



Études irlandaises

37-2 | 2012

Enjeux féministes et féminins dans la société
irlandaise contemporaine

Ireland's criminal conversations

Diane Urquhart



Electronic version

URL: <https://journals.openedition.org/etudesirlandaises/3162>

DOI: 10.4000/etudesirlandaises.3162

ISSN: 2259-8863

Publisher

Presses universitaires de Caen

Printed version

Date of publication: 30 October 2012

Number of pages: 65-80

ISBN: 978-7535-2158-2

ISSN: 0183-973X

Electronic reference

Diane Urquhart, "Ireland's criminal conversations", *Études irlandaises* [Online], 37-2 | 2012, Online since 30 October 2014, connection on 27 July 2022. URL: <http://journals.openedition.org/etudesirlandaises/3162> ; DOI: <https://doi.org/10.4000/etudesirlandaises.3162>

This text was automatically generated on 27 July 2022.



Creative Commons - Attribution-NonCommercial-ShareAlike 4.0 International - CC BY-NC-SA 4.0
<https://creativecommons.org/licenses/by-nc-sa/4.0/>

Ireland's criminal conversations

Diane Urquhart

Crim. Con.: a brief history

- 1 Developing at common law in the late 17th century, the first widely publicised crim. con. case was that of the Duke of Norfolk who sought £100,000 in damages for his wife's adultery in 1692. By 1780 crim. con. was a preliminary step to attaining a divorce and a prerequisite from 1798. Although the damages awarded in crim. con. cases were often used to fund a divorce, it was a stand-alone legal suit¹. Crim. con. cases attracted considerable attention and proceedings were frequently published to titillate readers with tales of sexual misdemeanours and to serve as a moral warning to those who might stray from the marital bond. The seven volume *Trials For Adultery*, for example, revealed a zealous determination to deter the "wavering wanton"².
- 2 Within the UK the practice existed in England, which included Wales in its jurisdiction, and in Ireland, but the Divorce and Matrimonial Causes Act of 1857 moved English divorce hearings from parliament to court and ended the crim. con. action, although its spirit lingered in the damages which could be claimed from a co-respondent in court until 1970³. Ireland was excluded from the 1857 act and although the introduction of a separate Irish bill was mooted, fear of the popular reaction to such a move meant that this was not forthcoming. Crim. con. thus survived. Although it has been claimed that it was "almost entirely confined to England" and was "novel" in Ireland by 1804 and "very rare" by 1816⁴, cases continued to be brought in Northern Ireland and the Republic of Ireland until 1930s and 1980s respectively.
- 3 Damages awarded in crim. con. trials highlighted that not all wives were considered of equal value. Amounts awarded in Irish cases ranged from a farthing to £20,000, the sum depending on the alleged purity of the woman and what her infidelity denied her spouse: "a faithful wife's value to her husband is much enhanced if she has made his home happy, attended to his children, and assisted him in life", with her opposite, leading "a loose life before marriage", much devalued⁵. One farthing was, for example, awarded for the "unscrupulous and lying adventureness" at the centre of the *Lynch v.*

Macan-Lynch trial of 1890⁶. Nominal amounts could also be awarded when a husband was considered negligent. Dublin's Rev. Vanston was accused of cruelty in his 1897 case brought against a man his wife married after securing a divorce in Dakota. A three-day case saw a farthing damages awarded on the grounds that Vanston should have kept better control of his "property"⁷.

- 4 Class was another consideration; an educated woman from respectable stock would merit a higher award of damages in the 18th and 19th centuries and the wealth of the parties still featured in 20th-century crim. con. suits. As the 1974 *Mahe v. Collins* case noted, damages should be based on:

The actual value of the wife to the husband and [...] proper compensation to the husband for the injury to his feelings, the blow to his mental honour and the hurt to his matrimonial and family life [...] The value of a wife can be considered on [...] the pecuniary aspect in relation to which her fortune and her assistance to her husband's business [...] and [...] the consortium aspect in relation to which the wife's general qualities as a wife and mother and her conduct and general character are relevant⁸.

- 5 This case was, however, controversial. The Irish High Court ruling was overturned by the Supreme Court on account of the £15,000 damages which were awarded and as counsel for *Mahe* invited the jury to make an award "as would express their horror at the conduct [...] which would act as a deterrent to others" when damages were meant to compensate rather than punish or set an example to others⁹.

