian federalist, and Jean Monnet, the man who provided the inspiration for the Schuman Plan which led to the European Coal and Steel Community in 1951, were the main proponents of the federalist and the functionalist approaches, which were to provide the impetus for European integration. The federalist approach is centred on the notion that local, regional, national and European authorities should cooperate and complement each other. The functionalist approach, on the other hand, favours a gradual transfer of sovereignty from national to Community level. Both of those schools of thought ultimately merged into the conviction that domestic governance should be complemented by supranational governance in relation to issues in which a joint approach is more effective than an individualistic one. Examples of the areas governed by the EU, and therefore by the law produced by the Union, are monetary and environmental policies.

The integration of the dual notions of federalism and functionalism was initiated with the establishment of the European Coal and Steel Community in 1951. The Community was the invention of Schuman and on its establishment in 1951 it had six members: Belgium, West Germany, Luxembourg, France, Italy and the Netherlands. The power to take decisions about the coal and steel industry in these countries was placed in the hands of an independent, supranational body called the "High Authority". Jean Monnet was its first President.

As a result of the success of the ECSC, the six nations took the decision to integrate further elements of their economies. In order to give effect to this intention they signed the Treaties of Rome in 1957 creating the European Atomic Energy Community (EURATOM) and the European Economic Community (EEC). Through these organisations, which merged in 1967, the states went about creating a 'common market'. The 1967 merger was followed by the development of the organisation into the EU and its ultimate expansion to 25 states.

The Institutions in Brief

The Commission has both executive and administrative roles and is separated into departments (known as Directorate Generals) with responsibility for drafting and overseeing the implementation of legislation. In essence, the Commission has a parliamentary role within the Union as it initiates legislation and submits proposals to the Council. The main research source for the Commission is the Commission of the European Communities Documents (known as COM Documents), which

include proposals and amendments issued by the Commission, including explanatory memoranda. These are sequentially numbered by year and referred by number and date (e.g. COM (90) 322 final). The COM also includes Green Papers and White Papers produced by the Commission. Green papers are intended to stimulate debate on an issue, whereas White Papers will generally contain specific proposals for an area.

The **Council of the European Union** represents the Member States. It acts on proposals submitted by the Commission and has the ultimate legislative authority on these proposals. The Council may also requisition proposals for legislation and conduct any consultative or reporting procedures necessary in order to achieve the aims elucidated in the Founding Treaties. In addition, the Council has treaty-making authority. Working papers, legislation, minutes and other documents of the Council can be found in the Official Journal (see below) and on the website of the European Union.

The **European Parliament** is composed of Representatives directly elected by the populations of the Member States. In the vast majority of cases the Council is obliged to submit proposed legislation to the Parliament for their comments. Inherent in this overseeing process is the Parliament's role as a forum for debate and questioning of the Council and Commission. The appropriate committee of the Parliament considers the proposed legislation and makes any necessary enquiries in relation to it, after which a *Rapporteur* will draft a report and opinion on the proposal. Where legislation is adopted after such a process, it is said to have been adopted 'in codecision' with the Commission. Debates and minutes of the Parliament are available in the Official Journal (in the *Debates of the European Parliament*), and reports of *Rapporteur* can be found in the reports section of the publication *Working Documents*.

The **European Court of Justice** is the highest legal authority in the EC. The Court has jurisdiction over the interpretation and application of the Treaties, and cases are usually taken between Institutions and Member States in relation to non-compliance with implementation and application of Treaties and derived legislation. In addition, the Court has jurisdiction to issue prejudicial decisions on questions of Community law referred to it by national courts. The decisions of the Court are binding on the national courts of Member States, although there is no strict application of the doctrine of *stare decisis* within the Court.¹ In addition to the Court of Justice the Court of First Instance hears disputes between community civil servants and their institutions, actions in the field of competition law, actions under anti-dumping law and actions under the ECSC Treaty. The opinions of both courts are officially available in the European Court Report series (ECR) and can be sourced online on the official website (<http://curia.eu.int/en>) and on Lexis Nexis and Westlaw.

Interpreting European Law

Terminology used in European law can, at times, be confusing and overly cumbersome, making a glossary of European law a particularly useful resource. While there are a number of different publications available, *Eurojargon: A Dictionary of European Union Acronyms, Abbreviations and Sobriquets*, 6th Edition, (2000, Chicago; CPI) is one of the best.

Primary Sources of European Law

The primary sources of law are the founding treaties of the European Union and inter-state treaties of member states themselves and between member states and non-member states. These Treaties have a number of functions: namely establishment, accession and governance. In terms of governance, it is particularly interesting to note that the Amsterdam Treaty included a clause empowering the Union to sanction Member States who persistently breach the fundamental principles of liberty, democracy and human rights (Article 7).

Article 48 of the Treaties of the European Union (TEU) provides for the procedure by which the Treaties may be amended. An initial proposal to amend is made by a Member State and then proposed to the Council, which will consult the Parliament in advance of deciding whether to proceed with the proposal. Should the Council decide to proceed, it will convene a conference of representatives of the governments of the Member States where the (unanimous) decision as to the form and substance of the amendment will be taken. Once the amendment has been agreed, Member States must ratify the amendments in the manner required by their municipal law, which take the form of Constitutional referenda in Ireland. The exception to the referendum requirement in Ireland is the accession of a new Member States by means of an amendment to the founding Treaties.

An important point to note in relation to the research of European law is that amending Treaties may sometimes change the Article number in the Founding Treaties of 1957, and one should therefore be sure that they are in fact referring to a provision by its correct current Article number.

Given the difficulties of reconciling founding Treaties and Amending Treaties manually, people tend to find a volume of EC Treaties to be the most convenient tool for the research of primary sources. These books are relatively cheap and widely available, though it is of course vital that the volume one uses is the most recent volume available.

The Treaties are available in printed form from the Commission offices in Dublin or from Government publications. The official source is the Official Journal of the EU, accessible through the CELEX database. The EU's website is an excellent source and can be found at www.europa.eu.int. However, this database can sometimes be difficult to navigate, and it is often the case that a simple Google search is quicker and more effective.

An Introduction to Secondary Sources of European Law

Article 249 EC provides for the creation of secondary sources of European Law in the form of regulations, directives, decisions, recommendations and opinions (the latter two of which are not legally binding).

Regulations

Article 249 EC defines a regulation as having general application, being binding in its entirety, and being directly applicable to all Member States. Regulations can be created by the Council acting alone, the Council and Commission acting together, or the Parliament. Regulations are, in a sense, the equivalent of General Public Acts in domestic jurisdictions inasmuch as they apply to all legal persons within that jurisdiction as opposed to being specific or tailored pieces of legislation. Perhaps the most important and interesting characteristic of a Regulation is that it is directly applicable, meaning that no act of incorporation is

required to make it binding in domestic law, even in a dualist nation (a nation that requires international law to be incorporated in order to be binding). The direct effect of Regulations is important in terms of both administration and practical considerations (as thousands of Regulations are created every year it would be almost impossible to expressly incorporate them all), and in terms of effectiveness. Member States, by acceding to the European Union, accept the authority of the Union to legislate for them by means of Regulations and are bound by all Regulations passed, instead of being able to selectively incorporate international law as is the case in most other scenarios.

Directives

Article 249 EC again offers a definition of a Directive, describing it as being binding as to the result to be achieved and as against the Member State(s) to which it is addressed. However, Member States retain the authority to choose the method of implementation of Directives. While Member States are left with this discretion, there is a definite obligation on States to *actually* ensure they implement it. Directives always include a date by which Member States are obliged to have completed the implementation. Should this date pass without implementation, the Commission may prosecute the Member States under Article 226 EC. Individuals may also acquire rights under the unimplemented Directive, which they may rely on against the State. They may also be entitled to compensation where losses have been sustained as a result of failure to implement the Directive.

The rationale behind adopting a vast amount of law by means of Directive, as opposed to Regulation, is that this source recognises the difference in legal systems and legal implementation methods throughout the Union, while ensuring an equality of outcome for the individuals in each Member State by requiring effective implementation. In Ireland, the legislature generally implements Directives by means of Statutory Instrument, though primary legislative measures may be taken where the Directive represents a substantial change to the law as it stands at the time.

Decisions

Decisions, as defined by Article 249 EC, are binding in their entirety on those to whom they are addressed (and are therefore not normative), and they are generally used in order to implement administrative decisions. Decisions will either include a date of taking effect or, where no such date is included, will become effective twenty days after publication (Article 154 EC).

Recommendations and Opinions

Opinions and recommendations are not binding, but can be important signifiers of the policy that the Commission or Council will take in relation to a particular issue in the future.

Researching Secondary Sources of Law

The first port of call in researching legislative provisions of the European Union is the Official Journal. The OJ is divided into the L and C series. Given the bulky nature of the Official Journal it is becoming increasingly less commonplace for law libraries to carry anything but the electronic version of the Journal (CELEX (by subscription) and Lexis Nexis). Although released almost daily, the journal is indexed monthly and accumulated annually. The index has both an Alphabetical and Methodological table, with the alphabetical table being a subject index.