- 6 In early crim. con. cases wives were often depicted as seducers. In 1796, for example, *Lady Westmeath* was presented as a "neglected beauty" seeking revenge on her spouse with the published proceedings asking: "where could be found a man resolute enough to withstand female beauty when determined to conquer¹⁰?" But wives became more frequently portrayed as the victims of predatory men¹¹. As celebrated Irish barrister Charles Phillips claimed, an adulterous wife was:

a wretched victim [...] starting on the sin of a promiscuous prostitution as a consequence of a man's sensual rapine [...] CHASTITY IS THE INSTINCT OF THE IRISH FEMALE, the pride of her talents, the power of her beauty, the splendour of her accomplishments, are but so many handmaids of this vestal virtue¹²[.]

- 7 Irish juries certainly gained a reputation of being "foremost in marking their sense of infamy of wife seduction" and were still "inclined to large awards" in the 1970s¹³.
- 8 The ruination of a women's reputation was another common preoccupation. Phillips referred to a woman's adultery reducing her "husband to widowhood [...] smiling infants to anticipated orphanage, and that peaceful, hospitable, confiding family, to helpless, hopeless, irremediable ruin", with the husband allegedly insisting that the children wear mourning garb as their mother left the marital home: "poor innocents[...] to them her life is something worse than death [...], far better, their little feet had followed her in funeral." Like many subsequent cases, Phillips expressed pity for the mother, her fine dress adorning her "for the sacrifice [...] Poor, unfortunate, fallen female! How can she expect mercy from her destroyer? How can she expect that he will revere the character he was careless of preserving¹⁴?"
- 9 If the name or location of the adulterer was unknown, or if they were outside of the court's jurisdiction, deceased or too poor to pay damages, a crim. con. suit would not be brought although an explanation would have to be presented if a parliamentary divorce was sought. Joseph Anderson, for instance, was unable to bring a crim. con suit in the 1930s as his wife's lover was in the Irish Free State Army and lacked the means to

pay damages or costs¹⁵. With regard to those outside the court's jurisdiction, some moves were made to either bring a suit in another jurisdiction or by the early 20th century under the rules of the Supreme Court in Ireland, a summons could be issued when the adultery was committed within the dominions and the action was brought by a man domiciled within the court's jurisdiction. However, most Irish crim. con. suits continued to be brought before the High Court¹⁶.

- 10 Given crim. con's clear association with the sexual double standard and a wife as the property of her spouse, it might be supposed that the practice would be abolished or fall into disuse in the 20th century. Suits were, as noted, still being brought in Northern Ireland in the 1930s although the damages awarded were comparatively small. Richard Dobbs, for example, brought a crim. con. action in 1930 and was awarded £350 while Thomas Trew was awarded £50 in his 1934 case¹⁷. 1937 saw the last mention of a crim. con. case in the Northern Ireland parliament. With Westminster's revival of divorce law reform in that year, Northern Ireland continued a practice evident from the establishment of the State to imitate rather than initiate legislation, introducing the Matrimonial Causes (NI) Act of 1939. This ended the crim. con. action, replacing it with a statutory action for damages and moved divorce from parliament to the High Court with the Attorney General deeming crim. con. now "hard to defend in any logical way¹⁸".
- 11 By comparison, cases in the Republic of Ireland continued to be brought and with an increased frequency in the 1950s. Although never an overtly popular action, in the 1970s, the decade preceding the action's repeal, six cases were brought. Damages awarded to the working classes generally remained low. The 1950 case of *Reilly v. Turner*, for instance, saw £230 awarded even though farmer Thomas Turner denied the adultery¹⁹. The 1954 case of bank official O'Reilly against company director McKay, however, attracted much fuller press coverage and displayed crim. con's now characteristic trait of a wife being described as "weak" and "led astray". More exceptionally this was accompanied by the admission that the adultery had taken place "with her full consent [...] seduction was probably not the word²⁰". Examples of wives giving evidence to the court in crim. con. trials emerge from the 1890s although this was understandably traumatic, with women being often described as "deeply distressed" and weeping²¹. In this case Mrs O'Reilly's evidence detailed an abusive, "impossible" marriage where she "loathed and hated her husband, whose very touch was repugnant". Despite this, £9,000 damages were awarded²².
- 12 The notion of a predatory male remained more common. In *Brolly v. McGowan* in 1970, Mrs Brolly was described as "a foolish young woman" held "captive" by McGowan. This case attracted huge media interest not only in consequence of the high profile defendant, Senator Patrick McGowan but also because of the disparity in wealth between the parties. Brolly claimed a violation of his "inalienable imprescriptible family rights" and "the constitution and authority of his family" which caused mental distress and damaged his health. Part of his motivation was, as was apparent in earlier cases, that Senator McGowan "and his like may be warned that there are consequences when the big man of the town rides roughshod over a little one". Counsel for Brolly elaborated that he "knew of no greater disaster than when a man of wealth and position intervened in the life of a comparatively humble man and tore away at the family bonds and smashed up the home for his pleasure in another man's wife's body²³".

The end of crim. con in Ireland

- 13 In the 19th century there was occasional criticism of the inability of women to mount any defence in crim. con. cases as well as the sexual double standard enshrined in the action. Prior to the English reform of 1857 there were also some parliamentary calls for crim. con.'s abolition but not all were informed by equality. Lord Auckland, for example, in 1800, unsuccessfully called for adultery to be criminalised and for crim. con.'s replacement with a fine or imprisonment²⁴. First-wave feminists like Hanna Sheehy-Skeffington and Anna Haslam did not mount any attack on crim. con. in the late 19th and early 20th centuries and sporadic calls for reform came only from the legal profession²⁵. Crim. con. was also overshadowed by the debates which succeeded its Irish reform, most notably contraception, abortion and divorce.
- 14 There was no lack of notorious or salacious cases in crim. con.'s earlier history, but in 1972, *Braun v. Roche* became the most widely publicised Irish crim. con. case of the 20th century. This case saw £12,000 awarded to commercial agent Werner Braun against Stanley Roche, the director of the Irish department store chain of the same name. As in many earlier cases, the idea of a woman's seduction by a predatory man and an imbalance of wealth between the petitioner and defendant were to the fore. That Heide Braun was fifteen years her husband's junior was mentioned but more onus was placed on her alleged vulnerability after the loss of a child in infancy, making her "an easy victim for Mr. Roche's wealth [...] Perhaps she was a foolish, light-headed woman". Whilst court heard that damages would make it clear that "Roche could not buy another man's wife as he could buy goods for his store", and the renown of the Roche name was likely to attract heightened press coverage, more controversial was Justice Butler's use of the word "chattel" in his jury address, referring to a wife "as something that the husband owned, and you compensate him for [...] the value of the wife he has lost – just as you would compensate him for a thoroughbred mare or cow"²⁶.
- 15 Coinciding with the rise of second-wave feminism and calls for family law reform in Ireland, unlike its predecessors, the Roche case ignited a reform campaign. Within two days Conor Cruise O'Brien and Justin Keating, Labour Party representatives for Dublin North East and Dublin County North respectively, posed a question in Dáil Éireann, the Irish parliament, to Minister of Justice O'Malley on the legitimacy of such language, asking whether he would bring reforms to secure women's legal equality²⁷. Although there was little defence that could be made of crim. con., it was another nine years before the action was abolished. In the interim, second-wave feminists collectively kept the need for its abolition to the fore.
- 16 Irish second-wave feminism was a complex and disparate movement. Issues such as abortion and divorce did not automatically fall under the feminist remit and women's rights and women's liberation were often seen as distinct. Fissures over tactics also spawned a myriad of organisations. AIM (Action, Information, Motivation) primarily founded by Nuala Fennell and Bernadette Quinn in 1971 to co-ordinate the campaign for legal reform including social welfare and maintenance payments and the Council for the Status of Women (CSW,) established in the following year and later state sponsored, are examples of more moderate, liberal Irish feminism. AIM also remained separate from the more radical, confrontational and ideologically inspired Irish Women's Liberation Movement (IWLM), which emerged in 1970-71 to challenge the

State rather than work within its parameters. Indeed, Fennell formed AIM after resigning from IWLM in protest that it was too left wing²⁸.