The L Series contains Regulations which must be published under Article 191. Publication of directives is not required, but it is considered best practise to publish them and decisions in addition to the Regulations. The C Series contains anything that can be reasonably referred to as 'communications', such as texts of proposed legislation, lists of cases due before the courts and brief decisions. These decisions can be reported briefly in the C series before being reported elsewhere and the C series therefore provides a very valuable and quick service in this way.

Prior to 1972, the Official Journal was not published in English. When the UK and Ireland joined, all legislation in force was translated and published into English in a special edition of the Official Journal (1952-1972).

Given the large volume of Community law in existence, a familiarity with citations for European law is vital in order to carry out both effective and time-efficient legal research. The following commonly used table should provide sufficient guidance for the aspiring researcher.

Official Journal	1996 OJ L 83/26	1996 = Year OJ = Official Journal L = L Series 83 = Issue number in L series 26 = Page 26 in L series
Regulations	(EC) 3011/94	EC = Community Initials 3011 = Regulation Number 94 = Year of Regulation
Directive	(EC) 76/207	EC = Community Initials 76 = Year of Directive 207 = Number of Directive

The Effect of European Law on Domestic Law

The Court of Justice has developed numerous concepts and doctrines in relation to the effect of Community Law within domestic legal systems, for example, the doctrine of emanation of the state, indirect effect etc...The two most fundamentally important doctrines, however, are the doctrine of supremacy and the doctrine of direct effect.

The European Union is based, to a large extent, on the concept of individual states giving up some element of sovereignty in return for the advantages of being part of the Union. One of the most important repercussions of this ceding of sovereignty is the obligation to accept the doctrine of supremacy in relation to Community law. While the Founding Treaties are not explicit that Community law is to be supreme to national law, there are a number of indications within the texts that this was the intention. Article 226 EC authorises the Commission to prosecute a Member State before the Court of Justice on the ground that the Member State in question has infringed Community law, even where the infringement was a result of incompatibility with national law. Article 227 EC allows one Member State to bring another before the Court of Justice on the same basis.

Notwithstanding this lack of express recognition of the doctrine of supremacy within the Founding Treaties, the Court of Justice has consistently asserted supremacy. The classical statement of this doctrine came in the case of *Costa v ENEL*² where the Court held

By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.

The integration into the laws of each Member State of provisions which derive from the Community, and more generally the terms and spirit of the Community make it impossible for a Member State, as a corollary, to accord precedence to a unilateral and subsequent measure over a system accepted by them on the basis of reciprocity. Such a measure cannot therefore be inconsistent with that legal system. The executive force of Community law cannot vary from one state to another in deference to subsequent domestic laws without jeopardising the attainment of the objectives of the Treaty.

The repercussions of this doctrine are manifold, with the Court at various stages holding, *inter alia*, that a national court may not deem a provision of the Treaties incompatible with their domestic Constitution,³ and that where there is a conflict between Community law and domestic law, Community law would have priority.⁴

In addition to the doctrine of supremacy, the Court has developed the concept of direct effect, meaning that Community law confers rights on natural or legal persons, which they may invoke before a national court and have enforced against another person or against a Member State. Whether any provision is directly effective will depend on the nature of the provision and whether or not the following conditions have been fulfilled:

1. The provision must create an obligation to do something or refrain from doing something;
2. The obligation must be clear and precise;
3. The obligation must be absolute and unconditional;
4. The measure must be final.

Concluding Comments

As the European Union continues to grow both in maturity and in size, changes to the legal system are inevitable. However, these changes should not be cause for too much concern for the legal researcher. Current awareness programmes in relation to European law are numerous and effective, with the Bulletin of the European Union (available on <http://europa.eu.int/ABC/doc/off/bull/en/welcome.htm>) and European Law Reports (Sweet & Maxwell) being perhaps the most useful of these resources. Information on the recently agreed upon European Constitution is also relatively easy to come by and the Official Journal is the best source for information on the ratification and incorporation status of the Constitution, as well as its practical repercussions.

1. That said, the Court does tend to consider itself bound to some extent by its previous decisions.
2. 6/64 [1964] ECR 585, ECJ
3. *S (Michel) v Fonds Nationale de Reclassement Social des Handicapés* 76/72 [1973] ECR 457
4. *Nold (I) KG v Commission* 4/73 [1974] ECR 491
5. See further, for example, Horspool, *European Union Law*, 3rd Edition, (2003, Butterworths Essential Texts), Chapter 7



Ripples in a Whirlpool: *Reservations to the Convention on the Elimination of all Forms of Discrimination Against Women*

Suzanne Doyle,

LL.B (Hons) (Griffith College Dublin),
LLM candidate (Trinity College Dublin).
Email: suzdoy@yahoo.co.uk

One of the most fundamentally important debates in international human rights discourse is the ongoing conflict between two opposing schools of thought: universalism and relativism. While often considered in broad terms, this debate is perhaps best approached by analysing specific case studies. This article aims to analyse the debate between universalism and relativism as it applies to reservations to the Convention on the Elimination of All Forms of Discrimination Against Women. By using this particular context to consider the veracity of opposing views within this debate, this article aims to consider relativist and universalist arguments in the theatre in which they are most manifest: gender.

Universalism and Western Theories of Rights

Western scholarship claims that 'rights' are held by individuals, and when an individual holds a right that means that they have some entitlement. According to Vincent, this means that a right is a "justified claim".¹ Because one person then has this claim or entitlement, a necessary corollary is that another person has some *obligation*. The nature of the obligation will depend on whether the entitlement, or right, is a positive or negative one. A positive right is one that requires another person to do something, whereas a negative right is one that requires another to restrain from doing something.

Western theorists also claim that rights can be used in many different ways. Donnelly suggests that one may "exercise, assert, claim, press, demand, waive, or transfer rights, as well as put them to many other uses".² Ronald Dworkin espouses a theory of rights that represents rights as 'trumps', as having some "special overriding character" giving them precedence over many other moral considerations.³

The main question underlying the debate between universalism and cultural relativism, however, is what is it that makes a right a *human* right? Universalists claim that human rights are, quite simply, rights that one attains by virtue of being human; they are "general rights, rights that arise from no special undertaking beyond membership in the human race. To have human rights one does not have to be anything other than a human being. Neither must anyone do anything other than be born a human being".⁴ Human rights are thus an inherent part of being a human being, and therefore inalienable.

The real stumbling block of universalism is the difficulty in identifying just what it is that makes human rights universal, in other words that there is no philosophical basis for this assertion. A number of different theories have been advanced:

- (a) Human rights are based on an individual's ability (or potential) to choose and to think rationally. This view asserts that these are uniquely human characteristics that are protected, preserved and promoted through respect for human rights.
- (b) Human rights are based on common human experiences.
- (c) The 'relational' theory of universality: all humans are defined by their relationships with others, and these relationships are essential to our humanity. Through our relationships with others, we learn to see the world from other perspectives, and we are therefore empathetic. All human beings have relationships, therefore all human beings experience human empathy, and therefore all human beings have human rights protected by this empathy.⁵

Cultural Relativism

The relativist school disputes the alleged universality of rights, and claims instead that one gains rights appropriate to and related to the culture in which one exercises one's humanity. Relativism asks us to try to view a culture through the eyes of the participants and assumes that all cultures are equal, i.e. no culture is superior to, or more civilised than, another. Cultural relativists claim "rights and rules about morality are encoded in and thus depend on cultural context".⁶ It has been argued that "cultural relativism raises the possibility that the category 'human' is no longer sufficient to enable cross-cultural assessment of human practices or the actions of the State".⁷ Further, strong cultural relativism posits the theory of the individual who is entirely constructed by his/her society.⁸ Consequently, most cultural relativists argue that international human rights laws such as the Convention for the Elimination of all Forms of Discrimination Against Women are at best irrelevant and at worst discriminatory in themselves as they fail to account for the various and conflicting notions of rights that exist in diverse societal traditions.

Cultural relativists criticise human rights, and especially universalist conceptions of human rights, as being imperialistic. Objections are very often raised on the basis that human rights are a Western, liberal construction that developed from a concept of human beings as free individuals who need rights to protect themselves from the state; from Rawlsian theory of the individual as being separate from the state and from the community. Relativists argue that in societies that are more communitarian in nature, people have strong ties to their community, and tend to think about their duties and obligations to their communities rather than their own individual interests. Cultural absolutism (or extreme cultural relativism) therefore "declares a society's culture to be of supreme ethical value. It advocates ethnocentric adherence to one's own cultural norms as an ethically correct attitude".⁹

While strong cultural relativist arguments can be described as viewing human rights and the prevailing trend of globalisation as a Western imposition and a threat to

traditional practices such as communitarianism, weak cultural relativism (very much based on a new conception of culture as a fluid and malleable concept) tends to accept that not only are cultures evolving but they are also not homogenous, that not every member of a particular culture is in agreement with the dictates of that culture, and that there is a potential to challenge culture from within using human rights claims as a basis for this challenge.¹⁰

Contextualising the Universalism v. Relativism Debate

By examining the reservations made by various states parties to CEDAW it is possible to view this debate in the context of both international law, human rights law and legal standards, and also in terms of the diversity and, in some cases, polarity of the international community. Powell notes that in fact the issue of universalism versus cultural relativism has mainly been negotiated by their respective proponents in the context of reservations to legal mechanisms such as CEDAW.¹¹

Reservations

Under Article 2(1)(d) of the Vienna Convention on the Law of Treaties a reservation is defined as a unilateral statement made by a state when ratifying a treaty “whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state.”

Clerk¹² notes that the drafters of treaties since the conclusion of the Vienna Convention have generally failed to meet what Lord McNair called the “imperative necessity” of formulating regimes on reservations specific to each treaty.¹³ Thus, in her opinion, the drafters of CEDAW felt it sufficient to restate the rather generic rule in Article 19(c) of the Vienna Convention, which states that a reservation may be formulated unless it is “incompatible with the object and purpose of the treaty”. As a result, Article 28(2) of CEDAW predictably reads: “A reservation incompatible with the object and purpose of the present Convention shall not be permitted”.

Article 5(a) of CEDAW imposes a positive obligation on states to “modify ... social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customary and all other practices which are based on the idea of the inferiority of either of the sexes or on stereotyped roles for men and women.” Article 2(f) imposes an obligation to “modify or abolish ... customs and practices” that discriminate against women.

CEDAW is “universal in reach, comprehensive in scope and legally binding in character”¹⁴ and as a result creates a hierarchy of values, with reservations to the Convention reflecting a state's position within the debate on universalism versus cultural relativism. An examination of reservations to CEDAW and their cultural reflection is therefore appropriate at this point.

By January 2000, 67 parties to CEDAW had entered reservations or declarations, either addressed to a specific provision or of a general character that addressed the entire Convention.

Since the arguments of states parties regarding reservations to CEDAW reflect those parties' positions along the universalism versus cultural relativism divide, an analysis of certain contentious reservations to CEDAW and the ensuing arguments concerning them would seem to be the most effective means of displaying the macrocosmic

division of world opinion reflected in the microcosm of the Convention.

Religion

McCarthy¹⁵ notes that Algeria, Bangladesh, Egypt, Libya and Malaysia have entered reservations to Article 2 of CEDAW, which is acknowledged as one of its most fundamental provisions, containing the “actual framework for the implementation of the Convention”. The question of sincerity of intention on the part of these states logically becomes an issue. The Swedish objection to the Bangladeshi reservation stated that “the reservations in question, if put into practice, would inevitably result in discrimination against women on the basis of sex, which is contrary to everything the Convention stands for.”¹⁶

At first glance this conflict would seem to be a simple reflection of the opposing ideals of Islamic nations compared to Western standards. Yet Clerk notes that in the case of Iraq:

*... the question of compatibility does not arise to the same extent as with Bangladesh's Shari'a-based reservation because of two important differences. First, Iraq's Shari'a-based reservation relates to Article 16 (matrimonial property laws), not to the central Article 2; and second, in this case, the Shari'a is more favourable to, not more restrictive of, women's rights than CEDAW.*¹⁷

McCarthy reinforces this point when she notes that the Muslim countries of Indonesia, Mali and Senegal have signed without reservations. Yet these countries are considered no 'less' Islamic than those who have based their reservations on Islamic law.

It is important to note that since Shari'a law is based upon interpretations of the Qur'an and Sunna, it is likely that local and national customs and traditions played a major role in the formation of that law since different scholars from different regions may have had a variety of differing methods of interpreting religious doctrine.¹⁸

Raday¹⁹ suggests that by using the construct of 'culture' in the phraseology of CEDAW, the overarching concept under which religion is included, it was arguably the intention of the drafters to give the widest possible range of protection to the human rights of women. She proposes that by using the term 'culture' as a 'fig leaf' for religion (a more rigidly defended construct than culture in most human rights treaties) they hoped for a greater readiness on the part of states to ratify CEDAW. This would seem to explain the trend in reservations made to the Convention. Upon examination, there are at least twenty reservations that demonstrate states' wishes to conserve religious-law principles for either its entire population or for minority communities. Raday notes that these reservations are made primarily under Article 16 of the Convention, which addresses women's rights to equality within the family, yet only four countries have entered reservations to article 5(a). The author contends that this highlights the lack of understanding on the part of these countries concerning the incorporation of religion within culture. A more cynical analysis could lead to the opinion that this masks a more fundamental issue: the intention of certain states to mask discrimination behind cultural relativist arguments based on religion. It seems ironic that a convention which

arguably sought to limit discrimination by expanding the definition of culture has been used as a means of subverting that very ideal.

Another example of such conflict is available upon examination of reservations to Article 16(f) of CEDAW, which addresses the issues of custody and guardianship and states that women shall have the "same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children". McCarthy notes that under Shari'a law a mother is not entitled to guardianship of her child after the death of the father or upon divorce. Yet the courts in Pakistan have ruled that a child may be awarded to the mother if it is in the 'best interests of the child'. This would seem to be in conflict with Pakistan's Islamic foundations yet has been incorporated into the country's jurisprudence without any apparent betrayal of Muslim ideals. It is also interesting to note that the term 'in the best interests of the child' is remarkably similar to the phrase used in Article 16(f) of CEDAW, namely that "the interests of the children shall be paramount". It would again seem that the justification of basing reservations on cultural grounds by some Islamic states parties falls short of a comprehensive and consistent defence.

Culture

Yet another crossroads along the divide between universalism and cultural relativism arises in the case of conflicts between the protection of human rights and the maintenance and assertion of divergent cultural values. States parties' reservations to CEDAW highlight this, the generally acknowledged 'East Asian Perspective' or 'Asian Values Debate' providing one of the clearest points of contention.

Since the early 1990's this new challenge to human rights (and as a result to CEDAW) has emerged. Southeast Asian countries, in particular Singapore, Malaysia and Indonesia, began to argue that international human rights law should not necessarily be applied to them because it was Western in origin and did not conform to Asian culture or, in some cases, Confucianism. Engle²⁰ notes that although a similar rhetoric had been enunciated by China (one of the major communist protagonists of the Cold War) for decades, it was the espousal of such doctrine by former Cold War allies that many participants in the ensuing debate found "surprising and troubling". As Simon Tay notes in "Human Rights, Culture and the Singapore Example"²¹ the utilisation of the defence of culture "no longer comes from indigenous peoples, anthropologists, socialists, or insular religious or ethnic minorities; rather it comes increasingly from governments representing polyglot, largely multi-ethnic, and increasingly modern and capitalist societies in Asia".

The effect of this cultural assertion by East Asian states parties was the entering of reservations by Singapore to Articles 2 and 16 of CEDAW where "compliance with these provisions would be contrary to ... religious or personal laws." Singapore also interpreted Article 11(1), in the light of the provisions of Article 4(2), as "not precluding prohibitions, restrictions or conditions on the employment of women in certain areas, or on work done by them where this is considered necessary or desirable to protect the health and safety of women or the human foetus".

Yet Engle notes that although many East Asian states have entered similar reservations which effectively prevent the elimination of discrimination against women, the more recent

document concerning women's human rights (which many of these states were parties to), the Beijing Declaration and Platform for Action,²² contains undertakings protecting a number of rights of women which would generally have been challenged by the culture argument.

This inconsistency underscores a much larger issue which is addressed by Yash Ghai in "Human Rights and Governance: The Asia Debate"²³ where he notes that "[it] would be surprising if there were indeed one Asian perspective, since neither Asian culture nor Asian realities are homogenous throughout the continent". Moreover, it is noted by the author that the facade of the protection of such Asian values with a 'communitarian' argument often masks a government's 'Janus-faced' method which on the one hand is used to deny the universality of human rights but on the other is also used to deny the "claims and assertions of communities in the name of 'national unity and stability'".

The East Asian Debate as viewed in terms of CEDAW also highlights a critical facet of the 'universalism v. cultural relativism' debate - that of the 'priority' of rights. Generally, Western standards would view civil and political rights (and as a result the eradication of discrimination against women) as being of more immediate importance than economic, social and cultural rights in a modern and equality-driven society. Advocates of Eastern values would disagree. For these critics, whether a country is democratic is less important than the level of poverty in that country. This is epitomised by the statement of the then prime minister of Singapore, Lee Kuan Yew, in 1992:

As prime minister of Singapore, my first task was to lift my country out of the degradation that poverty, ignorance and disease had wrought. Since it was dire poverty that made for such a low priority given to human life, all other things became secondary.

Reservations to CEDAW in the name of preservation of culture therefore to raise a more fundamental question - "What is Culture?".

Yet in this writer's opinion, that question tends to promote the view that 'culture' can be easily and perpetually defined whereas all evidence points to the conclusion that culture is a dynamic and complex concept which defies the nature of universality. Culture is neither uniform nor static. Further, it cannot be said to encompass an entire society or nation.

Rao²⁴ argues that the notion of 'culture' favoured by the international community (even non-Western states) must be accepted for what it is: "a falsely rigid, ahistorical, selectively chosen set of self-justificatory texts and practices" whose patent partiality raises the question of whose interests are being served.

In order to avoid such a pitfall, Rao suggests that certain, more incisive questions than "what is culture?" be asked when assessing claims of culture, particularly those used to counter women's claims of rights, namely: Whose culture is being invoked? What is the status of the interpreter? In whose name is the argument being advanced? Who are the primary beneficiaries of the claim?