- 17 AIM was to the fore of the crim. con. campaign, labelling it as unconstitutional and degrading to women, regarding “a woman’s love, fidelity and services to her family as marketable products with a cash value” and providing “an enticement to the mercenary and the insensitive – a poor man can market his wife in this way to a rich one [...] it makes the ugliness of marital breakdown more hideous and degrading than ever²⁹”. As part of a sustained media campaign, AIM emphasised the appreciation or depreciation of a woman’s worth over time: “To what extent do looks, fertility, sex appeal [...] enter into the assessment [of damages]? [...] is it comparable to an Irish horse fair³⁰?” AIM simultaneously engaged with and lobbied the government. Gerry Collins, Minister for Justice, opened the association’s new Women’s Centre in Dublin in 1978, for example, and declared his commitment to crim. con. reform but AIM also used a family law conference at Trinity College Dublin in 1976 to call on Attorney General Costello to abolish this action. Costello’s reply suggested change would come if there was sufficient public demand but “thought that there were many people who would not approve”. In reply, AIM’s Mary Higgins castigated crim. con. as “contrary to human decency”, and claimed that the government should take the lead in shaping public opinion as to the need for its cessation³¹. However, support from more conservative groupings was growing. The Committee of Catholic Bishops’ Council for Social Welfare, for example, called on the Minister for Justice to reform family law, including the end of crim. con., in 1974; the Irish Countrywomen’s Association publically called for its removal from 1977 and the Church of Ireland’s Law Advisory Committee included its abolition in its 1978 recommendations. This suggests that AIM’s pragmatic campaign effectively raised awareness beyond the feminist movement.
- 18 Criticism of the crim. con. action was also internationalised by Irish feminists of both a moderate and more radical hue. In 1976 Nell McCafferty, representing the radical Irishwomen United organisation, which emerged in the previous year, and AIM’s Nuala Fennell were delegates to the International Tribunal on crime against women in Brussels, included crim. con. on their list of required reforms³². In New York, Maeve Breen of the Irish Women’s Political Association called for the removal of the action in Ireland in an address to the International Alliance of Women³³. International Women’s Day of the same year saw demands for crim. con.’s reform take to the Dublin streets: placards at a lunchtime picket organised by Sinn Féin’s National Women’s Committee saw approximately twenty women at the Department of Justice in St Stephen’s Green call for an “End to chattel status of women”. A statement of the previous month marked this committee’s first involvement in the crim. con. campaign, labelling the suit’s continuance as unconstitutional, “disgusting and degrading” and as an anathema to women’s equality: no person should be “a chattel of another”. Their International Women’s Day statement reiterated the discriminatory basis which made women “the subject of bargaining in our courts between opposing men³⁴”. Although working towards the same end, Sinn Féin’s Women’s Committee’s involvement in the campaign did not mark the start of any co-operation with feminist groupings. Rather this was an example of an independent stance which crystallised in Sinn Féin’s establishment of a Women’s Department in 1979³⁵.
- 19 The level of protest, although not wholly united, was such that the Law Reform Commission, established in 1975 with remit to review the law and make

recommendations for its reform, considered crim. con.'s abolition. Its 1976 preliminary suggestion that a solution might lie in allowing women to use the same action against men saw CSW, now representing thirty-one organisations and 250,000 individuals, join the Women's Representative Committee, established by the Minister of Labour from women's groups, trade unionists and employers, to call on the Law Commission to abolish the action, citing contravention of the United Nation's Declaration on Discrimination Against Women³⁶. Leading legal professionals like Alan Shatter simultaneously called for reform³⁷. AIM and CSW continued to write to press calling for crim. con.'s removal whilst the Women's Political Association focussed on parliament, sending a questionnaire on the rights and position of women, including the need to end crim. con., to all TDs in November 1976. In reply Fianna Fáil, although balking at the notion of divorce reform, now agreed to crim. con.'s abolition. Members of the Trinity College Branch of Fine Gael were also putting pressure on their party, bringing a motion to the 1976 Ard Fheis which was not debated. Further criticism of the action came in the Dáil, with Brosnan, Fianna Fáil member for N. E. Cork, referring to it as an 'archaic relic of feudal times' in early 1977 but the election of the same year did not see the party embrace the crim. con. reform agenda³⁸. The Law Reform Commission's report of the following year provided another insight into the inherent conservatism which delayed this reform, confirming what was mooted in 1976; crim. con. should be changed to allow women to bring cases with the process being renamed the Family Action for Adultery.