In her article "Women's Rights"²⁵ Charlesworth contends that the fact that culture is so endlessly mutable actually presents a major problem for cultural relativists. All social values and hierarchies "in their own time frames can be described as forms of culture". She posits that if all cultures

are seen as special, resting on values that cannot be investigated in a general way, it is difficult to make any assessment from an international perspective of the significance of particular concepts and practices for women. It would seem that the use of Rao's questions as stated above could go some way towards removing such elasticity and ineffectiveness and as a result allow for an equitable discernment of the validity of reservations to CEDAW both from a universalism and cultural relativism standpoint.

Traditional and Customary Practices/Law

It is clear from the terminology used in Articles 2(f) and 5(a) of CEDAW that it was the drafters' intention to include traditional and/or customary laws within the jurisdiction of the Convention. An-Na'im²⁶ stress the importance of assuring that the human rights standards are seen as legitimate within the culture where they are to be implemented and notes that decisions about what is legitimate may be contested within the culture and influenced by power relationships. Yet the reservations entered by certain states parties to CEDAW and the lack of willingness on the part of the domestic judiciaries to implement any such changes (as illustrated by the case law below) again highlights the 'universalism v. cultural relativism' debate.

Such reservations are mainly based on a states parties' wish to ensure the ability of its country to continue to employ certain customary practices whether through tradition or by enforcement of existing and established law. These mainly concern inheritance, property and marital rights under certain sections of Article 16 of CEDAW. Yet Raday²⁷ notes that even within the practice of traditional and customary law there has been sharp divergence of opinion and application between nations. This is exemplified by two African court decisions on discrimination against women in their land rights under traditional customary law that were decided in diametrically opposed ways.

In *Ephrahim v. Pastory*²⁸ the Tanzanian High Court held that the law of customary inheritance, which barred women, unlike their male counterparts, from selling clan land, unconstitutionally discriminated against women. In invalidating the rule of customary law, Justice Mwalusanya relied on the language of Tanzania's Constitutional Bill of Rights and the ratification of CEDAW. In delivering his judgment he noted:

From now on females all over Tanzania can at least hold their heads high and claim to be equal to men as far as inheritance of clan land ... is concerned. It is part of the long road to women's liberation.

Conversely, in 1999 the similar case of *Magaya v. Magaya*²⁹ was decided in Zimbabwe. It concerned Venia Magaya, the daughter of her deceased's father's first wife. Magaya claimed ownership of the estate, a claim which was opposed by a son of the father's second wife. Interestingly, Magaya originally petitioned in the community court for the heirship of the estate and it was granted to her. Her brother, however, had not been made aware of these proceedings and appealed the ruling on that ground. In delivering its judgment, the Supreme Court (rejecting the binding effect of various international rights instruments which Zimbabwe had ratified, including CEDAW) refused to invalidate the

customary law rule that gave preference to males in inheritance cases. The court then overruled the previous decision stating that "... [Magaya] is a lady [and] therefore cannot be appointed to [her] father's estate when there is a man." Judge Muchechetere held that this customary law rule was part of the fabric of the African socio-political order, at the heart of which lay the family. He concluded his judgment by stating:

While I am in total agreement with the submission that there is a need to advance gender equality in all spheres of society, I am of the view that great care must be taken when African customary law is under consideration... I consider it prudent to pursue a pragmatic and gradual change which would win long term acceptance rather than legal revolution initiated by the courts.

This decision has been widely criticised as failing to take into account socio-cultural and legal changes (including CEDAW). Banda³⁰ notes that it also calls into question the seriousness of the view put forward by the then Chief Justice of Zimbabwe when he stated:

Judiciaries should make a greater conscious effort towards the protection and active enforcement of fundamental human rights and freedoms, and should always endeavour, wherever possible, to construe domestic legislation so that it conforms with the developing international jurisprudence of human rights.

As well as highlighting the dominance of customary and traditional law in many CEDAW signatory countries, this also highlights the antipathy that many states parties seem to display towards any such international human rights instruments which attempt to redress generally accepted gender norms in a given society. The result is the entering of reservations (particularly to Articles 2 and 16) that frequently render CEDAW ineffective and inadequate when dealing with discrimination against women.

Conclusion

The debate surrounding reservations to CEDAW is sometimes described as a microcosm of the broader universalism versus cultural relativism debate in international human rights law. Whether the debate surrounds religion, culture or traditional and customary law, the larger (and more complex) argument regarding the status and scope of human rights revolves around standards and ideals. Regardless of the values of either universalism or cultural relativism, there seems to be a more deep-seated root cause for the antagonism that these two perspectives on human rights perpetuate - that is the merit and moral superiority of either advocate's beliefs. Richard Falk concisely encapsulates the ensuing paradox:

Without mediating international human rights through the web of cultural circumstances, it will be impossible for human rights norms and practices to take deep hold in non-Western societies except to the partial, and often distorting, degree that these societies - or, more likely, their governing elites - have been to

some extent Westernised. At the same time, without cultural practices and traditions being tested against the norms of international human rights, there will be a regressive disposition toward the retention of cruel, brutal and exploitative aspects of religious and cultural tradition.

Although not presuming to encapsulate the answer to decades of multi-faceted discord in a single word, a possible point of origin for the reconciliation of these two traditions could be the acknowledgement of the need to secure for each person a certain level of dignity, regardless of gender, race or religion. Perhaps there, along that complicated road of divergence, a point of convergence could be found.

References

1. Vincent, *Human Rights and International Relations*, (1986, Cambridge: Cambridge University Press), p. 9
2. Donnelly, "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights", (1982) *American Political Science Review* 303, at 305
3. Dworkin, *Law's Empire*, (1986, Hart Publishing)
4. *Ibid*, p. 306
5. Alston & Steiner, *International Human Rights in Context: Law, Politics, Morals*, 2nd Ed., (2002, Oxford: Oxford University Press), p. 366
6. *Ibid*, p. 366-367
7. T.E. Higgins, "Anti-Essentialism. Relativism and Human Rights", (1996) 19 *Harv. Women's L.J.* 89, 96
8. S. Desai, "Hearing Afghan Women's Voices: Feminist Theory's Re-conceptualisation of Women's Human Rights", 16 *Ariz. J. Int'l & Comp. Law* 805 at 810
9. Howard, *Human Rights and the Search for Community*, (1995, Boulder: Westview)
10. *Supra* No. 7, p. 366-367
11. Powell, "Locating Culture, Identity and Human Rights", 30 *Colum. Human Rights L. Rev.* 201 at 217
12. "The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women" [1991] 85 *A.J.I.L.* 281
13. A. McNair, *The Law of Treaties* (1961, Oxford: Clarendon Press), 170
14. Cook, "Elimination of All Forms of Discrimination Against Women", (1990) *Virginia Journal of Int'l Law* 642
15. "The Veil of Islam: The Use of Reservations as a Hypocritical Escape Hatch", [2002] *C.O.L.R.* VII
16. UN Doc. A/41/608, at 35 (1986)
17. Clerk, "The Vienna Convention Reservations Regime and The Conention on Discrimination Against Women", (1991) 85 *A.J.I.L.* 281, at 300
18. Mayer, "Islam and the State", (1991) 12 *Cardozo L. Rev.* 1015, p.p.1023-1024
19. "Religion and Gender", [2003] *Icon* 1.4(663)
20. *Culture and Human Rights: The Asian Values Debate in Context* (2000) 32 *N.Y.U. J. Int'l L. & Pol.* 291
21. (1996) 41 *McGill L.J.* 743 at 751
22. U.N. Fourth World Conference on Women: The Beijing Declaration and Platform for Action, U.N. Doc. A/CONF. 177/20 (1995) and A/CONF. 177/20/Add.1 (1995)
23. (1994) 15 *Austral. Y. Bk. Int. L.* 1, 5
24. "The Politics of Gender and Culture in International Human Rights Discourse", in J. Peter & A. Wolper (Eds), *Women's Rights, Human Rights: International Feminist Perspectives* (New York, Routledge, 1995) 167 at 174
25. (2001) *HRL Res.* 9
26. "State Responsibility Under International Human Rights Law to Change Religious and Customary Law", in Rebecca Cook (ed.), *Human Rights of Women* (1994), at 167
27. *Ibid*, n.13
28. [1992] 87 *Int'l L. Rep.* 106
29. [1999] 3 *L.R.C.* 35 (Zim.)
30. "Global Standards: Local Values", (2003) *I.J.L.P.&F.* 2003.17(1)
31. *Zimnat Insurance Co Ltd v Chawanda* (1990) *ZLR* 143, 154
32. "Cultural Foundations for the International Protection of Human Rights in Human Rights", in Abdullahi Ahmed An-Na'im (ed.), *Cross-Cultural Perspectives: A Quest for Consensus*, (1992, University of Pennsylvania Press), p.p. 45-46

NEW TITLES from First Law

Sport and the Law

By Dr Neville Cox, B.L. and Alex Schuster

PUBLICATION DATE: 25 September 2004

PRICE: €130.00 (HB)

— • —

Wards of Court in Ireland

By Anne-Marie O'Neill

PUBLICATION DATE: 4 October 2004

PRICE: €65.00 (PB)

— • —

Personal Injury Assessment Board: Implications for Legal Practice

Edited by Paul Quigley and William Binchy

NOW AVAILABLE — PRICE: €65.00 (HB)

Order Form

Please send me ___ copy / ies of

I enclose a cheque payable to First Law for _____

Name: _____

Firm: _____

Address: _____

or Credit Card number _____

Visa Mastercard

Expiry date: _____

Security Code*: _____

Signature: _____

E-mail: _____

PLEASE RETURN THE COMPLETED FORM TO:

First Law

Merchants Court | Merchants Quay | Dublin 8.

T: +353 1 679 0370 - F: +353 1 679 0057 -

E: bartdaly@firstlaw.ie - W: www.firstlaw.ie



Book Reviews

This section is edited by

Mairead Enright,

BCL (NUI), Candidate MA in Medical Ethics and Law (Lond), Lecturer in Law, Griffith College Dublin. Email: mairead.enright@gcd.ie

This section is devoted to reviewing the latest books of interest to the legal profession. Publishers or authors who would like to have their books reviewed in this section should contact the Book Review Editor.

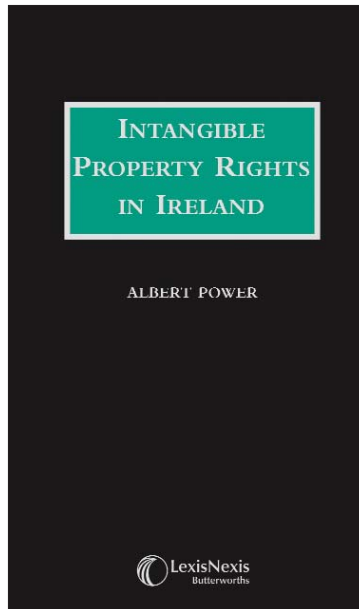
Intangible Property Rights in Ireland

Published by: LexisNexis Butterworths, Dublin
Author: Albert Power

The law of property has a (sometimes deserved) reputation for difficulty, antiquity and absurdity, which can, in many cases, be said to stem from the intricacies of intangible property rights. While these rights have, of course, always received considerable attention in general volumes on property law, their complexity certainly justifies a dedicated volume, which has now been contributed by Dr. Albert Power.

Dr. Power separates his volume into dedicated considerations of easements and analogous rights, profits *à prendre*, covenants, licences, rights of residence, *conacre* and *agistment*. While his consideration of the law of easements and analogous rights is impressively thorough, it was surprising to see public rights receiving no more attention than they tend to receive in general volumes on property law. Writings on property law contain relatively little information on the creation of easements and analogous rights by statute and especially how these rules affect the every day work of local authorities. While the author does consider how a private land-owner may create a public right of way (dedication to the public together with public acceptance and maintenance), for example, he does not give detailed attention to how local authorities create such rights, which some may find disappointing. I was also somewhat surprised at the omission of a consideration of the Law Reform Commission's recent recommendations on the acquisition of easements by prescription from this otherwise thorough volume (LRC, *Report on the Acquisition of Easements by Prescription*, December 2002). These proposals have received relatively little attention since their release and, although it is not customary to consider specific reform proposals in textbooks, the potential positive effect of the adoption of these proposals on all kinds of prescription (common law, the fiction of the lost modern grant and statutory) makes the exclusion of such a consideration something of a disappointment from an academic point of view.

It was equally somewhat unexpected to see the sparse consideration



given to the issue of estoppel licences in this publication. Since *Cullen v Cullen* ([1962] IR 268, which is given extensive attention in the book, the law of estoppel has been a muddled pool within Irish land law. An especially interesting element of estoppel in Ireland has been the practice of the Irish courts to use estoppel to elevate the licence to the status of a proprietary right by allowing estoppel licencees to essentially extinguish the licensor's freehold estate by means of adverse possession. This trend was particularly evident in the judgment in *McMahon v Kerry County Council* ([1981] ILRM 419), which unfortunately is not thoroughly examined in the book. Many students and practitioners alike would presumably have appreciated a more detailed consideration of the confused area of estoppel licences and should a second edition of this impressive volume be released it is hoped that a more detailed investigation of this area of

the law would be included.

The author's consideration of licences does, however, include an impressive consideration of the lease/licence distinction and it was especially interesting to see the author's comments in relation to *Smith v Córás Iompar Éireann* (9th October 2002, Unreported, High Court). It is generally believed that *Smith* shows a movement on the part of the Courts towards considering exclusive possession as determinative of a lease regardless of the express intentions of the parties that would be unlikely to be upheld in a later case (see for example the consideration of this case in the *Annual Review of Irish Law 2002*, p.p. 341-343), but Dr. Power states that it "represents a brave reassertion of the principles enunciated in *Irish Shell and BP Ltd v John Costello* (No. 1)" (p. 380).

The author's consideration of all intangible property in Ireland is thorough and the depth of analysis of the cases included is impressive, although this volume is unlikely to be used by undergraduate students in their property law studies as its detail assumes a base of knowledge in the reader. Dr Power's work is, however, an important contribution to the law library of anyone with an interest in property law and an exciting addition to the growing body of works on Irish land law in general.

Fiona de Londras, BCL, LLM (NUI).

Civil Proceedings and the State – Second Edition

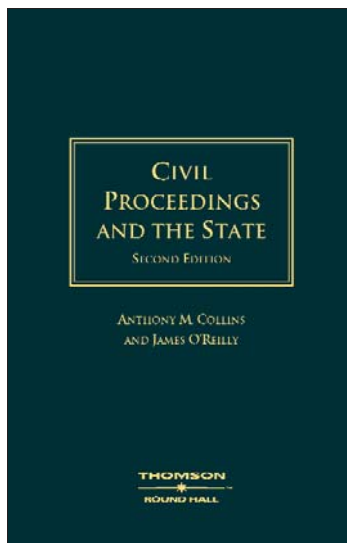
Published by: Thomson (Roundhall)
Authors: Anthony M. Collins & James O'Reilly
Price: 320 euro.

The first edition of Collins & O'Reilly was described as a work "written by practising lawyers for practising lawyers". The hefty successor to that edition looks and acts that part. It remains very much a centrally important practitioner's guide to the procedural aspects of the law as it applies to the citizen's dealings with the State. It is intended to com-

plement rather than compete with more philosophical works on the substantive facets of what is broadly called public law. Two factors combine to make the authors project a difficult one: their commitment to producing the sort of comprehensive and encyclopaedically detailed source required by lawyers and the unavoidably broad and complex nature of public law. Their method has been to adopt a writing style and general format which are both painstaking in their clarity. The individual chapters are well and logically structured. Their knowledgeable use of theory helps to give context to bare legal rules. References to the historical origins of archaic procedures are a valuable aid to understanding and remind us that even the most venerable rule was made

by mere mortals and usually for reasons of dull expediency. Key concepts and definitions, settled arguments as well as the law's grey areas are thoroughly explored. For example, in relation to the Case Stated procedure, the authors have succeeded in offering both a wealth of information on the diverse bases on which a case stated can be founded, followed by a description of the appropriate procedure to be adopted in situations as varied as the Case Stated under the Acquisition of Land (Assessment of Compensation) Act 1919 and the case stated under the Freedom of Information Acts 1997-2003. Of particular practical value are those 300 pages of the book which form the annexes. A wide variety of useful forms and precedents are collected therein which might have made a useful publication on their own.

The law today is a very different creature in many respects from what it was at the publication of the first edition 14 years ago and this great change has obliged the authors to join in the recent flurry of publications in this area and produce something more than a cursory update of the original. Thus the book contains the usual revisions and rewrites and the authors' shrewd legal awareness comes to the fore in those sections dealing with "often overlooked, but significant" changes in areas such as cases stated and proceedings stemming from Articles 40 and 26 of the constitution. The authors have also included a substantial quantity of new work. Perhaps the most important alterations deal with



as authorities rather than educators, students could do worse than read the introductory portions of the chapters on references under Article 26 of the constitution, European law in the Irish courts and Proceedings under the ECHR for their succinct but accurate treatment of these difficult areas. This does not pretend to be a book for the man on the Clapham omnibus but it should be the first port of call for a working lawyer attempting to ascertain with certainty what the law is and how it operates in practice.

Anastasia M. Ward B.L.

Hibernian Law Journal

Established in 1999, the Hibernian Law Journal is an annual publication co-ordinated by both trainee and newly qualified solicitors. The Journal aims to promote an increased awareness of the law and its related disciplines among practicing and academic lawyers, whilst also encouraging increased scholarship by members of the legal community in Ireland. Its multidisciplinary focus facilitates detailed argument and discussion on a wide range of disparate topics such as e-commerce, arbitration, the European Convention on Human Rights, intellectual property, public private partnerships and financial services law.

Each year the Hibernian Law Lecture takes place at which invited speakers deliver a paper, with the text of each lecture included in each publication. This year, Professor Andreas Lowenfeld agreed to present the fourth Annual Hibernian Law Lecture entitled "Sanctions and International Law: Connect or Disconnect." Professor Lowenfeld is Herbert and Rose Rubin Professor of International Law at New York University School of Law, where he specialises in public and private international law, international economic transactions, and international litigation and arbitration. He serves frequently as arbitrator in international cases, and has written widely on various aspects of international trade, investment, finance, and dispute settlement. He is an elected member of the Institut de Droit International and of the International Academy of Comparative Law, and has twice been a Lecturer at the Hague Academy of International Law.