- 20 AIM and CSW predictably rejected the proposal and could now legitimately declare it contrary to public opinion. Liberal and radical feminists also continued to raise consciousness by stressing the inequity and discriminatory basis of this action. AIM was amongst the first to make a public response to the 1979 trial of *Mulvaney v. Collins* where a wife was referred to as "completely worthless [...] a useless slut" although the jury still awarded damages of £1,500³⁹. Nell McCafferty also provided one of the most scathing critiques, highlighting crim. con.'s symbolic significance for Irish women: "law reflects society." McCafferty essentially outlined all Irish married women's legal vulnerability as crim. con. defined "a wife as a runaway prostitute and slave when she consorts with any man other than her husband [...] prompts husbands to pimp, demanding payment from other men for sexual services rendered by their wives [...] All wives are potential prostitutes under the law". Her castigation of the Commission's proposal suggested that if women had access to crim. con. "the courts could not cope with the huge influx of cases". Given women's low rates of pay, McCafferty's question of whether women would be able to pay damages was astute. Moreover, juries determining the monetary value of a husband's services would, in McCafferty's view, "come to around £10⁴⁰".
- 21 Although more radical feminists, like many of those in the IWLM, did not support State interaction, winning support from those who could introduce legislative reform was arguably one of the crim. con. campaign's key successes. Fine Gael spokesman on human rights, Michael Keating, introduced a private members' bill, the Law Reform (Abolition of Criminal Conversation) Bill, in January 1980, appealing for government support to remove "an outdated and nasty legislative device [...] an insult to womankind⁴¹". But Keating was criticised on numerous grounds: for straying into the preserve of another spokesman; introducing the bill without party consent; preceding the final report of the Law Reform Commission and for not incorporating further

family law reforms into the bill. Again, no effective defence was proffered for the continuance of this action, but the bill was defeated 62 votes to 40.

- 22 Keating was, however, responsible for bringing a successful motion to abolish crim. con. to the Fine Gael Ard Fheis in March 1980 and in the next month the new Minister for Justice, Sean Doherty pledged that reform would come. There was therefore shock when an Adultery Bill to make it an offence to entice a spouse away from their family was introduced. This seemed wholly at odds with the growing support for crim. con.'s abolition and the largely negative public response to the Law Reform Commission's recommendations. For AIM, in a letter to the editor of the *Irish Times*, this could only be interpreted a "retrograde step" opposed to public opinion which would cause further "distasteful actions". Senator Catherine McGuinness was also publically critical. Addressing the Irish Federation of Women Graduates in Greystones, Co. Wicklow she blamed the outmoded "mid-Victorian fantasy" views of the Law Commission⁴². The Divorce Action Group and Gingerbread, the single parents' association also dissented and although it is hard to accurately measure the impact of such criticism, the Adultery Bill's life was short. The bill was never circulated and was shelved in February 1981. Within three months a Family Law Bill was introduced which included crim. con.'s abolition and, ignoring the Law Commission's recommendations, put nothing in its place⁴³. The cessation of crim. con., as one of the bastions of the sexual double standard and the chattel status of women, was greeted by many, including Keating, with relief: women's "sexual services will not be adjudicated on a sliding scale of costs [...] I suppose we should be thankful for small mercies⁴⁴".
- 23 The feminist tactics deployed in the crim. con. reform campaign varied from consciousness raising, occasional street protest to government lobbying. Herein lay its strength: crim. con.'s relevance to women's lives and its symbolic import were effectively conveyed and the campaign subsequently garnered the support of State-sponsored bodies such as CWS, politicians as well as church groupings, popular organisations like the Irish Countrywomen's Association and the emergent women's movement within Sinn Féin. The consciousness-raising efforts of both AIM and Nell McCafferty were particularly significant and have resonance in 21st-century Ireland where some of the reforms sought by second-wave feminists are still outstanding. Ireland has been ranked 51st of 58 countries in global gender gap indices. Equal pay, promotion and female parliamentary and political representation, access to childcare, abortion and protection from violence are not guaranteed. Yet feminism in Ireland, as elsewhere, is experiencing an identity crisis⁴⁵. There is seemingly no sense of a common cause amongst women and, as was apparent in the aftermath of first-wave feminism, the movement is popularly associated with its more radical elements. As Ivana Bacik notes, a revitalised feminist campaign is needed "to ensure that the roles aspired to by younger women today do not become "Celtic Tigers" tomorrow: empty symbols of power and success that hide deep-rooted economic and social gender inequalities in Irish society⁴⁶". Such a campaign might look to the crim. con. campaign where a diverse body of opinion was effectively mobilised to procure legislative change.