Professor Lowenfeld served as Associate Reporter for the American Law Institute's Restatement (Third) of the Foreign Relations Law of the United States, with principal responsibility for the sections on jurisdiction, judgments, and dispute settlement, and is presently co-Reporter of the ALI's International Jurisdiction and Judgments Project. From

1961 to 1966 Professor Lowenfeld was a member of the Office of Legal Adviser of the U.S. Department of State, serving successively as Special Assistant to the Legal Adviser, Assistant Legal Adviser for Economic Affairs, and Deputy Legal Adviser. He is a graduate of Harvard College and Harvard Law School.



Hibernian Law Journal – 2004 Edition

March saw the launch of the 2004 Edition of the Hibernian Law Journal as it continues its tradition of providing a wide and varied range of Articles and Notes & Commentaries covering a cross section of areas and disciplines. Contributors to the 2004 Edition range from a Trainee Solicitor to a University Professor thereby ensuring a diverse range of styles and opinions. While recent editions have focused on areas such as Constitutional Law, Copyright Law, Arbitration Law, Human Rights Law and Financial Services Law, the 2004 Edition explores, amongst others, Medical Law, Data Protection Law and various aspects of International Law.

The Hibernian Law Journal has recently gone on-line at www.hibernianlawjournal.com. The website includes details of previous and current issues of the Journal, contributors, committee members and upcoming events.

The Editorial Committee is now accepting submissions for the 2005 edition. The Hibernian Law Journal offers an excellent opportunity for solicitors and trainees to have their work published in an academic forum. Having an Article published in the Journal offers trainee solicitors the key advantage of an exemption from one examination subject in the Professional Practice Course, Part II.

For more information log on to www.hibernianlawjournal.com or email the editor at editor@hibernianlawjournal.com

Web Review



Cian C Murphy

is a BCL II student in University College Cork. He has served as both Recording Secretary and Webmaster of the U.C.C. Law Society.

Web Review is compiled by Cian Murphy, who is completing his BCL in University College Cork. The section is devoted to reviewing law related websites and will carry sometimes serious, sometimes light-hearted but always honest reviews of legal web pages. Cian aims to analyse, inform, share good humour and encourage enhanced online activity and creativity within the legal community. Submit your comments, suggestions or website for review by email to cianmurf@eircom.net

I'm sure you've all been beside yourselves with withdrawal symptoms from the lack of an Independent Law Review. Don't worry, like that annoying internet popup window that just won't go away, we're back, bigger and brighter than before, although unlike the window, we're not offering low-cost mortgages. Since the last issue of the ILR, I've been slaving in a solicitor's office, stalking a barrister and getting a taste of the civil service. So, having reviewed the websites of Arthur Cox, Matheson Ormsby Prentice, and McCann Fitzgerald in our last issue, it's now time to complete our look at some of Ireland's best-known solicitors' websites as I unveil Career Kamikaze Part Deux. But first, I should note that McCann Fitzgerald have now launched a new website. The new design is much improved, correcting many of the layout issues identified in the review. There's no time to re-review it now though, because it's time to visit...

A&L Goodbody – www.algoodbody.ie

The A&L Goodbody is the least flawed of the websites reviewed in this particular trip down big-firm lane. That's not in a best of a bad lot sort of way either, more in a creamiest of the creamy. Branded with the unmistakable A&LG logo, the design is difficult to fault – never excessively swanky, but always stylish. That said, the A&L site will cause the odd user some grief as flashy images and animations can push a 56k modem to breaking point. While it won't worry their corporate customers who use grease-lightning fast broadband, the rest of us will just have to grab a coffee and wait.

The site's navigation system – combining a banner of links, as well as drop-down menus, and inline links – is comprehensive and easy to use. The site map is accessible from any page, and if you can't find what you're looking for with that, then chances are you're on the wrong website! If you decide to visit real world A&L, there's maps locating their Dublin and London offices. (If you want to visit them in Boston or New York, you'll just have to follow your nose).

The site has detailed profiles on almost all of their lawyers, complete with photograph and email links. While it doesn't tell us what they eat for breakfast, it does tell us who's been Business Lawyer of the Year and who hasn't. Each profile also has a "print this profile" link, which probably only benefits stalkers and opposing negotiators, but looks good all the

The screenshot shows the A&L Goodbody website. At the top, there is a navigation bar with links for 'The Firm', 'Practice Areas', 'Partners', 'Legal News & Publications', 'Careers', and 'Home'. Below this is a yellow banner with the text 'PIAB to hear employer liability cases'. The main content area is titled 'CAREERS: Work Experience' and features a list of job categories: Introduction, Solicitors, Business Consulting, Paralegals, Secretarial, Support, Trainees, Tax/VAT, and Work Experience. To the right of this list is a sidebar with a search bar and links for 'Email Directory', 'Site Map', 'Contact Us', and 'Disclaimer'. At the bottom of the page, there is a section for 'Summer Internship Programme 2004' and contact details for the firm.

same. In general the site makes it very easy to find who you're looking for and contact them.

The content of the legal news section is voluminous, and would probably take an infinite amount of time to read. The archive dates back to 1998, and one of the earliest articles informs us of the 'new initiative' that is Freedom of Information. The publications include topics such as E.U. law, tax reports, and papers on broader business topics.

If there was to be any fault found with the A&L Goodbody website, it's that there's possibly too much information on each page – with the main content suffering as the eye is drawn to the links on the left and the right of the page. That's not enough to take away the site's well-deserved gold stars. All in all, A&L boast a top-notch site, which would serve as a good guide for other firms that are developing an online presence.

The site map is accessible from any page, and if you can't find what you're looking for with that, then chances are you're on the wrong website!

William Fry – www.williamfry.ie

The next stop on our tour of some of Ireland's biggest law firms is William Fry. The homepage has a nice, clean design, and good use of the corporate logo in the banner, though it is prone to some of the download time problems that also affect A&L. This design is used consistently throughout the website and from an aesthetics point of view it's hard to fault.

The Practice Area section of the site is well structured, with each area subdivided into specialised fields of practice. Tailored contact information is given for those who seek more information. There are also links to related websites - for example, checking under IT law provides links to ComReg, the Data Protection Commissioner, and the Director of Consumer Affairs.

The site has an up to date Legal News Bulletin, with stories of national and international origin, both from the Courts and the legislature. An archive of past articles is also available, although it would probably benefit from a structured approach.

There's a "User's Login", which allows you to register and then subscribe to their Legal Bulletin. This facility is perhaps a nice hidden gem for those who would like to keep in touch with the legal world. At the time of writing no bulletin has yet been received, so the quality of these cannot yet be commented upon.

Information on the firm is quite



detailed. There's a well-administered Firm News section, as well as profiles of each partner complete with contact details. Prospective trainees will find sufficient details to whet their appetites for a shot at an apprenticeship: the Recruitment section is divided into professional and support staff and is well stocked with notices.

The "Publications" section is well laid out, with the same section-by-section approach as is adopted by the "Practice Area", and the publications themselves are all available to download in PDF format. They consist

of useful guides to new developments in the law, which provide a good starting point for either members of the public, the business sector, or even legal professionals. A unique selling point for the William Fry site is its publications section *auf Deutsch*. Very impressive, *ja*, and no doubt aimed at attracting foreign clientele. (Either that or there's a huge German-speaking population hiding away in the financial district).

Once again, the site is hard to criticise, making for a great corporate image, and a very frustrated critic!



New improved look for McCann Fitzgerald.

So, drawing this two-issue study to a close, it's impossible to say which of Ireland's biggest firms has the most impressive website. Each site has many strengths and few weaknesses. Next month we'll take a look at some great online legal

resources – the British and Irish Legal Information Initiatives, and the Lexis-Nexis websites. If they have as few faults as these sites, I'm going to find it very hard to make my word count. Then again, I can always write about the pretty colours...

Recruitment

This section will be read by more than 4000 people in the legal profession throughout Ireland.

To promote your recruitment services or to advertise a vacancy, please contact Célia Zwahlen on tel: +353 (0)1 416 3300 or email: ilr1@eircom.net

Deadlines:

November/December	15 October
January/February	15 December
March/April	15 February
May/June	15 April
September/October	15 August

Don't get mad...
get even better recruitment solutions...



BluePrint Legal Appointments is the leading supplier of legal recruitment solutions throughout Ireland, North and South. BluePrint recruits both professional and support staff at all levels, from Partner to Paralegal, Trainee Solicitor to Senior Secretary.

We manage the whole process from identification of suitable candidates, pre-screening, interviewing, through to the presentation of short-lists to the employer. Our services range from both permanent and temporary vacancies through to managed recruitment campaigns and executive search.

Belfast

Commercial Property Solicitor

Well known firm seek an ambitious Lawyer to work on a busy caseload. Banking exp. desirable, whilst NI knowledge is essential. Suit 3-5yrs PQE.