Conclusion

- 24 The crim. con. reform campaign was never a united force. Liberal feminist organisations like AIM worked within state structures and were "more concerned with

concrete political achievements than ideological purity⁴⁷". By comparison, some more radical feminists were critical that discriminatory actions like crim. con. were being tackled in a piecemeal fashion and divisions between the women's liberation movement and the crim. con. abolition campaign remained⁴⁸. It was AIM, however, that most clearly and consistently linked crim. con. to the need for further reform, significantly calling for a divorce referendum. Such an association should not be taken for granted. For example, in Italy, the most recent European country to introduce divorce in 1971, the reform campaign was not equated to women's issues and this was commonplace elsewhere⁴⁹. The 1971 *Chains or Change* pamphlet produced by the radical IWLM demanded equal pay, access to education, contraception, justice for unmarried mothers, deserted wives and widows as well as legal equality which would end married women's position as a chattel of her spouse⁵⁰. It tellingly omitted divorce from its list of demands and, as Nell McCafferty noted, it was "a measure of our utter innocence [...] It just did not occur to us that marriage could or should be legally terminated⁵¹". The correlation between a radical reform agenda and the more radical Irish feminist associations should not therefore be too firmly drawn in this instance.

- 25 The crim. con. campaign also proved that change was possible in the early phases of the Irish second-wave feminist movement and made feminism relevant to many women's lives. As Fine Gael TD Gemma Hussey acknowledged, consciousness raising was paramount: as more women became aware of crim. con.'s existence, "they became outraged by it⁵²". Similarly AIM's correspondence campaign to the *Irish Times* was arguably an inspired way to inform a more moderate audience whilst McCafferty's columns on Irish court proceedings had a didactic effect in regard to legal inequalities. This less combative approach from both liberal and radical feminists won support across the mainstream including where ultimately a change in the law would be made: parliament. Although none used the term feminist, several TDs paid credit to the influence of the women's movement even before crim. con.'s abolition. Fianna Fáil's Sean Brosnan was the first in 1977 to suggest that this reform should come "in view of the repeated claims by women's associations over the past number of years that this antediluvian archaic provision should be removed from modern law⁵³". Michael Keating, introducing the second reading of his private members' bill to the Dáil in 1980, also paid tribute, listing nineteen women's associations which had called for the reform and referring to the "debt which Irish society" owed to these organisations. This was reinforced by Labour TD Eileen Desmond who thanked the women's movement for guidance on "the priorities and the more keenly conceived injustices as far as they are concerned [...] and] for the pressure of public opinion which they have whipped up⁵⁴". To re-mobilise such support, reaffirm its relevance and revive gender equality as an aspiration, Irish feminism again needs to raise consciousness and engage with the mainstream.