Belfast

Probate Solicitor

Large successful practice wish to recruit a Lawyer with excellence in Probate and Administration of Estates. Conveyancing knowledge desirable. Superb opportunity for career advancement. Suit 4yrs + PQE.

Co Antrim

Newly Qualified Solicitor

Friendly general practice wish to recruit a General Solicitor with an interest in Family, Litigation and Criminal law. Excellent opportunity to join growing practice.

For more details on the above vacancies call Orla Stewart at Blueprint Legal Appointments on 028 9032 3333 or email legal@blueprintappointments.com

Dublin

Hedge Funds Solicitor

International Asset Management Co seeks a lawyer (3-5yrs PQE) in alternative investments/hedge funds. Previous exp in Bermuda desirable.

Dublin

Commercial/IP/Conveyancing Solicitor

Exciting opportunity for solicitor with 4yrs PQE exists with one of Dublin's foremost commercial practices.

For more details on the above vacancies call

Ciaran Buckley on 00353 1 611 4881 or email cbuckley@blueprintappointments.com

www.blueprintappointments.com

BluePrint⁺
Legal Appointments

2004

September

Annual Conference of Society of Legal Scholars

September 13-16, 2004;
Sheffield, England.
Info: Mrs Sally Thomson,
Administrative Secretary,
The Society of Legal Scholars,
School of Law, University of
Southampton, Highfield,
Southampton, SO17 1BJ, England.
Tel: +44 (0)23 8059 4039
Fax: +44 (0)23 8059 3024
Email: s.j.thomson@soton.ac.uk

Conference on Poverty

September 13, 2004;
Belfast, Northern Ireland.
Info: Mr. Charles Fisher,
West Belfast Economic Forum,
148-158 Springfield Road, Belfast
BT12 7DR, Northern Ireland.
Tel: +44 (028) 90874242
Email: charlie@wbef.org

Equality for Women Measure Conference

September 14, 2004;
Dublin, Ireland.
Info: Technical Support Service,
WRC –Social and Economic
Consultants, Unit 1, 22-24 Great
Strand Street, Dublin 1, Ireland.
Tel: (01) 8723100
Email: info@ewm.ie
Website: www.ewm.ie

Social Partnership: A New Kind of Governance?

September 14-15, 2004;
Maynooth, Ireland.
Info: Social Partnership
Conference, Department of
Sociology, NUI Maynooth, Co.
Kildare, Ireland.
Tel: (01) 708 3659
Email: Sean.oriain@may.ie

Employment Equality Conference

September 15, 2004;
Dublin, Ireland.
Info: CPD Unit, The Law School,
Law Society, Blackhall Place,
Dublin 7, Ireland.
Tel: (01) 672 4802
Fax: (01) 672 4803
Email: lawshool@lawsociety.ie

Corporate Criminal Liability

September 18-19, 2004;
Santa Fe, New Mexico.
Info: James MacGuill on
james.macguill@macguill.ie

Governing the Corporation: Mapping the Loci of Power in Corporate Governance Design

September 20-21, 2004;
Belfast, Northern Ireland.
Info: Ms Katie Quinn, School of
Law, Queens University Belfast,
28 University Square, Belfast,
BT7 1NN, Northern Ireland.
Tel: +44 (0)28 9027 3370
Email: c.m.quinn@qub.ac.uk

Health & Safety Updates

September 22, 2004;
Dublin, Ireland.
Info: CPD Unit, The Law School,
Law Society, Blackhall Place,
Dublin 7, Ireland.
Tel: (01) 672 4802
Fax: (01) 672 4803
Email: lawshool@lawsociety.ie

Anti-Money Laundry Laundering Regulations: Where Do They Begin...or End?

Will Solicitors Go to Jail?
September 27, 2004;
Dublin, Ireland.
Info: Karen Devine, Dublin
Solicitors Bar Association.
Tel: 1850 75 25 75
Email: karen@dbsa.ie
Website: www.dbsa.ie

European Law Remedies

September 30, 2004;
Dublin, Ireland.
Info: CPD Unit, The Law School,
Law Society, Blackhall Place,
Dublin 7, Ireland.
Tel: (01) 672 4802
Fax: (01) 672 4803
Email: lawshool@lawsociety.ie

October

Freedom of Information: Changing the Mindset

October 1, 2004;
Dublin, Ireland.
Info: Catherine Finnegan, School
of Law, House 39, Trinity College,
Dublin 2.
Tel: (01) 608 23 67
Fax: (01) 677 0449
Email: finnegnc@tcd.ie

Schools, Education and the Law

October 2, 2004;
Cork, Ireland
Info: M Walsh, Faculty of Law,
University College of Cork, Cork,
Ireland.
Tel. 021 4903414
Email: m.walsh@ucc.ie

A Charter of Rights for the Island of Ireland

October 2, 2004;
University College Cork,
Cork, Ireland.
Info: Ursula on u.kilkenny@ucc.ie
Tel: (021) 490 3642 or Colin on
c.j.harvey@leeds.ac.uk
Tel: +44 1133435029

Residential Tenancies Act

October 13, 2004;
Dublin, Ireland.
Info: CPD Unit, The Law School,
Law Society, Blackhall Place,
Dublin 7, Ireland.
Tel: (01) 672 4802
Fax: (01) 672 4803
Email: lawshool@lawsociety.ie

Family Law Conference 2004

October 14, 2004;
London, UK.
Info: Jordan Publishing Limited,
Conference Department,
21 St Thomas Street,
Bristol BS1 6JS.
Tel: +44 (0)117 918 1490
Fax: +44 (0)117 925 0486
DX 78161 Bristol, UK.
Email: conferences@jordanpublishing.co.uk

Human Rights Law, 6th Annual Conference

October 15, 2004;
London, UK.
Info: The Conference Organiser,
GEE Publishing, 100 Avenue Road,
London, NW3 3PG, UK.
Tel: +44 (20) 7393 7859
Fax: +44 (20) 7393 7790
Email: conference.orders@gee.co.uk

Expert Witness Institute Annual Conference: 'Forensic Evidence on Trial'

October 15, 2004;
London, UK.
Info: Expert Witness Institute,
Africa House, 64-78 Kingsway,
London WC2B 6BD.
Tel: +44 (0870) 366 6367
Fax: +44 (0870) 411 2470
Email: info@ewi.org.uk

ECHR Incorporation Review and Human Rights in Gender Law

October 16, 2004;
Dublin, Ireland.
Info: Nicola Crampton, Law
Society, Blackhall Place,
Dublin 7, Ireland.
Tel: (01) 6724961
Email: n.crampton@lawsociety.ie

Annual Conference of the International Bar Association

October 24-29, 2004;
Auckland, New Zealand.
Info: Ms Caroline Renton
International Bar Association,
217 Regent Street, London,
W1B 2AQ, UK.
Tel: +44 (0)207 629 1206
Fax: +44 (0)207 491 4460
Email: caroline.renton@int-bar.org

EU Competition Law and the Influence of the Charter on the Fundamental Rights

October (date to be finalised),
2004; Dublin, Ireland.
Info: Ms Patricia O'Sullivan Lacy,
Irish Society for European Law.
Email: osullivan@lacy.com

November

Public Procurement Law

November 4, 2004;
Dublin; Ireland.
Info: CPD Unit, The Law School,
Law Society, Blackhall Place,
Dublin 7, Ireland.
Tel: (01) 672 4802
Fax: (01) 672 4803
Email: lawshool@lawsociety.ie

Private Client Legal Forum 2004

November 11-13, 2004;
Lake Como, Italy.
Info: Jennifer Dodd
Tel: + 44 (0)20 7566 5612
Email: jennifer.dodd@legalweek.com

The Independent & Law Reform Committee Annual Lecture: Judge and Law Reformer:

A Contradiction in Terms?
November 15, 2004;
London, UK.
Info: Jan Bye, Executive Secretary,
Law Reform Committee,
The General, Council of the Bar,
289-293 High Holborn, London
WC1V 7HZ.
Email: profstds2@barcouncil.org.uk

Scottish Expert Witness Conference 2004

November 27, 2004;
Edinburgh, Scotland.
Info: Caroline Stanger, Sweet &
Maxwell, 100 Avenue Road,
London, NW3 3PE, UK.
Tel: +44 (20) 7393 7859
Fax: +44 (20) 7393 7790
Email: conferences@sweetandmaxwell.co.uk