NOTES

1. A parliamentary divorce was not dependent on a crim. con. action's success. See Lawrence Stone, *Broken lives. Separation and divorce in England, 1660-1857*, Oxford, Oxford University Press, 1993.
2. Anon., *Trials for adultery [...]*, London, S. Bladon, 1779 reprinted New York and London, Garland, 1985, vol. 1, p. 3.
3. Crim. con. was not part of Scottish law although it was possible to sue for damages. There was no equivalent to crim. con. parts of Europe like France or Germany. Numerous US states abolished the procedure in the 1930s although in parts of Canada like Ontario it was not abolished until 1975.
4. Lawrence Stone, *Road to divorce: England, 1530-1981*, Oxford, Clarendon, 1990, p. 255.
5. Henry Edwin Finn, *Thirty-five years in the Divorce Court*, London, T. Werner Laurie, c. 1910, p. 219-223. For the highest awards see, for example, *Cloncurry v. Piers* (1808).
6. Lynch, "a poor man" residing in America, claimed £5,000 against Master of Dublin's Rotunda Lying-in Hospital, *Macan-Lynch*. The damages were applauded in court and *Macan-Lynch* was claimed to have no "stain on his character", *The Irish Times*, 2 July 1890.
7. James Roberts, *Divorce bills in the Imperial Parliament*, Dublin, John Falconer, 1906, p. 92-93. The *Vanstons* divorced in 1897.
8. Alan Joseph Shatter, *Family law in the Republic of Ireland*, Portmarnock, Wolfhound Press, 1977, p. 90. The *Mahers* reportedly reconciled.
9. *The Irish Times*, 5 Dec. 1874. See Shatter, *ibid*, p. 89. See also *Beamish v. Longley* (1874) where the jury were informed that their verdict "could protect every fireside in Ireland from the contagion of this example". £5,000 damages were awarded, *The Irish Times*, 17 Nov. 1874.
10. George Frederick Nugent, *Crim. Con. [...]*, Dublin, n.p., 1796, p. 9. £10,000 damages were still awarded. The *Westmeaths* divorced in the Irish parliament in 1796.
11. Abby L. Sayers, "Publicizing private life: criminal conversation trials in eighteenth century Britain", unpublished MA thesis, Auburn University, 2010, p. 92.
12. The case was *Connaughton v. Dillon*. Charles Phillips, *The speeches of Charles Phillips [...]*, London, n.p., 1817, p. 149 and 153.
13. Shatter, *op. cit.*, p. 90. See, for example, the 1976 case of *Berrett v. Brennan* where £14,000 was awarded. Brennan denied the allegations and did not attend court.
14. Charles Phillips, *The speech of Mr. Phillips, delivered in the Court of Common Pleas, Dublin, in the case of Guthrie v. Sterne, for Adultery*, n.p., 1816, p. 95-105. £5,000 damages were awarded.
15. Anderson's Divorce Act (Northern Ireland [hereafter NI], 1934) (Northern Ireland Assembly Library [hereafter NIAL]). See also the 1932 Armstrong and 1936 Agnew divorce acts (NIAL).
16. See Supreme Court order XI, rule I (i). Roberts, *Divorce bills*, p. 19. Cases were also heard in the Irish Probate Court and Court of King's Bench.
17. Dobbs and Trew divorced in the NI parliament in 1931 and 1936 respectively.

18. Black, NI House of Commons debates, 2 May 1939, vol. 22, col. 1239. The NI action for damages remained in place until 1978.
19. *The Irish Times*, 3 Feb. 1950.
20. *The Irish Times*, 22 Oct. 1954.
21. See, for example, *Hunt v. McDonnell* (1891).
22. *The Irish Times*, 22 Oct. 1954.
23. *The Irish Times*, 5 June 1970.
24. The Stone, *Road to divorce*, p. 287. Lord Lansdowne, however, called for crim. con's abolition on the grounds of morality and equality in 1856 and 1857. There were also concerns regarding false charges and collusion. See Allen Horstman, *Victorian divorce*, London, Croom Helm, 1985, p. 5.
25. See A. W. Samuels' evidence to *The Royal Commission on Divorce [...] Minutes of Evidence*, London, HMSO, vol. 3, p. 456-462.
26. Heide Braun's evidence stated that her husband sanctioned her leaving the marital home but would not permit her to take their children. *The Irish Times*, 21 June 1972.
27. *The Irish Times*, 24 June 1972.
28. See Linda Connolly, *The Irish women's movement from revolution to devolution*, Basingstoke, Palgrave, 2002, p. 145-154. The IWLM was largely defunct by 1972.
29. *The Irish Times*, 20 Dec. 1975.
30. *The Irish Times*, 26 July 1976.
31. William Duncan and James O'Reilly, both later to the forefront of the 1986 and 1995 pro-divorce referenda, also addressed the conference on the monetary aspect of crim. con. damages, including the possibility that the action could be used to disinherit wives on the basis of 'unworthiness' under section 120 of the 1965 Succession Act. *The Irish Times*, 13 Feb. 1976.
32. *The Irish Times*, 17 Feb. 1976. McCafferty and Fennell's report included contraceptive, divorce and wives' asylum committal reform. Irishwomen United lasted until 1977 and its demise has been related to its radicalism and diversity. See Linda Connolly and Tina O'Toole, *Documenting Irish Feminisms. The second wave*, Dublin, Woodfield Press, 2005.
33. *The Irish Times*, 3 Aug. 1976. The Women's Political Association developed from the Women's Progressive Association which, with Mary Robinson as first president, sought to increase the number of politically and publically active Irish women from 1970.
34. *The Irish Times*, 10 Feb. and 9 Mar. 1976.
35. Although interpretations of the motivation for this department's establishment vary from republican self-interest to a progressive engagement with women's issues, it was unique both in the context of Northern Ireland and the Republic of Ireland.
36. The Women's Representative Committee was active from 1974-8 and considered domicile, social welfare, training, nullity family planning, legal aid. It was abolished due to an overlap with CSW and the Employment Equality Agency. See Connolly, *The women's movement*, p. 102. CSW initially sought equal pay as well as taxation and social welfare reform. It was partially state-sponsored from 1977. The Law Reform Commission also considered divorce law reform. The Irish Family League was one of the few organisations that supported opening the crim. con. action to women. See, for

example, *The Irish Times*, 7 Dec. 1977. CSW, now known as the National Women's Council, and the Law Reform Commission are still in existence.

37. See Shatter, *op. cit.*, p. 92.

38. *The Irish Times*, 3 Feb. 1977.

39. *The Irish Times*, 9 and 12 Nov. 1979.

40. *The Irish Times*, 23 Nov. 1979.

41. *The Irish Times*, 5 Jan. 1980.

42. *The Irish Times*, 14 Oct. 1980.

43. This was a wide-ranging bill, which also abolished tort of enticement, harbouring a spouse and action for breach of promise.

44. Dáil Éireann Debates, vol. 328, no. 11, 7 May 1981, col. 2457.

45. Pat O'Connor, "Still changing places: women's paid employment and gender roles" in *The Irish Review*, vol. 35 (Summer 2007), p. 64-65.

46. *Irish Examiner*, 4 Apr. 2008. See Connolly and O'Toole, *Documenting Irish Feminisms*.

47. Connolly, *op. cit.*, p. 108.

48. See *The Irish Times*, 22 Mar. 1976 and Connolly, *The Irish women's movement*, p. 145.

49. Michelle Dillon, *Debating Divorce*, Kentucky, University Press of Kentucky, 1993, p. 71.

50. Yvonne Scannell, "The constitution and the role of women", Brian Farrell (ed.), *De Valera's constitution and ours*, Dublin, Gill and Macmillan, 1988, p. 129.

51. Cited in Dairmaid Ferriter, *Occasions of sin: sex in twentieth-century Ireland*, London, Profile, 2009, p. 441. Irishwomen United, however, included divorce on their 1976 charter.

52. Dáil Éireann Debates, vol. 95, no. 22, 17 June 1981, col. 2211.

53. Dáil Éireann Debates, vol. 296, no. 5, 2 Feb. 1977, col. 667.

54. Dáil Éireann Debates, vol. 318, no. 6, 4 Mar. 1980, cols. 1272-1274 and col. 1295.

ABSTRACTS

Criminal conversation, the legal action whereby a husband could bring a case for monetary damages against a man his wife had committed adultery with, was more widely discussed in 1970s-80s Ireland than at any other time in its three-century history. Popularly known as crim. con., the short-hand for criminal conversation meaning adultery, this process was based on trespass and, as women were legally seen as the property of their husbands, was only available to men. Crim. con. was abolished in the Republic of Ireland in 1981 and the campaign for its reform was headed by an amalgam of second-wave feminists. This article seeks to reinstate a forgotten victory to the Irish feminist movement and assess the relevance of the tactics deployed in crim. con.'s abolition for feminism in 21st-century Ireland.

La « criminal conversation », action en justice en vertu de laquelle un mari pouvait demander des dommages et intérêts à l'homme avec lequel sa femme avait commis l'adultère, a fait l'objet de davantage d'attention en Irlande dans les années 1970 et 1980 qu'à tout autre moment de l'histoire du pays. La « crim. con. », plus communément connue sous le nom d'adultère, était basée sur la notion de violation de propriété, compte tenu que les femmes étaient considérées, sur le plan légal, comme étant la propriété de leur mari, et était un privilège exclusivement masculin. Elle fut abolie en République d'Irlande en 1981 et la campagne qui accompagna cette réforme fut conduite par un amalgame de féministes de la deuxième vague. Cet article propose de rétablir une victoire oubliée du mouvement féministe irlandais et d'évaluer la pertinence des techniques utilisées pour l'abolition de la « crim. con » pour le mouvement féministe du XX^e siècle en Irlande.

INDEX

Mots-clés: femmes, féminisme et post-féminisme, État irlandais (République d'Irlande), études de genre, justice, Irlande - questions économiques et sociales, divorce, mariage

Keywords: gender studies, feminism and post-feminism, women, Irish State (Republic of Ireland), Ireland - socio-economic issues, justice, divorce, marriage

AUTHOR

DIANE URQUHART

University of Liverpool