2005

February

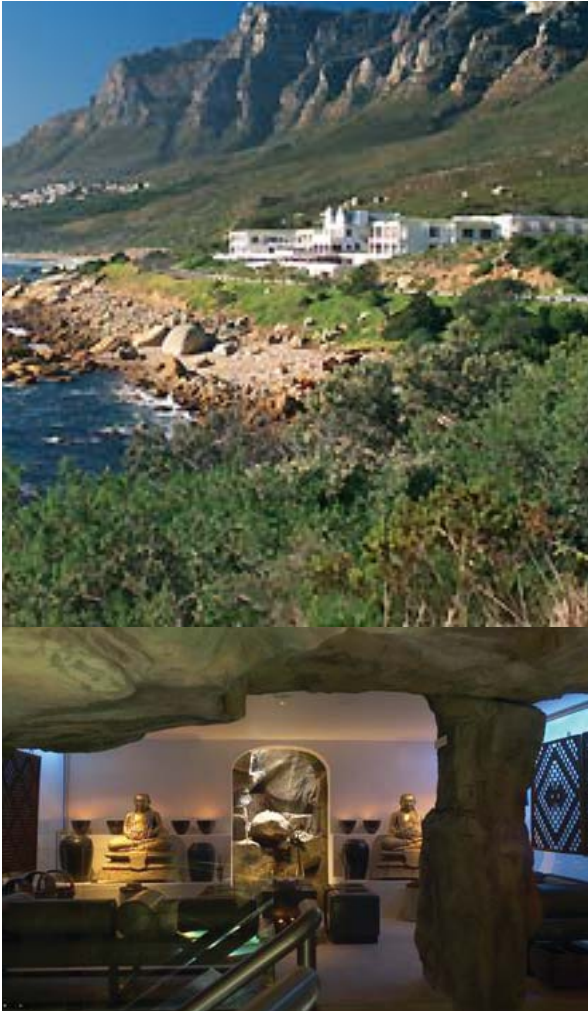
Four Jurisdictions Family Law Conference 2005

February 4-6, 2005;
Nice, France.
Info: The Law Society of Northern
Ireland, Law Society House,
98 Victoria Street, Belfast, BT1 3JZ,
Northern Ireland.
Tel: +44 (0)28 90 231 614 or visit
www.lawsoc-ni.org

March

4th world Congress on Family Law and Children's Rights

March 20-23, 2005;
Cape Town, South Africa.
Info: Gail Fowler, Project Manager,
Capital Confernces,
PO Box 253, Church Point,
NSW Australia 2105.
Tel: +61 2 9999 6577
Fax: + 61 2 9999 5733
Email: gail.fowler@capcon.com.au



Welcome to Heaven on Earth

Vanessa Landers

Legend has it that Cape Town's majestic Twelve Apostles mountain range was named by sailors who made the biblical connection whilst feeling the immense relief of having found a safe port after months at sea. The journey-weary traveller will experience the same sense of relief on reaching the 5-star hotel which is nestled at the foot of the Twelve Apostles, and which takes its name. The Twelve Apostles Hotel and Spa is a *bona fide* holiday destination in itself, and could hardly enjoy a more dramatic location. It is perched

on the mountain-side and overlooks the Atlantic Ocean. Guests in each of the Hotel's 70 bedrooms and suites enjoy captivating panoramic views where mountains, ocean, and azure skies meet.

The hotel staff are attentive, but thankfully not at all obsequious. Having been informed that my luggage was misplaced by the airline, Tanya Van Schalkwyk, the guest liaison officer, made me feel completely relaxed and kindly arranged for the hotel's chauffeur to ferry me to a local shopping complex to purchase some

essentials pending the arrival of the luggage. Needless to say, I soon began to feel very relaxed. The driver provided me with a wealth of local information on our short journey, pointing out local restaurants and glamorous bars of note, such as Blues, Cod Father, Caprice, Baraza and Paranga. The beaches that hugged the coastline *en route* to our destination were simply spectacular.

Our destination, the Victoria & Alfred Waterfront, is a working port surrounded by 190 retail outlets. It is one of South Africa's most popular

tourist destinations, and is located within five kilometers of the hotel. It was, however, a disappointment. Whilst the V & A offers a vast array of shopping possibilities in an extremely safe tourist environment, its very popularity with tourists sometimes leaves the visitor feeling they have stepped across a random American shopping mall. I quickly purchased the items required and returned to the luxury of 'the 12A'.

On my return to the hotel, I noticed that the hotel's Visitors' Book is full of effusive praise from satisfied guests. A number commented on the wonderful senses of contrast in the hotel – the cool dark sensual reception area is set off perfectly by the brilliant whiteness of the hotel's corridors. Rarely have I stayed in a hotel that has surpassed all my expectations. My room was bright, meticulously furnished, and decorated with the finest white linen, woven African fabrics and leather furniture. In place of the usual generic shampoos and shower gels, the ample bathroom boasted designer potions and lotions, and some wonderful organic spa bath products. The balcony overlooked the Twelve Apostles mountain range and the Lion's Head, another Cape Town landmark. Exotic flowers and beautiful wildlife were just outside the door. Indeed, guests hoping to get close to the flora and fauna of the Western Cape are well catered for, and maps of trails, each leading to a secluded picnic spot, are available on request.

The hotel also boasts a splendid restaurant, Azure, where service is extremely professional but also extremely laid back. This, I later discovered, is a very Capetonian trait, and a cause of great local pride. Led by Executive Chef Roberto de Carvalho, the Azure team have developed a menu that is worthy of acclaim. De Carvalho recently became a member of the highly select *Chaine des Rotisseurs*, an international gastronomic society founded in Paris in 1950 devoted to promoting the pleasures of fine dining around the globe. Mr. De Carvalho's eminence within his profession is evidenced by all of the delicious dishes sampled from Azure's extensive



menu, including Cape Malay pickled fish, delicate fresh oysters followed by a butternut, baby marrow and morogo lasagne or the grilled kingklip served with sautéed brown rice and chives with a roasted fennel sauce.

The hotel's café is also terrific. Open twenty-four hours a day, the laid back service was nonetheless effortlessly

professional. One could (and one did...) enjoy the café's delights whilst lounging by the pool. It was the ultimate in comfort and taste.

There is never a shortage of things to do at this hotel. On my second evening in the hotel, I took a quick ramble down some steps by the pool to The Sanctuary Spa. For purely





investigative reasons, I had decided to book a treatment... This, in my opinion, is the highlight of any stay in The Twelve Apostles. The spa is wonderfully located, a state of the art therapeutic haven carved out of subterranean rocks. Candles and subdued underground panel lighting create an amazingly alluring, not to mention relaxing atmosphere. The spa boasts a hydro pool, Rasul Chamber, and secluded gazebos with views of the ocean. I was sold on the place, and that was even before the wonderfully professional therapist began my treatment. In fact, I was so relaxed that I fell asleep, to the tones of transcendental music, in the middle of my treatment. The promotional material I downloaded from the hotel's website (www.12apostleshotel.com) was spot on.... This really was 'heaven on earth'!

The hotel boasts a fully equipped fourteen-seat cinema, cine12, which offers recent releases and classic movies each day. And don't worry about missing the popcorn, as this is provided to guests free of charge, along with milk shakes, ice-cream, chocolates, and cocktails....

As the days went by, I found myself revelling in the luxury afforded by this hotel and its wonderful staff. The favours left on the pillow each day,



the complimentary champagne, the fresh flowers, the helicopter tours, the sun-downers in the exquisite Leopard Bar became the cherry on top of the cherry on a sumptuous cake.

Recent accolades include one from Condé Nast Traveler, USA, which has placed the Twelve Apostles Hotel & Spa on the 2003 Hot List as one of the '80 Top New Hotels' in the world. The 12A is also a member of The Leading Small Hotels in the World.

While the 11 hour flight from Dublin is laborious, South Africa is only one or two hours ahead of G.M.T., which makes it an ideal holiday destination for those who dread jet-lag as much as I do. Truly, the Twelve Apostles Hotel and Spa is an experience that everyone should enjoy at least once.

The Twelve Apostles Hotel and Spa,
Victoria Road, Oudekraal, Camps Bay,
Cape Town, Republic of South Africa,
Tel: +27 (0)21 437 9000,
Fax: +27 (0)21 437 9055,
email - bookta@rchmail.com.

Prices start at €225 per double room per night. More affordable self-catering accommodation is available in Camps Bay, and may be viewed at www.capetown365.com.

Alternatively, contact Will of capetown365 at 0027 21 439 7549.

Want to tell our readers about a great restaurant, hotel, society or club?

If so, contact us at
Independent Law Review
by Email: ilr1@eircom.net or Fax: +353 (0)1 4163300



Legal challenge

Griffith College Dublin is home to Ireland's largest law school and has earned an outstanding reputation for academic and professional success within both branches of the legal profession.

BARRISTERS

GCD is the only independent college in the country to have its degrees* (LL.B (Hons) and B.A. (Hons) (Business & Law)) accredited by the Honorable Society of King's Inns. This means that graduates of these programmes have direct access to the King's Inns' entrance examinations without having to first complete the Inns' diploma course or qualifying diploma examinations. GCD is particularly proud to be the **only** Independent college in Ireland to be afforded this recognition.

* Validated by Nottingham Trent University

SOLICITORS

In 2003, six of the Law Society's nine FE1 prizes were awarded to students of Griffith College Dublin's Professional Law School, making GCD the logical choice to prepare you for admission to the Law Society of Ireland's Professional Practice courses.

Tel: (01) 415 0400 e-mail: admissions@gcd.ie website: www.gcd.ie

- LLB (Hons) in Irish Law
- BA (Hons) in Business & Law
- Diploma in Professional Legal Studies (Legal Executive)
- King's Inns Preparatory Course
- BA (Hons) Law with Business
- BA in Legal Studies
- Preparatory Course for the Entrance Examinations of the Law Society
- New York Bar



GRIFFITH COLLEGE DUBLIN

A complete learning experience

 **The Law School**

A member of the Higher Education Colleges Association (HECA)

South Circular Road, Dublin 8. www.gcd.ie